

Queensland



**QUEENSLAND BUILDING
SERVICES AUTHORITY
AMENDMENT ACT 1999**

Act No. 43 of 1999

Queensland



QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT ACT 1999

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Queensland



**Queensland Building Services Authority
Amendment Act 1999**

Act No. 43 of 1999

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

[Assented to 2 September 1999]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Queensland Building Services Authority Amendment Act 1999*.

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, ‘In this Act—’—

omit, insert—

‘The dictionary in schedule 2 defines particular words used in this Act.’.

(2) Section 4—

insert—

‘**“approved security provider”**, for part 4A, see section 67A.

“building contract”, for part 4A, see section 67A.

“carry out building work”, for part 4A, see section 67A.

“commercial building contract”, for part 4A, see section 67A.

“completed building inspection” means—

- (a) the inspection or investigation of, and the provision of advice or a report about, a completed building; or
- (b) certification about whether the erection or construction of a

completed building has been in compliance with a relevant code, standard or statutory requirement.

“construction management trade contract”, for part 4A, see section 67A.

“contracted party”, for part 4A, see section 67A.

“contracting party”, for part 4A, see section 67A.

“contract price”, for part 4A, see section 67A.

“excluded company”, for part 3A, see section 56AC(7).

“excluded individual”, for part 3A, see section 56AA.

“executive officer”, of a company, means a person who is—

- (a) a director or secretary of the company; or
- (b) a person who is concerned with, or takes part in, the company’s management, whether or not the person is a director or secretary of the company or the person’s position is given the name of executive officer.

“field work” means—

- (a) a site investigation; or
- (b) a site assessment; or
- (c) soil sampling; or
- (d) soil collection.

“fire protection system”, for a building, means a system of fire protection for all or part of the building comprising some or all of the following—

- (a) portable fire-fighting appliances, including, for example, wheeled fire extinguishers, fire hoses, fire blankets and portable fire extinguishers;
- (b) fire hydrants, with or without pumps;
- (c) fire hose reels, with or without pumps;
- (d) a fire detection system, alarm system or emergency warning and communication system;

- (e) a fire suppression system or fire sprinkler system, whether solid based, liquid based or gas based;
- (f) fire doors, fire shutters and fire damper assemblies.

“**influential person**”, for part 3A, see section 56AA.

“**permitted individual**”, for part 3A, see section 56AA.

“**principal**”, for part 4A, see section 67A.

“**progress payment**”, for part 4A, see section 67A.

“**relevant bankruptcy event**”, for part 3A, see section 56AC(1)(a).

“**relevant company event**”, for part 3A, see section 56AC(2)(b).

“**relevant event**”, for part 3A, see section 56AA.

“**retention amount**”, for part 4A, see section 67A.

“**security**”, for part 4A, see section 67A.

“**site classification**” means the classification of a site, or the reclassification of a site, under a standard directed to ensuring the appropriate selection or design of footings.

“**site testing**” means—

- (a) field work for soil testing or site classification; or
- (b) laboratory testing of soil.

“**subcontract**”, for part 4A, see section 67A.

“**valuable instrument**”, for part 4A, see section 67A.

“**variation**”, for part 4A, see section 67A.

“**written form**”, for part 4A, see section 67A.’.

(3) Section 4, definition “**building work**”, paragraph (g)—
omit, insert—

- ‘(g) the installation, maintenance, or certification of the installation or maintenance, of a fire protection system for a commercial or residential building; or
- (h) carrying out site testing and classification in preparation for the erection or construction of a building on the site; or

(i) carrying out a completed building inspection;’.

(4) Section 4, definitions (as amended)—

relocate to schedule 2, as inserted by this Act.

Insertion of new ss 4B and 4C

5. Part 1, after section 4A—

insert—

‘Act binds all persons

‘4B. This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

‘Certain building contractors not bound

‘4C. Parts 5 and 6 do not bind a building contractor to the extent that the business carried on by the building contractor consists of or includes carrying out completed building inspections.’.

Amendment of s 9 (Role of board)

6.(1) Section 9(e)—

renumber as section 9(f).

(2) Section 9—

insert—

(e) to give advice to the Minister about unfair or unconscionable trading practices affecting security of payments to subcontractors;’.

