

Queensland



# QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991

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Queensland



**Queensland Building Services  
Authority Act 1991**

**Act No. 98 of 1991**

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**An Act to regulate the building industry**

*[Assented to 17 December 1991]*

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Queensland Building Services Authority Act 1991*.

### **Commencement**

**2.(1)** Part 1 (other than sections 1 and 2), Part 2, Division 1 of Part 7 and section 115 commence on 1 January 1992.

**(2)** The remaining provisions of this Act (other than sections 1 and 2) commence on a day to be fixed by proclamation.

### **Objects of Act**

**3.** The objects of this Act are—

- (a) to regulate the building industry—
  - (i) to ensure the maintenance of proper standards in the industry; and
  - (ii) to achieve a reasonable balance between the interests of building contractors and consumers; and
- (b) to provide remedies for defective building work; and
- (c) to provide for the efficient resolution of building disputes; and
- (d) to provide support, education and advice for those who undertake building work and consumers.



**Definitions**

**4.(1)** In this Act—

**“Advisory Service”** means the Home Building Advisory Service;

**“architect”** means a person registered as an architect under the *Architects Act 1985*;

**“Authority”** means the Queensland Building Services Authority;

**“Board”** means the Queensland Building Services Board;

**“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 sub-contractor who carries out building work for a building contractor;

**“building site”** means a place where building work has been, is being, or is about to be, carried out;

**“building work”** means—

- (a) the erection or construction of a building; or
- (b) the renovation, alteration, extension, improvement or repair of a building; or
- (c) the provision of lighting, heating, ventilation, air-conditioning, water supply, sewerage or drainage in connection with a building; or
- (d) the demolition of a building; or
- (e) any site work (including the construction of retaining structures) related to work of a kind referred to above; or
- (f) the preparation of plans or specifications for the performance of building work; or
- (g) any work of a prescribed kind;

but does not include work of a kind excluded by the regulations from the ambit of this definition;

**“company”** means any body corporate;

**“condition”** includes a limitation or restriction;

**“consumer”** means a person for whom building work is carried out, but does not include a building contractor for whom building work is carried out by a sub-contractor;

**“contractor’s licence”** means a licence authorising the licensee to carry out, and to supervise, building work;

**“cost escalation clause”** means a provision of a domestic building contract under which the amount to be paid by the consumer may be increased to reflect increased costs of labour or materials or in consequence of delays in carrying out the work;

**“defective”**, in relation to building work, includes faulty or unsatisfactory;

**“design work”** means—

- (a) the preparation of plans or specifications for building work; or
- (b) professional advice in relation to building work;

**“determination”** includes an order or direction;

**“display home”** means a home made available for inspection to persons who are invited expressly or impliedly to enter into contracts for the construction of similar homes;

**“domestic building contract”** means a contract for carrying out domestic building work;

**“domestic building dispute”** means—

- (a) a claim or dispute arising between a consumer and a building contractor in relation 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 in relation 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;

**“domestic building work”** means building work related to a home or an associated building;

**“engineer”** means a person registered as a professional engineer under the *Professional Engineers Act 1929*;

**“exempt building work”** means—

- (a) building work in relation to a farm building or proposed farm building; or

- (b) building work of a value less than an amount fixed by the regulations for the purposes of this paragraph; or
- (c) building work exempted by the regulations from the application of this Act; or
- (d) design work carried out, or supervisory services provided, by an architect in the course of the architect's professional practice; or
- (e) design work carried out, or supervisory services provided, by an engineer in the course of the engineer's professional practice; or
- (f) building work carried out by the Crown or an instrumentality or agency of the Crown (as distinct from building work carried out for the Crown or an instrumentality or agency of the Crown by an independent contractor); or
- (g) building work carried out by a local authority (as distinct from building work carried out for a local authority by an independent contractor);

**“farm building”** means a building of a kind classified by the regulations as a farm building;

**“home”** means any residential premises except premises constituting, or forming part of, commercial or industrial premises;

**“home-building contract”** means a contract to build a home;

**“licence”** means a licence under this Act;

**“licensed contractor”** means a person who holds a contractor's licence;

**“licensed supervisor”** in relation to building work means a person who holds a contractor's licence or a supervisor's licence authorising supervision of building work of the relevant class;

**“licensee”** means a person who holds a licence;

**“major domestic building work”** means domestic building work of a value exceeding an amount fixed by the regulations for the purposes of this definition;

**“nominated supervisor”** in relation to a company means an officer or employee of the company nominated by the company to have the general supervision of building work to be carried out under a licence;

**“owner”** of land means—

- (a) in the case of land subject to the Real Property Acts—the

registered proprietor of that land;

(b) in the case of other land alienated from the Crown by the grant of an estate of freehold—the proprietor of an estate of freehold in the land;

(c) in the case of land held under a statutory lease or licence conferring a right to possession of the land—the lessee or licensee;

**“owner-builder permit”** means a permit under Division 8 of Part 3;

**“Real Property Acts”** means the *Real Property Act 1861* and the *Real Property Act 1877*;

**“rectify”** building work means to remedy defective building work or to complete incomplete building work;

**“Registrar of Titles”** means—

(a) in relation to land subject to the Real Property Acts—the Registrar of Titles under the Real Property Acts;

(b) in relation to other land—the officer maintaining a register of that land;

**“residential construction work”** means building work classified by the regulations as residential construction work;

**“statutory insurance scheme”** means the insurance scheme established under Part 5;

**“supervisor’s licence”** means a licence authorising the licensee to supervise (but not to carry out) building work;

**“trade licence”** means a contractor’s licence or a supervisor’s licence related to building work within a particular trade or particular trades;

**“Tribunal”** means the Queensland Building Tribunal;

**“value”** of building work means an amount representing the reasonable cost to a consumer of having the work carried out by a licensed contractor on the basis that all building materials are to be supplied by the contractor (whether or not the work is in fact carried out by a licensed contractor on that basis).

(2) If building work is, or is to be, carried out in stages under a series of separate contracts, a reference in this Act to the value of the building work is a reference to the aggregate value of the building work carried out, or to be

carried out, under those contracts.

## **PART 2—THE QUEENSLAND BUILDING SERVICES AUTHORITY**

### *Division 1—Establishment of Authority*

#### **Establishment of Authority**

**5.(1)** An Authority called the Queensland Building Services Authority is established.

**(2)** The Authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

**(3)** The Authority has, for or in connection with the performance of its functions, all the powers of a natural person, and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants; and
- (e) make charges for services provided by it.

#### **Constitution of Authority**

**6.** The Authority consists of—

- (a) the Queensland Building Services Board; and
- (b) the Registrar/General Manager; and
- (c) the Home Building Advisory Service.

***Division 2—Ministerial direction*****Ministerial direction**

**7.(1)** The Authority is subject to direction by the Minister, but only if the direction is given in accordance with this section.

**(2)** If the Minister proposes to direct the Authority—

- (a) the direction must be given in writing; and
- (b) a copy of the direction must be tabled in the Legislative Assembly within 7 sitting days after it is given.

**(3)** The Authority is, on receipt of a written direction under subsection (2), bound by the direction.

**(4)** A direction by the Minister must be published in the annual report of the Authority for the year in which the direction is given.

***Division 3—Queensland Building Services Board*****Establishment of Board**

**8.** A Board called the Queensland Building Services Board is established.

**Role of Board**

**9.(1)** The Board has the following functions—

- (a) to make and review policies governing the administration of this Act; and
- (b) to monitor the Registrar/General Manager's administration of the Authority, including its financial administration; and
- (c) to direct the activities of the Home Building Advisory Service; and
- (d) to advise the Minister on matters affecting the building industry or the administration of this Act; and
- (e) to advance the interests of the building industry in any other way

consistent with the objects of this Act.

(2) The policies of the Board are to be made in written form and published in an appropriate way.

