

Queensland



**QUEENSLAND BUILDING
SERVICES AUTHORITY
AMENDMENT ACT 1994**

Act No. 20 of 1994

Queensland



QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT ACT 1994

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Queensland



**Queensland Building Services Authority
Amendment Act 1994**

Act No. 20 of 1994

An Act to amend the *Queensland Building Services Authority Act 1991*

[Assented to 10 May 1994]

The Parliament of Queensland enacts—**Short title**

1. This Act may be cited as the *Queensland Building Services Authority Amendment Act 1994*.

Commencement

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

Act amended

3. This Act amends the *Queensland Building Services Authority Act 1991*.

Amendment of s 4 (Definitions)

4.(1) Section 4(1), definitions “**Advisory Service**” and “**exempt building work**”—

omit.

(2) Section 4(1)—

insert—

‘ **“Board’s policies”** means the policies of the Board made for the purposes of section 9(a);

“licensed builder” means a person who is a licensed builder under the regulations;’.

Amendment of s 6 (Constitution of Authority)

5. Section 6(b) and (c)—

omit, insert—

‘(b) the General Manager and the organisational unit under the control of the General Manager.’.

Replacement of s 9 (Role of Board)

6. Section 9—

omit, insert—

‘Role of Board

‘9. The Board has the following functions—

- (a) to make and review policies governing the administration of this Act;
- (b) to provide guidance and leadership to the General Manager and monitor the General Manager’s management of the Authority;
- (c) in conjunction with the General Manager, to establish the strategic direction for the Authority;
- (d) to advise the Minister on issues affecting—
 - (i) the building industry; and
 - (ii) consumers; and
 - (iii) the administration of this Act; and
 - (iv) the administration of the Authority;
- (e) to consult with, and advance the interests of, the building industry and its consumers consistently with the objects of this Act.

‘Board’s policies

‘9A.(1) The Board’s policies—

- (a) must be made in writing; and
- (b) are statutory instruments.

‘(2) The policies consist of—

- (a) policies made for the purposes of section 43(3) (“**supervision policies**”); and

(b) policies other than supervision policies (“**general policies**”).

‘(3) Supervision policies—

- (a) are subordinate legislation; and
- (b) must be given to the Minister at least 14 days before they are notified in the Gazette.

‘(4) General policies—

- (a) must be published in the Gazette; and
- (b) must be given to the Minister at least 14 days before they are published in the Gazette; and
- (c) do not have effect until they are gazetted.’.

Amendment of s 10 (Composition of Board)

7. Section 10(1) to (3)—

omit, insert—

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

- (a) 1 (the chairperson) is to be the person nominated for appointment as chairperson by the Minister;
- (b) 2 are to be representatives of licensed builders 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);
- (c) 2 are to be persons nominated by the Minister to represent consumers;
- (d) 1 is to be a person nominated by the Minister to represent the insurance industry;
- (e) 3 are to be representatives of licensed contractors (other than licensed builders) of whom 2 are to be selected by the Minister from a panel of names submitted by the Building Industry Specialist Contractors Organisation of Qld Inc.

‘(2) At least 2 months before making selections under subsection (1)(b)

and (e), the Minister must request the bodies identified in those provisions to submit their panels of names to allow the selection to be made.

‘(3) If a body identified in subsection (1)(b) or (e) fails to submit a panel of names to allow the Minister to make a selection from it, the Minister may select a suitable representative, or suitable representatives, without the assistance of a panel of names submitted by the body.’.

Amendment of s 12 (Proceedings at meetings)

8.(1) Section 12(2)(a), ‘6 voting’—

omit, insert—

‘5’.

(2) Section 12(2)(c), ‘(except a non-voting member)’—

omit.

Amendment of s 18 (Role of the General Manager)

9.(1) Section 18(1)—

omit, insert—

‘**18.(1)** The General Manager has—

- (a) all executive powers of the Authority; and
- (b) responsibility for the overall management of the Authority.’.

(2) Section 18(2), ‘The’—

omit, insert—

‘Without limiting subsection (1), the’.