Replacement of s 10 (Composition of board)

7. Section 10—

omit, insert—

‘Composition of board

‘10.(1) The board consists of 8 members, of whom—

- (a) 3 members are to be licensees, or directors of companies that are licensees, subject to the following conditions—
 - (i) at least 1 of the licensees must be a licensed builder;
 - (ii) at least 1 of the licensees must be a licensed contractor other than a licensed builder; and
- (b) 2 members are to be appointed as representatives of consumers; and
- (c) 1 member is to be appointed as a representative of either or both of the following—
 - (i) the general insurance industry;
 - (ii) the accounting profession; and
- (d) 1 member is to be appointed as a representative of building and construction unions; and
- (e) 1 member is a public service officer (the **“public service member”**).

‘(2) All members of the board, other than the public service member, are voting members.

‘(3) The public service member’s place at a meeting of the board may be filled by another public service officer chosen by the public service member.

‘Appointment of members

‘10A.(1) The Governor in Council is to appoint—

- (a) all the members of the board; and
- (b) 1 of the members to be the chairperson of the board.

‘(2) The appointment of a member is to be for a term, of not longer than 3 years, decided by the Governor in Council and stated in the member’s instrument of appointment.

‘(3) The office of a member becomes vacant if—

- (a) the member resigns by signed notice of resignation given to the Minister; or
- (b) the member becomes employed by, or becomes a contractor of, the authority; or
- (c) the member's appointment is ended by the Governor in Council under subsection (4).

'(4) The Governor in Council may, at any time, end the appointment of a member for any reason or without giving a reason.

'(5) The Governor in Council may appoint a person to act as a member of the board—

- (a) when there is a vacancy in the office of a voting member; or
- (b) for any period, or all periods, when a voting member is absent from duty or unable for any reason to act in the office.'

Amendment of s 12 (Proceedings at meetings)

8.(1) Section 12(2)(a), '5 members'—

omit, insert—

'4 voting members'.

(2) Section 12(2)(b), 'members'—

omit, insert—

'voting members'.

(3) Section 12(2)(c), 'each member'—

omit, insert—

'each voting member'.

Replacement of s 15 (Fees and allowances)

9. Section 15—

omit, insert—

‘Fees and allowances

‘15.(1) The members of the board are entitled to the fees and allowances decided by the Governor in Council for their membership of the board.

‘(2) Members of committees established under this division are entitled to the fees and allowances decided by the Governor in Council for their membership of the committees, but only if they are also members of the board.’.

Amendment of s 18 (Role of the general manager)

10.(1) Section 18(2)—

insert—

‘(ea) undertaking strategic planning, having regard especially to cyclical industry conditions, to ensure that the authority’s available revenue base, and its assets and reserves, are enough to allow the authority to maintain the services it is required to provide;’.

(2) Section 18(2)(h)(ii)——

omit.

Insertion of new pt 2, div 5

11. After section 20—

insert—

‘Division 5—The insurance manager

‘Appointment of insurance manager

‘21.(1) The authority must appoint an individual to be the insurance manager of the authority.

‘(2) The remuneration and conditions of appointment of the insurance manager are to be decided by the authority.

‘(3) The authority may appoint a person to act as insurance manager of the authority—

- (a) when there is a vacancy in the position of insurance manager of the authority; or
- (b) for any period, or all periods, when the insurance manager is absent from duty or, for any other reason, can not perform the functions of the position.

‘Role of insurance manager

‘**22.(1)** The insurance manager must report regularly to the board on the administration of the statutory insurance scheme and, if asked by the board, must give the board a special report on a particular subject.

‘**(2)** The insurance manager is independent of the general manager’s direction in reporting under subsection (1), but is otherwise subject to the general manager’s direction.’.

Amendment of s 25 (General Statutory Fund)

12. Section 25(2)—

insert—

- ‘(c) all amounts transferred from the Insurance Fund under section 26.’.

Amendment of s 26 (Insurance Fund)

13. Section 26(3)—

omit, insert—

‘**(3)** The following amounts are to be paid from the fund—

- (a) the costs of administering the statutory insurance scheme;
- (b) the costs of paying out claims under the statutory insurance scheme;
- (c) if a regulation is in force under subsection (4), the amounts decided by the authority from time to time under subsection (5).

‘**(4)** A regulation may state a maximum amount that may, within any

period stated in the regulation, be transferred from the fund to the General Statutory Fund for use by the authority in administering this Act, other than in administering the statutory insurance scheme.