### **Composition of Board**

**10.(1)** The Board consists of the following members—

(a) one (the chairperson) is to be a person nominated for appointment as chairperson by the Minister; and

(b) 3 (of whom at least 2 must be licensees) are to be representatives of the building industry in Queensland selected by the Minister from panels of names submitted by—

(i) the Queensland Master Builders' Association; and

(ii) the Housing Industry Association (Queensland Division);  
and

(iii) the Australian Institute of Building (Queensland Chapter);

(c) 2 are to be persons nominated by the Minister to represent consumers; and

(d) one is to be a person nominated by the Minister to represent the insurance industry; and

(e) 3 are to be persons nominated by the Minister to represent licensees who hold trade licences; and

(f) one is to be a person nominated by the Minister to represent licensed building designers; and

(g) the Registrar/General Manager (who is a non-voting member);  
and

(h) the Director of the Home Building Advisory Service (who is a non-voting member).

(2) At least 2 months before nominating a person for appointment as a member of the Board the Minister must—

(a) in the case of a member to be selected from a panel of names submitted under subsection (1)(b)—request the relevant body to submit a panel of names so that a selection may be made; and

(b) in the case of other members—by advertisement in a newspaper circulating throughout Queensland, invite suggested nominations for appointment from interested persons.

(3) A panel of names submitted by a body referred to in subsection (1)(b) must include at least 4 names of which at least one must be the name of a person who resides at least 150 kilometres from Brisbane.

(4) In selecting nominees for appointment to the Board, the Minister should have regard to such of the following factors as may be appropriate—

(a) breadth of experience in the building industry and in developing policies within the building industry;

(b) demonstrated commitment to promoting high standards in the building industry;

(c) capacity to subordinate sectional interests to the interests of the general community;

(d) understanding of the needs of the building industry and its importance within the State's economy;

(e) practical knowledge of the building industry and of relevant legislation;

(f) sympathy to the need for consumer protection and experience in dispute resolution.

(5) A member of the Board is to be appointed by the Governor in Council for a term (not exceeding 3 years) specified in the instrument of appointment.

(6) The office of a member of the Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns by written notice to the Minister; or

(d) is absent, without leave of the Board, from 3 consecutive meetings of the Board; or

(e) becomes bankrupt; or

(f) becomes a patient within the meaning of the *Mental Health Act*



1974; or

(g) is removed from office by the Governor in Council.

(7) The Governor in Council may appoint a person to act as a member of the Board—

(a) during a vacancy in the office of a member; or

(b) during any period, or all periods, when the member is absent from duty or unable for any reason to act in the office.

### **Times and places of meetings**

**11.(1)** Subject to subsection (2), meetings of the Board are to be held at such times and places as the Board determines.

(2) The chairperson—

(a) may at any time convene a meeting; and

(b) must convene a meeting when requested by at least 3 voting members of the Board.

### **Proceedings at meetings**

**12.(1)** The chairperson or, in the absence of the chairperson, a member chosen to preside by the members present, is to preside at a meeting of the Board.

(2) At a meeting of the Board—

(a) 6 voting members constitute a quorum; and

(b) a question is to be decided by a majority of votes of the members present and voting; and

(c) each member present (except a non-voting member) has one vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has a casting vote.

(3) The Board may regulate its proceedings as it considers appropriate.

(4) The Board may permit members to participate in a particular meeting, or all meetings, by—

(a) telephone; or

- (b) closed circuit television; or
- (c) any other means of communication.

(5) A member who participates in a meeting of the Board by permission under subsection (4) is taken to be present at that meeting.

(6) The Board may invite a person to attend a meeting of the Board for the purpose of advising or informing it on any matter.

### **Minutes**

13. The Board must keep minutes of its proceedings.

### **Committees**

14.(1) The Board, or the Minister, may appoint committees for the purpose of advising the Board on a particular subject or subjects.

(2) Regulations may be made governing the constitution, and regulating the proceedings, of any such committee.

### **Fees and allowances**

15. The members of the Board, or of a committee established under this Division, are entitled to such fees and allowances as may be determined by the Governor in Council.

***Division 4—The Registrar/General Manager*****The office of Registrar/General Manager**

**16.** The office of Registrar/General Manager of the Authority is established.

**Appointment of the Registrar/General Manager**

**17.(1)** The Registrar/General Manager is to be appointed by the Governor in Council.

**(2)** The remuneration and conditions of appointment of the Registrar/General Manager are to be determined by the Minister.

**(3)** The Governor in Council may appoint a person to act as Registrar/General Manager—

- (a)** during a vacancy in the office; or
- (b)** during any period, or all periods, when the Registrar/General Manager is absent from duty or is, for any other reason, unable to perform the functions of the office.

**Role of the Registrar/General Manager**

**18.(1)** All executive powers of the Authority are vested in the Registrar/General Manager.

**(2)** The Registrar/General Manager's functions and responsibilities include the following—

- (a)** administration of the licensing system established by this Act;
- (b)** administration of a system of inspection;
- (c)** issuing directions for rectification of building work under this Act;
- (d)** taking disciplinary and other proceedings under this Act;
- (e)** assessing and approving payment of insurance claims;
- (f)** issuing warnings to the public or any section of the public.

**(3)** The Registrar/General Manager must report regularly to the Board on

the administration of this Act and, at the request of the Board, must provide the Board with a special report on a particular subject.

### **Registrar/General Manager to be bound by Board's policies**

**19.(1)** The Registrar/General Manager is bound by the Board's policies.

**(2)** The Registrar/General Manager is, except as provided in subsection (1), independent of the Board's control.

### **Delegation**

**20.** The Registrar/General Manager may delegate powers under this Act to any officer or employee of the Authority.

## ***Division 5—Home Building Advisory Service***

### **Establishment of Home Building Advisory Service**

**21.** The Home Building Advisory Service is established.

### **Functions of the Advisory Service**

**22.** The functions of the Advisory Service are—

- (a) to provide or promote consumer education; and
- (b) to provide an advisory service to consumers with regard to—
  - (i) their statutory rights and obligations; and
  - (ii) their contractual rights and obligations in relation to building contracts; and
  - (iii) insurance claims that may arise in relation to building work; and
  - (iv) the role, functions, and operating procedures of the Authority; and
  - (v) any incidental matters; and

- (c) to provide courses of instruction for—
  - (i) those seeking to obtain licences; and
  - (ii) licensees; and
  - (iii) persons proposing to carry out building work as owner-builders; and
  - (iv) others seeking to acquire knowledge or expertise in subjects related to the building industry.

### **Director of the Advisory Service**

**23.(1)** The office of Director of the Home Building Advisory service is established.

**(2)** The Director is to be appointed by the Governor in Council.

**(3)** The remuneration and conditions of appointment of the Director are to be as determined by the Minister.

**(4)** The Director is to report directly to the Board.

**(5)** The Governor in Council may appoint a person to act as the Director—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the Director is absent from duty or is, for any other reason, unable to perform the functions of the office.

### **Funding of Advisory Service**

**24.** The costs of providing the Advisory Service are to be paid from the Authority's General Statutory Fund.

***Division 6—Financial provisions*****General Statutory Fund**

**25.(1)** A fund called the General Statutory Fund is established.

**(2)** The fund consists of—

- (a) the balance of the Builders' Registration Board General Fund as at the commencement of this section; and
- (b) any money received or recovered by the Authority except in connection with the insurance scheme.

**(3)** The costs of administering this Act (apart from the costs of administering the statutory insurance scheme) are to be paid out of the fund.

**(4)** The Authority may invest money from the fund that is not immediately required by the Authority in any form of investment approved by the Treasurer.

**(5)** The Authority may apply any amount surplus to the Authority's budgetary requirements for a particular financial year to encourage or assist education or research related to the building industry.

**Insurance Fund**

**26.(1)** A fund called the Insurance Fund is established.

**(2)** The fund consists of—

- (a) the balance of the Builders' Registration Board Insurance Fund as at the commencement of this section; and
- (b) all money received or recovered by the Board in connection with the statutory insurance scheme.

**(3)** The costs of administering the statutory insurance scheme and of paying out claims under that scheme are to be paid from the fund.

**(4)** The Authority may invest money from the fund that is not immediately required for the purposes of the insurance scheme in any form of investment approved by the Treasurer.