(3) Section 18(2)—

insert—

- ‘(g) providing and promoting consumer education;
- (h) providing an advisory service to consumers about—
 - (i) their statutory rights and obligations; and

- (ii) their contractual rights and obligations under building contracts; and
 - (iii) insurance claims that may arise about building work; and
 - (iv) the Authority's role, functions and operating procedures; and
 - (v) any incidental matters;
- (i) providing courses of instruction for—
- (i) persons seeking to obtain licences; and
 - (ii) licensees; and
 - (iii) persons proposing to carry out building work as owner-builders; and
 - (iv) other persons seeking to acquire knowledge or expertise in subjects related to the building industry.'.

Replacement of s 19 (Registrar/General Manager to be bound by Board's policies)

10. Section 19—

omit, insert—

'Relationship between General Manager and Board

'19.(1) The General Manager is independent of the Board's control in performing the functions and responsibilities mentioned in section 18(2).

'(2) However, the General Manager must give effect to the Board's policies.'.

Omission of Pt 2, Div 5 (Home Building Advisory Service)

11. Part 2, Division 5—

omit.

Omission of Pt 2, Div 7 (Annual report)

12. Part 2, Division 7—

omit.

Amendment of s 34 (Grant of licence)

13.(1) Section 34(4) and (5)—

renumber as section 34(5) and (6).

(2) Section 34—

insert—

‘**(4)** Subsection (3) does not apply to a contractor’s licence (other than a licence allowing the licensee to perform residential construction work) if it is of a class identified in the Board’s policies as a class of contractor’s licence to which subsection (3) does not apply.’.

Omission of s 40 (List of licensees)

14. Section 40—

omit.

Amendment of s 43 (Supervision of building work)

15. Section 43(3), ‘policies of the Board’—

omit, insert—

‘Board’s policies’.

Omission of s 45 (Responsibilities of owner-builder)

16. Section 45—

omit.

Amendment of s 48 (Cancellation or suspension of licence)

17.(1) Section 48(a) to (f)—

renumber as section 48(b) to (g).

(2) Section 48—

insert—

‘(a) the licence was obtained on the basis of incorrect information supplied to the Authority, whether or not fraud was intended;’.

(3) Section 48(d) (as renumbered)—

omit, insert—

‘(d) the licensee—

- (i) for an individual—has become bankrupt or taken advantage of the laws of bankruptcy; or
- (ii) for a company—is insolvent, has a provisional liquidator, a liquidator, an administrator or a controller appointed or is ordered to be wound up; or’.

(4) Section 48—

insert—

‘(h) the licensee contravened a condition imposed under section 36 on the licensee’s licence; or

- (i) the licensee owes an amount to the Authority and fails to comply with a demand by the Authority to discharge the debt; or
- (j) the Authority becomes aware of the existence of facts that, having regard to section 31(1)(a)—
 - (i) would allow the Authority to refuse to issue the licence if it were now being applied for by the licensee; or
 - (ii) would have allowed the Authority to refuse to issue the licence originally.’.

Insertion of new s 49A

18. After section 49—

insert—

‘Immediate cancellation of licence

‘49A.(1) Despite section 49(1), the Authority may cancel a licence without allowing the licensee time to make written representations before the cancellation takes effect, if—

- (a) grounds for cancellation mentioned in section 48(a), (b) or (d) exist; and
- (b) the Authority believes, on reasonable grounds, that there is a real likelihood that serious harm to consumers will happen if the licence is not immediately cancelled.

‘(2) The cancellation under subsection (1) is imposed by written notice to the licensee that also tells the licensee—

- (a) that the licensee may make written representations for restoration of the licence; and
- (b) that the licensee may apply to the Tribunal for review of the Authority’s decision; and
- (c) the reasons for the cancellation.’.

Insertion of new s 56A

19. Part 4, before section 57—

insert—

‘Application of Part 4

‘56A.(1) This Part (other than section 58(2) and (3)) applies to a contract only if the contract is about a duplex or single detached dwelling.

‘(2) This Part does not apply to a contract between—

- (a) a consumer; and
- (b) a licensed contractor of a class prescribed by regulation for this section.’.

Replacement of s 58 (Contract for major domestic building work)

20. Section 58—

omit, insert—

‘Contract for major domestic building work

‘58.(1) A contract between a building contractor and a consumer for carrying out major domestic building work must—

- (a) be in writing and signed by the building contractor and the consumer; and
- (b) sufficiently describe the building work; and
- (c) clearly state the building contractor’s name, licence number (as it appears on the building contractor’s licence card) and address; and
- (d) comply with the regulations about the form and expression of contracts to which this section applies; and
- (e) if the major domestic building work is residential construction work—be imprinted with the building contractor’s licence card when the contract is signed.