**Accounts and audit**

**27.(1)** The Authority must keep proper records of all financial transactions.

**(2)** As soon as practicable after the end of each financial year, the Authority must prepare a statement of account showing its receipts and payments for the financial year and its financial position as at the end of the financial year.

**(3)** The Auditor-General must audit the accounts of the Authority and has, in respect of the audit, the powers conferred by the *Financial Administration and Audit Act 1977*.

**Authority's obligation to report suspected offence**

**28.** If the Authority has reason to suspect that an offence resulting in loss of money, or loss or damage to other property has been committed, the matter must be reported to the Auditor-General and the police.

***Division 7—Annual report*****Annual report**

**29.(1)** The Authority must, not later than 31 October in each year, furnish the Minister with a report on the administration of this Act during the year ended on 30 June in that year.

**(2)** The report must include—

(a) separate reports from—

(i) the Board; and

(ii) the Registrar/General Manager; and

(iii) the Director of the Advisory Service;

on matters within their respective spheres of responsibility; and

(b) the audited accounts of the Authority.

(3) As soon as practicable after receiving the report, the Minister must table it in the Legislative Assembly.

## **PART 3—LICENSING**

### *Division 1—Classes of licences*

#### **Classes of licences**

**30.(1)** A licence may be issued authorising the licensee—

- (a) to carry out, and to supervise, all classes of building work; or
- (b) to supervise (but not to carry out) all classes of building work; or
- (c) to carry out, and to supervise, building work of one or more classes specified in the licence; or
- (d) to supervise (but not to carry out) building work of one or more classes specified in the licence.

**(2)** Licences are to be divided into classes by the regulations—

- (a) according to whether the licence is a contractor's licence or a supervisor's licence; and
- (b) according to whether the licence relates to all classes of building work or is limited to a specified class or specified classes of building work; and
- (c) if the licence is limited to a specified class, or specified classes, of building work—according to the class or classes of building work to which it relates.



***Division 2—Entitlement to licence*****Entitlement to contractor's licence**

**31.(1)** A person (not being a company) is entitled to a contractor's licence if the Authority is, on application by that person, satisfied that—

- (a) the applicant is a fit and proper person to hold the licence; and
- (b) the applicant has the qualifications and experience required by the regulations in relation to a licence of the relevant class; and
- (c) the applicant satisfies the financial requirements imposed by the regulations.

**(2)** A company is entitled to a contractor's licence if the Authority is satisfied, on application by that company for a licence, that—

- (a) the directors and any other persons who are in a position to control or substantially influence the conduct of the company's affairs (including, for example, shareholders with a significant shareholding, financiers and senior employees) are fit and proper persons to exercise such control or influence over a company that holds a contractor's licence; and
- (b) the company's nominated supervisor holds a licence authorising the supervision of building work of the class or classes for which the licence is sought by the company; and
- (c) the applicant satisfies the financial requirements imposed by the regulations.

**(3)** In deciding whether a particular person is a fit and proper person to hold a contractor's licence or to exercise control or influence over a company that holds a contractor's licence, the authority may have regard to—

- (a) commercial and other dealings in which that person has been involved and the standard of honesty and integrity demonstrated in those dealings; and
- (b) any failure by that person to carry out commercial or statutory obligations and the reasons for the failure; and
- (c) any other relevant factor.

**Entitlement to supervisor's licence**

**32.** A person (not being a company) is entitled to a supervisor's licence if the Authority is, on application by that person, satisfied—

- (a) that the applicant is a fit and proper person to hold the licence; and
- (b) that the applicant has the qualifications and experience required by the regulations in relation to a licence of the relevant class.

***Division 3—Grant of licence*****Application for licence**

**33.(1)** An application for a licence—

- (a) must be made in accordance with the regulations; and
- (b) must be accompanied by the appropriate application fee fixed by the regulations.

**(2)** An applicant for a licence must at the request of the Authority provide any further information or evidence that the Authority may require to decide the application.

**Grant of licence**

**34.(1)** If the Authority is satisfied, on an application under this Division, that the applicant is entitled to a licence, the Authority must issue a licence of the appropriate class.

**(2)** A contractor's licence may be issued by the Authority with or without an endorsement signifying that the licensee may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme.

**(3)** A licence is to be in the form of a card capable of being used to imprint documents with the licensee's name and licence number.

**(4)** The Authority may also issue a licence certificate in a form determined by the Authority.

(5) If, on application by a licensee and payment of the fee required by the regulations, the Authority is satisfied that a licence card or a licence certificate has been lost, damaged or destroyed, the Authority may issue a new licence card or licence certificate.

#### *Division 4—Conditions of licence*

##### **Imposition of conditions etc. on grant of licence**

35. A licence may be granted subject to such conditions as the Authority considers appropriate.

##### **Subsequent imposition of conditions etc.**

36.(1) If the Authority has reason to believe—

- (a) that a licensee may have insufficient financial resources to meet possible liabilities in relation to building work; or
- (b) that there is some other proper ground for imposing a condition on the licence;

the Authority may notify the licensee of the proposed condition and invite the licensee, within a period specified in the notice, to make written representations on the proposal.

(2) After considering the written representations (if any) made by the licensee, the Authority, if satisfied that the condition is appropriate, may, by notice to the licensee, impose the condition.

(3) A condition may be imposed preventing the licensee from continuing to carry on business until the licensee has lodged with the Authority appropriate security against possible liabilities in relation to building work.

(4) The Authority may, by subsequent notice to the licensee, vary or revoke a condition imposed under this section.

(5) A notice imposing or varying a condition must inform the licensee of the licensee's right to apply for a review of the Authority's decision to impose or vary the condition.

***Division 5—Annual licence fee*****Annual licence fee**

**37.** A licensee must pay annually and in advance the licence fee appropriate to a licence of the class held by the licensee in accordance with the regulations.

**Suspension for non-payment of fee**

**38.(1)** If a licensee fails to pay the appropriate licence fee within the time allowed under the regulations, the Authority may, by notice to the licensee, suspend the licence.

**(2)** A suspension imposed under this section terminates on payment of the appropriate fee.

**(3)** If a licence has remained in suspension under this section for more than 3 months, the Authority may, by notice to the licensee, cancel the licence.

***Division 6—The register*****Register**

**39.(1)** A register of licensees must be kept by the Authority.

**(2)** The register must include the following particulars in relation to each licensee—

- (a) the licensee's full name, business address, and registration number; and
- (b) if the licensee is a company—the full name and business address of the nominated supervisor and each director; and
- (c) the class of licence held by the licensee and any special conditions to which the licence is subject; and
- (d) any particulars required by the regulations.

(3) The register must also contain against the name of each licensee a note of any direction or order requiring the licensee to rectify building work and of any disciplinary action taken against the licensee.

(4) If circumstances change so that the particulars recorded in the register in relation to a particular licensee no longer reflect the current position, the licensee must, within 14 days after the date of the change, give the Authority written particulars of the change.

(5) A person may, on payment of the fee, and subject to the conditions, prescribed by the regulations, inspect the register at the Authority's office at any time that office is open to the public.

### **List of licensees**

**40.(1)** In January of each year the Authority must forward to the Minister a list of those who held licences as at 1 January of that year showing the class of licence held by each.

(2) On receipt of the list, the Minister must have it published in the Gazette.

(3) The published list is admissible in any legal proceedings as evidence of those who held licences as at 1 January of the relevant year.

### **Certificates**

**41.(1)** The Authority may, on application by any person and payment of the fee fixed by the regulations, issue a certificate—

- (a) certifying that a particular person was or was not licensed under this Act as at a particular date or over a particular period; or
- (b) certifying the class or conditions of a particular licence; or
- (c) certifying the cancellation or suspension of a licence; or
- (d) certifying as to any other matter contained in the register.

(2) A certificate under this section is admissible in legal proceedings as evidence of any matter stated in the certificate.

***Division 7—Requirement to be licensed*****Unlawful carrying out of building work**

**42.(1)** A person must not carry out, or undertake to carry out, building work (except exempt building work) unless that person holds a contractor's licence of the appropriate class under this Act.

**(2)** For the purposes of this section—

(a) a person carries out building work whether that person carries it out personally, or directly or indirectly causes it to be carried out; and

(b) a person is taken to carry out building work if that person provides advisory services, administration services, management services or supervisory services in relation to the building work; and

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

**(3)** A person who carries out building work in contravention of this section is not entitled to any monetary or other consideration for doing so.

**(4)** An unlicensed person who carries out, in the course of employment, building work for which that person's employer holds a licence of the appropriate class under this Act does not contravene this section.

**(5)** An unlicensed person who holds an owner-builder permit does not contravene this section by carrying out building work permitted by the permit.

**(6)** An unlicensed person who carries out, or undertakes to carry out, building work in partnership with a person who is licensed to carry out building work of the relevant class does not contravene this section.

**(7)** A person who contravenes this section commits an offence.

Maximum penalty—

(a) for an individual—80 penalty units for a first offence, 120 penalty units for a second offence and 160 penalty units for a third or subsequent offence; and

(b) for a company—160 penalty units for a first offence, 240 penalty units for a second offence and 320 penalty units for a third or

subsequent offence.

### **Supervision of building work**

**43.(1)** Any building work (except exempt building work) carried out by a licensed contractor must be carried out—

- (a) if the licensee is a company—under the personal supervision of an officer or employee of the company who holds a licence authorising supervision of building work of the relevant class; or
- (b) if the licensee is an individual—under the personal supervision of the licensee or an employee of the licensee who holds a licence authorising supervision of building work of the relevant class.

**(2)** A licensed contractor is obliged to ensure adequate supervision of all building work carried out under the licence and accordingly the number of licensed supervisors engaged in supervision must be adequate having regard to—

- (a) the nature and amount of the building work being carried out at any one time; and
- (b) the number of sites at which the building work is being carried out; and
- (c) the geographical location of the sites.

**(3)** The principles for determining the adequacy of supervision are to be laid down in the policies of the Board.

**(4)** The Authority may, for any proper reason, waive compliance with a requirement of this section on such conditions as the Authority considers appropriate.

**(5)** If building work is not supervised as required by this section the licensed contractor commits an offence.

Maximum penalty—

- (a) for an individual—40 penalty units for a first offence, 60 penalty units for a second offence and 80 penalty units for a third or subsequent offence; and
- (b) for a company—80 penalty units for a first offence, 120 penalty units for a second offence and 160 penalty units for a third or

subsequent offence.

### *Division 8—Owner-builders*

#### **Permits for owner-builders**

**44.(1)** The Authority may, on application by the owner of land, and payment of the appropriate fee determined under the regulations, issue a permit permitting the owner (subject to any other relevant law) to carry out on the land building work of a class prescribed by the regulations for the purposes of this Division.

**(2)** If the land is owned jointly or in common by 2 or more persons, the application must be made jointly by all of them.

**(3)** The regulations may require that an applicant for a permit to carry out building work of a particular class, or if there are 2 or more joint applicants, at least one of them, must have completed a specified course of instruction.

**(4)** A permit cannot be issued under this section if a permit has been issued to the same applicant within the previous 6 years unless—

- (a) the case falls within an exception stated in the regulations; or
- (b) the Authority is satisfied that there are special reasons for issuing the permit.

#### **Responsibilities of owner-builder**

**45.(1)** If building work is carried out under a permit, it is the responsibility of the holder of the permit to ensure that it is properly carried out.

**(2)** If the holder of a permit engages a licensed contractor to carry out any part of the building work no action may be taken under this Act to require the licensed contractor to rectify defective work unless—

- (a) a written contract between the holder of the permit and the licensed contractor expressly provides that the licensed contractor is to be responsible to ensure that the relevant part of the work is properly



carried out; and

(b) the building work is grossly defective through the fault of the licensed contractor.

### **Notification on certificate of title**

**46.(1)** If a permit is issued under this Division, the Authority must notify the Registrar of Titles of the granting of the permit.

**(2)** On receiving a notification under section, the Registrar of Titles must enter the notification in the file attached to the register and it may not be removed except under this section.

**(3)** At the end of 7 years from entry of a notification, the Registrar of Titles may remove it from the file.

**(4)** If the Authority directs earlier removal of a notification from the file, the Registrar of Titles must comply with that direction.

### **Warnings**

**47.(1)** If—

(a) building work (other than exempt building work) is carried out on land by a person who is not licensed to carry out that building work; and

(b) the land is offered for sale within 6 years after completion of the building work;

the vendor must, before the contract of sale is signed by the purchaser, give the prospective purchaser a notice containing details of the building work and a warning in the form required by the regulations.

**(2)** If a notice is not given as required by this section, the vendor will be taken to have given the purchaser a contractual warranty (which operates to the exclusion of any inconsistent provision of the contract of sale) that the building work was properly carried out.

## ***Division 9—Cancellation, suspension or surrender of licence***

**Cancellation or suspension of licence**

**48.** The Authority may suspend or cancel a licence if—

- (a) the licence was obtained by fraud or other improper means; or
- (b) the licensee is convicted of an indictable offence or an offence that, if committed in Queensland, would be an indictable offence; or
- (c) the licensee—
  - (i) in the case of an individual—has become bankrupt or taken advantage of the laws of bankruptcy; or
  - (ii) in the case of a company—is insolvent, being wound up, or under official management; or
- (d) the licensee is a company and it ceases, for a period exceeding 28 days, to have a nominated supervisor holding a licence authorising supervision of building work of the appropriate class or classes;
- (e) the licensee is convicted of an offence against this Act; or
- (f) the licensee becomes a patient within the meaning of the *Mental Health Act 1974*.

**Procedure for cancellation or suspension**

**49.(1)** The Authority must, before cancelling or suspending a licence, give the licensee notice of its reasons for the proposed cancellation or suspension and allow the licensee 21 days from service of the notice to make written representations on the matter.

**(2)** The Authority must consider any written representations made within the time allowed under subsection (1) before imposing the cancellation or suspension.

**(3)** A cancellation or suspension is imposed by written notice to the licensee.

**(4)** The notice of cancellation or suspension must inform the licensee or former licensee of the right to apply to the Tribunal for a review of the Authority's decision.

**Surrender of licence**

**50.** A licensee may, with the consent of the Authority, surrender the licence.

***Division 10—Miscellaneous*****False representation**

**51.** A person must not, by words or conduct, falsely represent—

- (a) that a person (whether the representor or some other person) holds a licence under this Act; or
- (b) that a person who holds a licence of a particular class under this Act (whether the representor or some other person) holds a licence of some other class.

Maximum penalty—80 penalty units.

**Signs to be exhibited**

**52.(1)** A licensed contractor (not being a sub-contractor) must exhibit at a prominent position on a building site under the contractor's control a sign conforming with the regulations showing the name under which the contractor is licensed under this Act and the number of the contractor's licence.

Maximum penalty—20 penalty units.

**(2)** A person who carries out building work under an owner-builder permit must exhibit at a prominent position on a building site under that person's control a sign conforming with the regulations showing the number of the permit.

Maximum penalty—20 penalty units.

**Return of licence**

**53.(1)** A licensee (or former licensee) whose licence is suspended or cancelled must, within 14 days of receiving notice of the suspension or cancellation, return the licence and, if the Authority has issued a licence certificate, the licence certificate, to the Authority.

**(2)** A licensee must, within 14 days of receiving notice of the imposition, variation or revocation of a condition of the licence return the licence and, if the Authority has issued a licence certificate, the licence certificate, to the Authority for endorsement.

**(3)** A person who fails, without reasonable excuse, to comply with a requirement of this section commits an offence.

Maximum penalty—80 penalty units.

**Advertisements**

**54.** A licensee who publishes or causes to be published any advertisement in connection with the licensee's business must ensure that the advertisement—

- (a) contains the name under which the licensee is licensed; and
- (b) states that the licensee is licensed under this Act and the number of the licensee's licence; and
- (c) conforms with any other requirements imposed by the regulations.

Maximum penalty—35 penalty units.