‘(2) As soon as practicable after entering into a contract for carrying out major domestic building work, the building contractor must—

- (a) give a copy of the contract to the consumer; and
- (b) if the work is residential construction work for a building that is class 1a or 2 under the classification of buildings and structures in the Building Code of Australia—give a copy of the contract to the Authority; and
- (c) if the work is residential construction work for another type of building—give the Authority written notice of details of the contract in a form approved under the Board’s policies.

Maximum penalty—20 penalty units.

‘(3) If, when a consumer signs a contract for major domestic building work that is residential construction work, there is imprinted on the contract the licence card of a building contractor, the building contractor whose card is imprinted on the contract is taken to be a party to the contract even if the

contract does not comply with subsection (1), or the building contractor does not comply with subsection (2).

‘(4) A building contractor who enters into a contract with a consumer for carrying out major domestic building work commits an offence if the contract does not comply with subsection (1).

Maximum penalty—20 penalty units.’

Amendment of s 59 (Variations to be in writing)

21. Section 59(2), ‘be relied on by the consumer but not by the building contractor’—

omit, insert—

‘not be relied on by the consumer or the building contractor.’

Amendment of s 68 (Payment of insurance premium)

22. Section 68(2), ‘paid’—

omit, insert—

‘paid or that no insurance premium is payable’.

Amendment of s 69 (Insurance of building work)

23. Section 69(2)—

omit, insert—

‘(2) A policy of insurance comes into force in the terms prescribed by regulation if a consumer enters into a contract for the performance of residential construction work, and—

- (a) the contract is imprinted with a licensed contractor’s licence card bearing an endorsement showing that the licensee may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
- (b) the contract is with a licensed contractor whose licence bears an endorsement mentioned in paragraph (a); or

- (c) the contract is with a person fraudulently claiming to hold a licence mentioned in paragraph (b).

‘(3) Subsection (2) applies whether or not an insurance premium has been paid or a certificate of insurance has been issued.’

Amendment of s 71 (Recovery from building contractor etc.)

24.(1) Section 71(2)—

omit, insert—

‘(2) For subsection (1)—

- (a) a building contractor by whom the relevant residential construction work was, or was to be, carried out is taken to include—
- (i) a licensed contractor whose licence card is imprinted on the contract for carrying out the work; and
 - (ii) a licensed contractor whose name, licence number and address are stated on the contract; and
 - (iii) a building contractor by whom the work was, or was to be, carried out; and
 - (iv) a person who, for profit or reward, carried out the work; and
- (b) a person through whose fault the claim arose is taken to include a person who performed services for the work if the services were performed without proper care and skill.’

(2) Section 71—

insert—

‘(4) In a proceeding brought by the Authority under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(i), it is a defence for the licensed contractor to prove that—

- (a) the licensed contractor’s licence card was imprinted on the contract for carrying out the work without the licensed contractor’s authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the

licence card was imprinted on contracts only with the licensed contractor's authority.

'(5) In a proceeding brought by the Authority under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(ii), it is a defence for the licensed contractor to prove that—

- (a) the licensed contractor's name, licence number and address were stated on the contract for carrying out the work without the licensed contractor's authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the licensed contractor's name, licence number and address were stated in contracts only with the licensed contractor's authority.'

Amendment of s 72 (Power to require rectification of building work)

25.(1) Section 72(2) to (6)—

renumber as section 72(3) to (7).

(2) Section 72(1)—

omit, insert—

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

'**(2)** For subsection (1), the person who carried out the building work is taken to include—

- (a) a licensed contractor whose licence card is imprinted on the contract for carrying out the building work; and
- (b) a licensed contractor whose name, licence number and address are stated on the contract; and
- (c) a building contractor by whom the building work was carried out; and
- (d) a person who, for profit or reward, carried out the building work.'

(3) Section 72—

insert—

‘(8) For the purposes of subsection (2)(c) and (d)—

- (a) a person carries out building work whether the person—
 - (i) carries it out personally; or
 - (ii) directly or indirectly causes it to be carried out; and
- (b) a person is taken to carry out building work if the person provides advisory services, administration services, management services or supervisory services for the work.