**Notification of nominated supervisor**

**55.** If a company that holds a licence—

- (a) ceases to have a nominated supervisor; or
- (b) changes its nominated supervisor;

the company must, within 14 days, give notice containing the information required by the regulations to the Authority.

Maximum penalty—20 penalty units.

**Partnerships**

**56.(1)** A licensed contractor may carry on business under the licence in partnership with an unlicensed person subject to the following conditions—

- (a) no contract to carry out building work may be entered into, and no offer or tender to carry out building work may be made, on behalf of the partnership except by the licensed contractor; and
- (b) any such contract offer or tender must be imprinted with the licensed contractor's licence card and have endorsed on it the names of the other members of the partnership; and
- (c) any advertisement published in relation to the business carried on, or to be carried on, under the licence must state the name under which the licensed contractor is licensed and conform with any requirements imposed by the regulations.

**(2)** If a condition imposed by subsection (1) is contravened, each member of the partnership commits an offence.

Maximum penalty—80 penalty units.

**PART 4—DOMESTIC BUILDING CONTRACTS****Suggested contractual forms**

**57.** The Authority may prepare and publish suggested contractual forms for use in relation to domestic building work.

**Contract for major domestic building work**

**58.(1)** A contract for carrying out major domestic building work—

- (a) must be in writing and signed by the building contractor and by the consumer; and
- (b) must sufficiently describe the building work to which it relates; and
- (c) must conform with any requirements of the regulations as to its form and the way it is expressed; and

(d) must be imprinted with the building contractors' licence card.

(2) The building contractor must on entering into a contract for carrying out major domestic building work, give a copy of the contract to—

- (a) the consumer; and
- (b) the Authority or an agent of the Authority.

### **Variations to be in writing**

**59.(1)** Any variation to a contract for carrying out major domestic building work must be in writing and signed by the parties to the contract.

(2) A variation that does not comply with this section may be relied on by the consumer but not by the building contractor.

### **Statement of contract price**

**60.(1)** The price for which a building contractor is to carry out major domestic building work must be stated in the contract.

(2) If the stated price is subject to variation under any provision of the contract, the contract must contain a warning next to the stated price to the effect that the stated price is subject to variation under specified provisions of the contract.

(3) If a warning is not included as required by subsection (2), a provision of the contract for variation of the stated price operates so far as it would result in a reduction of price but not so far as it would increase the price.

### **Prime cost items etc.**

**61.(1)** If a domestic building contract contains estimates of the cost to the consumer of items to be provided, or work to be done, under the contract, those estimates must be reasonable having regard to—

- (a) information that the building contractor had or should have had at the date of the contract; and
- (b) the nature and location of the building site.

(2) If the estimate was not reasonable as at the date of the contract the building contractor commits an offence.

Maximum penalty—35 penalty units.

(3) The unlawful inclusion of an unreasonable estimate does not render any provision of the contract illegal or void but the Tribunal may, on application by the consumer, reduce the consumer's liability in relation to an item or work to which the estimate relates to such extent as may be just.

### **Cost escalation clauses**

**62.(1)** A building contractor may not rely on a cost escalation clause in a domestic building contract unless—

- (a) before the consumer signs the contract containing the clause, the contractor gives the consumer a notice in the form required by the regulations explaining the effect of the clause; and
- (b) the clause is specifically signed or initialled by the consumer.

(2) A cost escalation clause in a domestic building contract is void unless—

- (a) the contract price for carrying out the building work exceeds \$200 000 or a greater amount fixed by regulation; or
- (b) the building work is to be carried out under the supervision of an architect who has been engaged by the consumer; or
- (c) the clause is in a form approved by the Authority, provides for increase of the contract price in accordance with a formula stated in the regulations, and is subject to the conditions prescribed by the regulations.

### **Non-compliance with time for completion**

**63.(1)** If a contract for carrying out domestic building work specifies a time for completion of the work, or a period within which the work is to be completed, and the work is not completed by that time, or within that period, the consumer is, subject to subsection (2), entitled to damages as if the building contractor had warranted that the work would be completed by the stated time or within the stated period.

(2) It is a defence to an action for damages under this section for the building contractor to establish—

(a) that the work was delayed by events beyond the contractor's control; and

(b) that within 10 business days of each such event the contractor gave written notice to the consumer of the happening of the event and its likely effect on the time for completion of the building work.

(3) This section does not prevent the parties to a contract from agreeing to provisions imposing more onerous consequences on a building contractor for failing to complete within the time allowed by the contract.

### **Fixtures and fittings**

**64.(1)** If a domestic building contract is made by reference to plans, any fixtures and fittings shown in the plans are taken to be included in the contract price unless specifically excluded by the contract.

(2) Any such exclusion is ineffective unless signed or initialled by the consumer.

### **Display home contracts**

**65.(1)** A person who makes a display home available for inspection must ensure that the following documents are prominently displayed in the display home—

(a) a copy of the plans and specifications relating to its construction; and

(b) if the building contractor commonly enters into contracts in a particular form—a copy of the contract form.

Maximum penalty—20 penalty units.

(2) If—

(a) a display home is made available for inspection by or on behalf of a building contractor; and

(b) a consumer enters into a contract with the building contractor for the construction of a similar home;

the contract is to be presumed to provide that the home will be constructed according to the same plans and specifications, standards of work quality and quality of materials as the display home except to the extent (if any) that



the contract provides for, and specifically identifies, departures from them.

**(3)** If—

- (a) a display home is made available for inspection by or on behalf of a building contractor; and
- (b) a consumer enters into a contract with the building contractor for the construction of a similar home or to have preliminary work carried out with a view to the construction of a similar home;

the consumer may, by notice given to the contractor within 5 business days after the date of the contract, rescind the contract.

**(4)** A contract to construct a home cannot be rescinded under subsection (3) if, more than 5 business days before the date of that contract, a contract was made between the same parties to have preliminary work carried out.

**(5)** On rescission of a contract under this section, the building contractor must repay to the consumer any deposit paid under the contract.

### **Progress payments**

**66.(1)** If a domestic building contract contemplates the payment of the contract price in instalments, the instalments must become due at defined stages of the construction in accordance with a schedule included in the contract.

**(2)** If a schedule for the payment of instalments is to be fixed in a domestic building contract, and the schedule differs from a suggested schedule for domestic building contracts of the relevant class contained in the regulations, the contractor must, before the contract is signed by the consumer, give the consumer a notice in the form required by the regulations—

- (a) setting out the suggested schedule contained in the regulations; and
- (b) explaining why that schedule is inappropriate in the circumstances of a particular case.

**(3)** An instalment of the contract price does not become due under a contract to which this section applies until the contractor has given the consumer an account for payment of the instalment accompanied by a certificate to the effect that the building work has been completed to the

relevant stage.

(4) Non-compliance with this section does not render a domestic building contract or any provision of such a contract illegal or void, but if a contract does not comply with subsection (1) or if a building contractor fails to comply with subsection (2), the contractor commits an offence.

Maximum penalty—35 penalty units.

### **Arbitration clauses prohibited**

67. A contractual provision requiring the reference of a dispute under a domestic building contract to arbitration is void.

## **PART 5—THE STATUTORY INSURANCE SCHEME**

### **Payment of insurance premium**

68.(1) A building contractor must, before commencing residential construction work pay to the Authority the appropriate insurance premium for the work in accordance with the regulations.

Maximum penalty—20 penalty units.

(2) A local authority must not grant an approval under the *Building Act 1975* in respect of residential construction work unless the applicant produces satisfactory evidence that the appropriate insurance premium has been paid.

(3) A certificate of insurance issued by the Authority in relation to residential construction work is conclusive evidence that the work is covered by a policy of insurance under the statutory insurance scheme.

**Insurance of building work**

**69.(1)** When the Authority accepts the appropriate insurance premium in respect of residential construction work, the Authority must issue a certificate of insurance in respect of the residential construction work.

**(2)** When a consumer enters into a contract with a licensed contractor whose licence bears an endorsement signifying that the licensee may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme, or a person fraudulently claiming to hold such a licence, to have residential construction work carried out in Queensland, a policy of insurance in the terms prescribed in the regulations comes into force in relation to the building work irrespective of whether the appropriate insurance premium is paid, or the certificate of insurance issued.

**Insurance claims**

**70.(1)** A person claiming to be entitled to indemnity under the insurance scheme must give notice of the claim to the Authority in accordance with the regulations.

**(2)** If a claimant is dissatisfied with the Authority's decision on the claim, the claimant may apply to the Tribunal for a review of the Authority's decision.

**(3)** On an application under this section the Tribunal may confirm, vary or reverse the Authority's decision and make consequential orders and directions.

**Recovery from building contractor etc.**

**71.(1)** If the Authority makes any payment on a claim under the insurance scheme, the Authority may recover the amount of the payment, as a debt, from the building contractor by whom the relevant residential construction work was, or was to be, carried out or any other person through whose fault the claim arose.

**(2)** If a claim under the insurance scheme arises from the fraudulent use of a licensee's licence card and the licensee failed to exercise reasonable care to prevent fraudulent use of the card, the Authority may recover any amount paid out on the claim, as a debt, from the licensee.

(3) The Authority is subrogated, to the extent of any payment that the Authority has made, or has undertaken to make, to the rights of a person to whom, or for whose benefit, the payment has been, or is to be, made in respect of the matter out of which the insurance claim arose.

## **PART 6—RECTIFICATION OF BUILDING WORK**

### **Power to require rectification of building work**

**72.(1)** If the Authority is of the opinion that building work carried out by a person who was a licensed contractor when the work was carried out is defective or incomplete, the Authority may direct the licensed contractor (or former licensed contractor) to rectify the building work within a period stated in the direction.

(2) If in order to rectify building work it is necessary to do so, the direction may require that a building or part of a building be demolished and building work be recommenced.

(3) If a direction is given under this section to a person who is not currently licensed to carry out the required work, the person must have the work carried out by a licensed contractor.

(4) A direction cannot be given under this section more than 6 years and 3 months after the building work to which the direction relates was completed or left in an incomplete state unless the Tribunal is satisfied, on application by the Authority, that there is in the circumstances of a particular case sufficient reason for extending the time for giving a direction and extends the time accordingly.

(5) The fact that a direction is given under this section does not prevent disciplinary action in respect of the defective or incomplete building work.

(6) A person who fails to rectify building work as required by a direction under this section is guilty of an offence.

Maximum penalty—80 penalty units.

**Panels of licensed contractors for rectification work**

**73.(1)** The Authority may establish panels of licensed contractors who express interest in tendering for rectification work.

**(2)** The panels will be established in relation to—

- (a) the areas of the State in which the work is to be carried out; and
- (b) the nature of the work involved.

**(3)** The Authority may advertise, from time to time, inviting expressions of interest from licensed contractors who wish to be included on the appropriate panel for the area or areas in which they carry on business.

**(4)** A licensed contractor who by notice in writing to the Authority expresses interest in being included on a panel for a particular area may, if entitled to carry out building work of the relevant class, be included on the panel.

**(5)** The Authority may remove the name of a contractor from a panel for any good reason.

**Tenders for rectification work**

**74.(1)** If rectification work in respect of residential construction work is required under this Act and the person required to carry out the work does not carry it out, or have it carried out, within the time allowed by the direction, the Authority may call for tenders for carrying out the work from licensed contractors whose names are included in the relevant panel.

**(2)** The Authority may accept any tender that it considers appropriate, irrespective whether the tender was for the lowest cost.

**(3)** The Authority may only have work carried out under this section to the extent that the cost of the work is covered by a payment to be made under the statutory insurance scheme in relation to the defective or incomplete work.

## **PART 7—THE QUEENSLAND BUILDING TRIBUNAL**

### *Division 1—Establishment of Tribunal*

#### **Establishment of Tribunal**

**75.** A Tribunal called the Queensland Building Tribunal is established.

#### **Members of Tribunal**

**76.(1)** The Tribunal consists of the chairperson and such number of other members as are appointed under this Act.

**(2)** The 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 barrister, solicitor, barrister and solicitor or legal practitioner of the High Court or the Supreme Court of a State or Territory 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 such term (not longer than 7 years) as is specified by the Governor in Council in the instrument of appointment.

**(6)** The *Public Service Management and Employment Act 1988* does not apply to the appointment of a member.

#### **Terms and conditions of appointment**

**77.(1)** A member of the Tribunal is to be paid such remuneration and allowances as are determined by the Governor in Council.

**(2)** A member of the Tribunal holds office on such terms and conditions not provided for by this Act as are determined by the Governor in Council.

**(3)** A member of the Tribunal may resign by signed notice given to the Governor.

**(4)** The Governor in Council may terminate the appointment of a

member for misbehaviour or physical or mental incapacity.

### **Chairperson and staff of Tribunal**

**78.(1)** The chairperson of the Tribunal is responsible for the administration of the Tribunal.

**(2)** The Governor in Council may appoint a person to act as chairperson of the Tribunal—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

**(3)** The staff of the Tribunal are to be appointed or engaged under the *Public Service Management and Employment Act 1988*.

## *Division 2—Constitution of Tribunal*

### **Constitution of Tribunal**

**79.** The Tribunal is constituted for the purpose of hearing a proceeding by a single member of the Tribunal.

## *Division 3—General powers of Tribunal*

### **Power to require attendance of witnesses etc.**

**80.(1)** The Tribunal may, on the application of a party to a proceeding or on its own initiative, issue a summons requiring a person to appear before the Tribunal at a specified time and place to give evidence or to produce documents (or both).

**(2)** A person served, as prescribed, with a summons to appear before the Tribunal must not, without reasonable excuse—

- (a) fail to attend as required by the summons; or

- (b) fail to appear from time to time in the course of the proceeding as required by the Tribunal.

Maximum penalty—80 penalty units.

### **Powers of Tribunal relating to taking of evidence**

**81.(1)** For the purpose of a proceeding, the Tribunal may—

- (a) take evidence on oath or affirmation; or
- (b) require a person appearing before the Tribunal to give evidence either to take an oath or make an affirmation; or
- (c) administer an oath or affirmation to a person appearing before the Tribunal.

**(2)** The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

**(3)** A person appearing as a witness at a hearing of the Tribunal must not, without reasonable excuse—

- (a) fail to be sworn or make affirmation; or
- (b) fail to answer a question that the person is required to answer by the Tribunal; or
- (c) fail to produce a document that the person was required to produce by a summons served on the person as prescribed.

Maximum penalty—80 penalty units.

**(4)** It is a reasonable excuse for a person to fail to answer a question if answering the question may tend to incriminate the person.

**(5)** It is a reasonable excuse for a person to fail to produce a document if producing the document may tend to incriminate the person.

### **Reference of matters for expert report**

**82.(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)** In carrying out an investigation under this section, the expert has the same protection and immunity as a member of the Tribunal.



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

(4) The Tribunal may adopt the findings of the expert in whole or in part.

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

**83.(1)** The Tribunal may, if it is necessary to do so for the purposes of a proceeding before the Tribunal—

- (a) enter and inspect any land or building; or
- (b) authorise a member of the staff of the Tribunal to enter and inspect any land or building and to report to the Tribunal on the result of the inspection.

(2) A person who obstructs the Tribunal, or a member of the staff of the Tribunal, in the exercise of a power of entry or inspection commits an offence.

Maximum penalty—80 penalty units.

### **Contempt of Tribunal**

**84.** A person must not—

- (a) insult a member of the Tribunal in relation to the performance of his or her functions as a member; or
- (b) interrupt a proceeding of the Tribunal; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting; or
- (d) do anything that would, if the Tribunal were a court of record, constitute a contempt of that court.

Maximum penalty—100 penalty units.

**Protection of members etc.**

**85.(1)** A member of the Tribunal has, in the performance of the member's duties as a member, the same protection and immunity as a District Court Judge.