‘(9) In a prosecution for an offence against subsection (7), or in a proceeding for taking disciplinary action on the ground that a licensee has failed to comply with a direction to rectify building work, it is a defence for a licensed contractor mentioned in subsection (2)(a) to prove that—

- (a) the licensed contractor’s licence card was imprinted on the contract for carrying out the building work without the contractor’s authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the licence card was imprinted on contracts only with the licensed contractor’s authority.

‘(10) In a prosecution for an offence against subsection (7), or in a proceeding for taking disciplinary action on the ground that a licensee has failed to comply with a direction to rectify building work, it is a defence for a licensed contractor mentioned in subsection (2)(b) to prove that—

- (a) the licensed contractor’s name, licence number and address were stated on the contract for carrying out the building work without the licensed contractor’s authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the licensed contractor’s name, licence number and address were stated in contracts only with the licensed contractor’s authority.’.

Amendment of s 89 (Legal representation)

26.(1) Section 89(a) to (c)—

renumber as section 89(b) to (d).

(2) Section 89—

insert—

‘(a) the proceeding is an application under section 103; or’.

Amendment of s 92 (Power of Tribunal to reconsider determinations)

27.(1) Section 92(2) and (3)—

renumber as section 92(4) and (5).

(2) Section 92—

insert—

‘**(2)** Section 87(1) does not apply to a reconsideration under subsection (1).

‘**(3)** A reconsideration under subsection (1)—

(a) may be made by the member of the Tribunal who made the determination, the chairperson or another member of the Tribunal; and

(b) must be made only on the evidence placed before the Tribunal at the hearing of the proceeding.’.

(3) Section 92(4)(b) (as renumbered), ‘an alleged factual error’—

omit, insert—

‘a clerical mistake or factual error’.

(4) Section 92—

insert—

‘**(6)** However, the making of the application does not, of itself, stop the determination from taking effect according to its terms.’.

Amendment of s 96 (Mediation)

28.(1) Section 96(4) and (5)—

renumber as section 96(6) and (7).

(2) Section 96—

insert—

‘**(4)** Despite subsection (6), if a domestic building dispute is not settled at mediation, the mediator must report to the Tribunal the issues that the mediator and the parties to the dispute agree are the issues in dispute.

‘**(5)** However, in a subsequent hearing before the Tribunal, the Tribunal is not limited to considering the issues reported under subsection (3).’.

Amendment of s 99 (Application for review)

29.(1) Section 99(4)—

renumber as section 99(5).

(2) Section 99—

insert—

‘**(4)** The Tribunal may order that a person who may be affected by the review be joined as a party to the review, and may make orders against, and give directions to, the person.’.

Insertion of new s 99A

30. After section 99—

insert—

‘Tribunal may settle matters of dispute during review of application

‘**99A.(1)** At any time after an application is made under section 99, the Tribunal may try to reach a negotiated settlement between the parties to the review.

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

‘(3) In this section—

“party” means—

- (a) the Authority; or
- (b) the applicant under section 99(1); or
- (c) a person joined under section 99(4).’.

Replacement of heading to Pt 8, Div 4 (Stop orders)

31. Part 8, Division 4, heading—

omit, insert—

‘Division 4—Stop orders and suspension orders’.

Insertion of new s 102A

32. Part 8, Division 4, after section 102—

insert—

‘Suspension orders

‘**102A.(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 “**respondent**”) complies with a condition imposed on the licence by the Authority or Tribunal.

‘(2) The order may direct the respondent 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 respondent, but, in that case, the Tribunal must subsequently allow the respondent a reasonable opportunity to show cause why the order should be rescinded.

‘(4) After considering the respondent’s evidence and representations (if any) and any further evidence or representations of the respondent or

Authority, if the Tribunal is not satisfied that 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.’.

Replacement of Pt 8, Div 5 (Resolution of policy disputes)

33. Part 8, Division 5—

omit, insert—

‘Division 5—Determinations about debts

‘Determinations about debts

‘**103.(1)** The Authority may, by application to the Tribunal, recover under this section a debt owing, or claimed to be owing, to it under section 71 or 101(5).

‘(2) For a debt owing, or claimed to be owing, under section 71, the Tribunal may make the orders, and give the directions, the Tribunal considers appropriate to resolve any issue in dispute between the Authority and a person owing or claimed to owe a debt to the Authority.