**(2)** 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.

**(3)** 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 4—Proceedings before Tribunal*****Start of proceedings**

**86.(1)** A proceeding is started before the Tribunal by application.

**(2)** The application must set out—

- (a)** the facts on which the application is based; and
- (b)** the nature of the determination sought by the applicant.

**(3)** The applicant must give notice of the application, accompanied by a copy of the application—

- (a)** to any person against whom a determination is sought; and
- (b)** if the Tribunal so directs—to any other person nominated by the Tribunal.

**(4)** When notice of the application has been given as required by this section, a time and place for hearing the application is to be fixed by the Tribunal.

**Hearing of proceedings**

**87.(1)** The Tribunal must allow the parties to a proceeding before it 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)** If a party fails to appear at a time and place notified by the Tribunal, the Tribunal may proceed in the party's absence.

**(3)** In a proceeding before the Tribunal—

- (a) the procedure of the Tribunal is, subject to this Act, within the discretion of the Tribunal; and
- (b) 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; and
- (c) the Tribunal is not bound by the rules of evidence but may inform itself in any way that it considers appropriate.

**Vexatious proceedings**

**88.** 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 the person by whom the proceeding was brought to compensate the person against whom it was brought for loss, inconvenience and embarrassment resulting from the proceeding.

**Legal representation**

**89.** A party to a proceeding before the Tribunal is entitled to be represented by a legal practitioner if—

- (a) the proceeding is a disciplinary proceeding; or
- (b) all parties to the proceeding agree; or

- (c) the Tribunal directs that such representation be allowed.

### **Tele-conferencing**

**90.** The Tribunal may, in appropriate cases, conduct a proceeding by means of telephone conferencing, video conferencing, or any other system of telecommunication.

## ***Division 5—Enforcement of Tribunal determinations***

### **Registration and enforcement of determinations**

**91.(1)** A determination of the Tribunal may be registered in the District Court.

**(2)** Proceedings for the enforcement of a determination registered under this section may be taken as if the determination were a judgment of the District Court.

## ***Division 6—Reconsideration, cases stated and appeals***

### **Power of Tribunal to reconsider determinations**

**92.(1)** The Tribunal may, on the application of a party to a proceeding, reconsider a determination given in the proceeding.

**(2)** An application under this section—

- (a) must be made within 14 days after the making of the determination; and
- (b) must be based on an alleged factual error in the findings of the Tribunal that is of sufficient significance to have influenced the outcome of the proceeding.

**(3)** On an application under this section, the Tribunal may confirm, vary or reverse its determination, and give consequential orders and directions.

**Cases stated**

**93.(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 determine 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.

**Appeals**

**94.(1)** A party to a proceeding before the Tribunal may, by leave of the District Court, appeal against a determination of the Tribunal in the proceeding.

**(2)** An application for leave to appeal must be made within 28 days after the making of the determination or such further period as the District Court allows (whether on an application made before or after the end of the 28 day period).

**(3)** An application for leave to appeal must be made in accordance within any applicable rules of court and any regulation made for the purposes of this section.

**(4)** On an appeal, the District Court may—

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

## **PART 8—JURISDICTION OF THE TRIBUNAL**

### *Division 1—Domestic building disputes*

#### **Tribunal's power to adjudicate domestic building disputes**

**95.(1)** The Tribunal may, on application by a party to a domestic building dispute, make such orders and directions as may be just to resolve the dispute and any other matters at issue between the parties.

**(2)** An application may be made on behalf of a consumer by the Commissioner for Consumer Affairs.

**(3)** The Tribunal may order that a supplier, subcontractor or another person be joined as a party to a proceeding under this section, and may make such orders and directions against a party so joined as may be just.

**(4)** In the exercise of its jurisdiction under this section, the Tribunal may exercise any one or more of the following powers—

- (a) order the payment of a monetary sum found to be owing by one party to another;
- (b) award damages, including exemplary damages and damages in the nature of interest;
- (c) order restitution;
- (d) avoid any unjust contractual term, or otherwise vary a contract to avoid injustice;
- (e) avoid a policy of insurance under the statutory insurance scheme;
- (f) order rectification of defective or incomplete building work;
- (g) award costs.

#### **Mediation**

**96.(1)** The Tribunal may appoint a mediator or mediators to endeavour to achieve a negotiated settlement of a domestic building dispute.

**(2)** An inspector is eligible for appointment as a mediator.

**(3)** A mediator appointed under this section has the protection and

immunity of a member of the Tribunal.

(4) Evidence of anything said or done in the course of an attempt to settle a domestic building dispute under this section is not admissible in the proceeding before the Tribunal or in related proceedings.

(5) If a domestic building dispute is settled, the mediator must report the terms of the settlement to the Tribunal and the Tribunal may make a determination in terms of the settlement, and make consequential orders or directions.

### **Transfer of proceedings between Tribunal and the courts**

**97.(1)** If an action arising, wholly or predominantly, from a domestic building dispute is brought in a court, and the action could be heard by the Tribunal under this Division, the court must, on the application of a party, order that the action be removed to the Tribunal.

(2) If the Tribunal is of the opinion that a proceeding brought in the Tribunal would be more appropriately brought, wholly or partly, in a court, the Tribunal may order—

- (a) that matters not directly related to a building dispute be removed to a court; or
- (b) that the proceeding be removed in its entirety to a court.

## ***Division 2—Proceedings for review***

### **Reviewable decisions**

**98.** Any of the following decisions of the Authority is subject to review by the Tribunal—

- (a) a decision to refuse an application for a licence;
- (b) a decision to impose or vary a condition of a licence;
- (c) a decision to suspend or cancel a licence;
- (d) a decision to direct rectification of building work;

- (e) a decision to disallow a claim under the insurance scheme wholly or in part;
- (f) another decision of the Authority that adversely affects any person.

### **Application for review**

**99.(1)** A person affected by a decision of the Authority that is subject to review may apply for a review of the decision.

(2) The application must be made within 28 days after the applicant receives notice of the decision unless the decision fixes a lesser period for compliance with a direction contained in the decision, in which case the application must be made within that lesser period.

(3) The Tribunal may extend the time for making an application for review (whether on an application made before or after the end of the period fixed under subsection (2)).

(4) On an application for review, the Tribunal may confirm, annul, vary or reverse the decision subject to the review and make consequential orders and directions.

### **Minor domestic building dispute proceedings not reviewable**

**100.(1)** The exercise by the Tribunal of any of its powers in relation to a minor domestic building dispute proceeding is not subject to judicial review.

(2) No statutory order of review, prerogative order, prerogative injunction or other injunction or declaration may be made in relation to any such exercise of the Tribunal's powers.

(3) Subsections (1) and (2) do not apply if—

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

(4) In this section—

**“minor domestic building dispute proceeding”** means a proceeding



that—

- (a) arises wholly from a domestic building dispute; and
- (b) involves a claim for—
  - (i) the payment of a monetary sum of not more than \$5 000; or
  - (ii) an award for damages (including exemplary damages and damages in the nature of interest) of not more than \$5 000;

**“prerogative injunction”** has the meaning given by section 3 of the *Judicial Review Act 1991*;

**“prerogative order”** has the meaning given by section 3 of the *Judicial Review Act 1991*;

**“statutory order of review”** has the meaning given by section 3 of the *Judicial Review Act 1991*.

### ***Division 3—Disciplinary proceedings***

#### **Disciplinary action**

**101.(1)** The Tribunal may, on application by the Authority or the Commissioner for Consumer Affairs, conduct an inquiry to determine whether proper grounds exist for taking disciplinary action under this section.

**(2)** Proper grounds exist for taking disciplinary action against a licensee if—

- (a) the licensee contravenes a requirement imposed by or under this Act; or
- (b) the licensee is convicted of an indictable offence, or an offence that, if committed in Queensland, would be an indictable offence; or
- (c) in the case of a company—a director or other person who is in a position to control or substantially influence the conduct of the company's affairs is not a fit and proper person to exercise such control or influence over a company that holds a licence; 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 such a business; or
- (e) the licensee is bankrupt or insolvent; or
- (f) the licensee is guilty of fraud or dishonesty in relation to the business carried on under the licence; or
- (g) the licensee contravenes the *Fair Trading Act 1989* in relation to building work carried out under the licence; or
- (h) the licensee is negligent or incompetent in carrying out building work under the licence; or
- (i) the licensee fails to comply with a direction to rectify building work; or
- (j) the licensee contravenes a condition of the licence; or
- (k) the licensee owes money to the Authority and fails to comply with a demand by the Authority to discharge the debt.

**(3)** Proper grounds exist for taking disciplinary action against a person who is not a licensee if the person—

- (a) carries out building work for which a licence is required without holding a licence of the appropriate class; or
- (b) is guilty of fraud or dishonesty in relation to the performance of building work; or
- (c) contravenes 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 to rectify building work.

**(4)** If on inquiry under this section the Tribunal finds that proper grounds exist for taking disciplinary action against a person, the Tribunal may make any one or more of the following orders—

- (a) an order imposing a penalty of not more than—
  - (i) in the case of an individual—\$10 000;
  - (ii) in the case of a company—\$20 000;

- (b) order that the respondent rectify defective or incomplete building work;
- (c) if the respondent is a licensee—
  - (i) an order reprimanding the licensee;
  - (ii) an order suspending the licence;
  - (iii) an order imposing conditions on the licence;
  - (iv) an order cancelling the licence.

#### *Division 4—Stop orders*

### **Stop orders**

**102.(1)** 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 this Act, the Tribunal may, by order, prohibit the person who is carrying out, or about to carry out, the building work (“**the respondent**”) from starting or continuing the building work (as the case may require).

**(2)** The Tribunal may make an order under this section on application by the Authority made without notice to the respondent but, in that case, the Tribunal must allow the respondent a reasonable opportunity to show cause why the order should not be confirmed and if the Tribunal, after considering the respondent’s evidence and representations (if any) and any further evidence or representations of the applicant, is not satisfied that the order should continue in force, the Tribunal must rescind the order.

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

Maximum penalty—

- (a) in the case of an individual—40 penalty units plus 4 penalty units for each day on which the work is carried on in contravention of the order; and
- (b) in the case of a company—80 penalty units plus 8 penalty units

for each day on which the work is carried on in contravention of the order.

### *Division 5—Resolution of policy disputes*

#### **Policy disputes**

**103.(1)** If a dispute arises between the Board and the Registrar/General Manager as to the implementation of a policy of the Board, either party to the dispute may refer the dispute to the Tribunal.

(2) On the reference of a dispute to the Tribunal, the Tribunal may investigate the subject of dispute and make such orders as it considers necessary or desirable to resolve the dispute.

## **PART 9—INSPECTORS**

#### **Appointment of inspectors**

**104.(1)** The Authority may appoint inspectors.

(2) The Authority must issue an identity card, containing a photograph of the inspector, to each inspector.

(3) A person who ceases to be an inspector must, as soon as practicable, return the identity card to the Authority.

Maximum penalty for contravention of this subsection—10 penalty units.

#### **Inspector to produce identity card**

**105.** An inspector is not entitled to exercise powers under this Act in relation to another person unless the inspector first produces the inspector's identity card for inspection by the person.

**Inspector's power to require name and address**

**106.(1)** An inspector who suspects on reasonable grounds that a person has committed an offence against this Act may require the person to state the person's name and address and, if the inspector has reasonable grounds to believe that the name or address given is false, may require evidence of its correctness.

**(2)** A person who is required under subsection (1) to state the person's name and address must not, without reasonable excuse—

- (a) fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—50 penalty units.

**(3)** A person who is required under subsection (1) to give evidence of the correctness of a name or address must not, without reasonable excuse, fail to give the evidence or give false evidence.

Maximum penalty—50 penalty units.

**(4)** If—

- (a) an inspector makes a requirement under subsection (1) on suspicion that a person has committed an offence against this Act; and
- (b) the person is not proved to have committed an offence against this Act;

the person cannot be convicted of an offence against subsection (1) because of a failure to comply with the requirement.

**Power to enter and inspect building site**

**107.(1)** An inspector may enter and inspect a building site—

- (a) for the purpose of ascertaining whether this Act is being complied with; or
- (b) for the purpose of determining whether the building work has been, or is being, properly carried out.

**(2)** The entry and inspection must be—

- (a) made with the consent of the person in control of the building site; or

(b) authorised by warrant of a member of the Tribunal.

(3) An inspector may apply to a member of the Tribunal for a warrant under this section in relation to a particular building site.

(4) Subject to subsection (5), the member may issue the warrant if the member is satisfied, by information on oath, that there is a proper reason for entering and inspecting the building site.

(5) If the member requires further information concerning the grounds on which the warrant is sought, the member must not issue the warrant unless the inspector or some other person has given the information to the member in the form (either orally or by affidavit) that the member requires.

(6) The warrant must—

(a) authorise the inspector, with such assistance and by such force as is necessary and reasonable, to enter and inspect the place; and

(b) state whether the entry may be made at any time of the day or night or during specified hours of the day or night; and

(c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and

(d) state the purposes for which the warrant is issued.

### **Obligation of local authority**

**108.** A local authority must allow an inspector or any other officer or employee of the Authority, at any reasonable time, to examine and make copies of, or take extracts from, books, documents, papers and records of the local authority relating to building work or proposed building work.

## PART 10—MISCELLANEOUS

### Access to building sites

**109.** A building contractor must, at the request of a consumer, allow the consumer reasonable access to a building site at which building work is being carried out for the consumer.

(2) A contractual provision that is inconsistent with subsection (1) is void.

### Non-application of certain Acts

**110.** The following Acts do not apply to domestic building work—

- (a) *Subcontractors Charges Act 1974*;
- (b) *Commercial Arbitration Act 1990*;
- (c) *Contractors' Trust Account Act 1974*.

### Prosecutions for offences

**111.(1)** A prosecution for an offence against this Act may be started within 2 years after the alleged date of commission of the offence or within 1 year after the offence comes to the knowledge of the Authority, whichever is the later.

(2) A prosecution may only be started by a person authorised by the Authority (either generally or in the particular case) to bring the prosecution.

(3) The authorisation required by subsection (2) is to be presumed in the absence of evidence to the contrary.

### Appropriation of penalty

**112.** Any monetary penalty recovered for an offence against this Act must be paid to the Authority.

**Double jeopardy**

**113.(1)** The fact that disciplinary action has been taken against a person under this Act does not affect the liability of that person to be prosecuted, convicted, and punished for an offence arising from the same circumstances.

**(2)** The fact that a person has been prosecuted and convicted or acquitted of an offence against this Act does not affect the liability of that person to disciplinary action under this Act.

**Protection**

**114.(1)** An officer or employee of the Authority incurs no civil liability for an honest act or omission in the performance or purported performance of functions under this Act.

**(2)** A liability that would, but for this section, attach to an officer or employee of the Authority attaches instead to the Authority.

**Regulations**

**115.** The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



## SCHEDULE

### REPEALS, AMENDMENTS AND TRANSITIONAL PROVISION

#### Repeals

1. The following Acts are repealed—

*Builders' Registration and Home-owners' Protection Act 1979*

*Builders' Registration and Home-owners' Protection Act Amendment Act 1982*

*Builders' Registration and Home-owners' Protection Act Amendment Act 1983*

*Builders' Registration and Home-owners' Protection Act Amendment Act 1987.*

#### Transitional provision

2.(1) On the commencement of this section, the Builders' Registration Board of Queensland is dissolved and all its assets and liabilities vest in the Authority.

(2) The employees of the Builders' Registration Board of Queensland become, on the commencement of this section, employees of the Authority without loss of continuity of service or impairment of their accrued and accruing rights in respect of employment.

(3) The provisions of the repealed Act as to insurance continue to apply, subject to any adaptations and modifications prescribed by regulation under this Act, to building work commenced before the commencement of this section and the Authority may exercise any of the powers of the former Board in relation to such insurance.

(4) A direction or order for rectification of building work may be made under this Act in respect of building work carried out before the commencement of this section by a person registered under the repealed

Act as if references in this Act to a licensed contractor extended to such a person.