‘(3) In the exercise of its jurisdiction under this section, the Tribunal may exercise 1 or more of the following powers—

- (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) award damages, including exemplary damages;
- (d) order the payment of interest on damages mentioned in paragraph (c);
- (e) order that amounts mentioned in paragraphs (a) to (d) be paid by instalments or another way directed by the Tribunal.

‘(4) If the Tribunal is of the opinion that an application under this section

would be more appropriately brought in a court, the Tribunal may order that the application not be dealt with further before the Tribunal.’

Amendment of s 113 (Double jeopardy)

34. Section 113(2), after ‘against this Act’—

insert—

‘or the *Builders’ Registration and Home-owners’ Protection Act 1979*’.

SCHEDULE**MINOR AND CONSEQUENTIAL AMENDMENTS**

section 3

1. Section 4(2), as heading—*insert—***‘Value of building work carried out in stages’.****2. Section 4(2)—***renumber* as section 4A.**3. Section 11(2)(b), ‘voting’—***omit.***4. Part 2, Div 4, heading—***omit, insert—****‘Division 4—The General Manager’.*****5. Sections 16–18 and 20, ‘Registrar’—***omit.***6. Section 26(2)(b), ‘Board’—***omit, insert—***‘Authority’.**

SCHEDULE (continued)

7. Sections 42(1) and 43(1), ‘(except exempt building work)’—

omit.

8. Section 47(1)(a), ‘(other than exempt building work)’—

omit.

9. Section 110—

omit, insert—

‘Non application of certain Acts

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

- *Commercial Arbitration Act 1990*
- *Subcontractors Charges Act 1974.*’.

10. Section 111(2), after ‘the prosecution’—

insert—

‘or the Attorney-General’.

11. Section 116—

omit, insert—

‘Regulations

‘116. The Governor in Council may make regulations under this Act.’.

12. Schedule heading, ‘provision’—

omit, insert—

‘provisions’.

SCHEDULE (continued)

13. Schedule, cl 2, heading, ‘provision’—

omit, insert—

‘provisions’.

14. Schedule, cl 2(9) and (10)—

omit.

15. Schedule—

insert—

‘Existing policies for supervision of building work

‘3.(1) In this clause—

“building work supervision policy” means a policy of the Board, or a part of a policy of the Board, if the policy or the part was —

- (a) in force immediately before the commencement of this clause; and
- (b) made for the purposes of section 43(3).

‘(2) Subject to any amendment made by the Board, a building work supervision policy has effect as a supervision policy under section 9A.

‘(3) However, a building work supervision policy has no effect after the expiry of this clause.

‘(3) This clause expires 6 months after its commencement.

‘Board members to go out of office

‘4.(1) In this clause—

“existing member” means a person who, immediately before the commencement of this clause—

- (a) was a member of the Board; or
- (b) held an appointment to act as a member of the Board.

SCHEDULE (continued)

‘(2) On the commencement of this clause, each existing member—

- (a) if the person was a member of the Board—goes out of office as a member of the Board; or
- (b) if the person held an appointment to act as a member of the Board—no longer holds the appointment.

‘(3) Nothing in this clause prevents an existing member from being appointed under section 10 as a member of the Board.

‘(4) This clause expires on the day on which it commences.

**‘References to Registrar/General Manager and Home Building
Advisory Service**

‘5. In an Act or document—

- (a) a reference to the Registrar/General Manager of the Authority is taken to be a reference to the General Manager of the Authority; and
- (b) a reference to Home Building Advisory Service is taken to be a reference to the Authority.

‘Director of the Advisory Service

‘6.(1) On the commencement of this clause, the person who, immediately before the commencement of this clause, held appointment under section 23 of the Act as Director of the Home Building Advisory Service goes out of office.

‘(2) The termination of the appointment of the Director under subclause (1) does not affect any right to compensation to which the Director is entitled under the terms of the Director’s appointment.

‘(3) This clause expires on the day on which it commences.

‘Disciplinary action

‘7.(1) For the purposes of section 101, proper grounds exist for taking

SCHEDULE (continued)

disciplinary action against a person (whether or not the person is a licensee) if the person—

- (a) committed an offence against the repealed Act; or
- (b) was liable under section 44 of the repealed Act to have the person's registration as a registered builder cancelled or suspended.

‘(2) This clause expires on 1 October 1998.’.