‘(5) The authority may, from time to time, transfer amounts from the fund to the General Statutory Fund if, each time an amount is transferred, the transfer is consistent with the requirements of the regulation in force under subsection (4).

‘(6) The fixing, under a regulation, of the amounts payable as insurance premiums in relation to building work must take into account any requirement for the transfer from time to time under subsection (5) of amounts from the fund to the General Statutory Fund.’.

Amendment of s 31 (Entitlement to contractor’s licence)

14.(1) Section 31(1)(c) and (2)(c), ‘financial requirements imposed by regulation’—

omit, insert—

‘relevant financial requirements stated in the board’s policies’.

(2) Section 31(2)(b)—

omit, insert—

‘(b) the company’s nominated supervisor holds a licence specifically identifying, as a class of building work that the supervisor may supervise, the same class of building work for which the licence is sought by the company; and’.

Amendment of s 33 (Application for licence)

15. Section 33—

insert—

‘(3) In deciding whether to give a licence, the authority may make inquiries and investigations that are reasonable and appropriate in the circumstances, including for example by—

- (a) seeking confirmation about the experience of applicants through site inspections and referee checks; and

- (b) carrying out checks with the Australian Securities and Investment Commission, bankruptcy registers and credit bureaus.’.

Amendment of s 34 (Grant of licence)

16.(1) Section 34(2)—

omit.

(2) Section 34(3) to (6)—

renumber as section 34(2) to (5).

(3) Section 34(3), as renumbered, ‘(3)’—

omit, insert—

‘(2)’.

Amendment of s 35 (Imposition of conditions etc. on grant of licence)

17. Section 35—

insert—

‘**(2)** Without limiting subsection (1), a contractor’s licence is subject to the condition that—

- (a) the licensee’s financial circumstances must at all times satisfy the relevant financial requirements stated in the board’s policies; and
- (b) variations of the contractor’s turnover and assets must be notified, or notified and approved, in accordance with the relevant financial requirements stated in the board’s policies.’.

Amendment of s 36 (Subsequent imposition of conditions etc.)

18. Section 36—

insert—

‘**(3A)** A condition may be imposed requiring the licensee to complete a course module included in technical or managerial national competency standards relevant to the building industry.’.

Insertion of new s 38A

19. Part 3, division 5—

insert—

‘Receipt of fee does not revive licence

‘38A.(1) This section applies if, despite the cancellation or suspension of a licence under this Act, other than a suspension under section 38(1), the authority accepts the payment of an amount purporting to be the licence fee for the licence.

‘(2) The licence does not stop being cancelled or suspended merely because of the authority’s acceptance of the payment.

‘(3) Subsection (2) applies whether or not the authority gives a receipt for the payment.’.

Amendment of s 39 (Register)

20.(1) Section 39(4) and (5)—

renumber as section 39(8) and (10).

(2) Section 39(3)—

omit, insert—

‘(3) The register must also contain against the name of each licensee a note of—

- (a) each direction of the authority requiring the licensee to rectify building work; and
- (b) each order made against the licensee by the tribunal under section 101(4);¹ and
- (c) each time the licensee is convicted of an offence against this Act and the provision of this Act that was contravened.

‘(4) No information may be included in the register under subsection (3)(a) until—

¹ Section 101 (Disciplinary action)

- (a) all periods for seeking a review of the direction, and for making any appeal arising out of review of the direction, have ended; and
- (b) any review or appeal about the direction is finally decided or is not proceeded with.

‘(5) No information may be included in the register under subsection (3)(b) until—

- (a) all periods for making an appeal arising out of the tribunal’s order have ended; and
- (b) any appeal about the order is finally decided or is not proceeded with.

‘(6) No information may be included in the register under subsection (3)(c) until—

- (a) all periods for making an appeal arising out of the conviction have ended; and
- (b) any appeal about the conviction is finally decided or is not proceeded with.

‘(7) A note made in the register under subsection (3) must be taken off the register 5 years after it is made.’.

(3) Section 39(8), as renumbered, ‘written’—
omit.

(4) Section 39—
insert—

‘(9) Particulars may be given under subsection (8)—

- (a) by written notice; or
- (b) in another way approved by the authority, and advised generally to licensees, as a suitable way for advising particulars to the authority.’.

Amendment of s 42 (Unlawful carrying out of building work)

21.(1) Section 42(3), ‘A person’—

omit, insert—

‘Subject to subsection (4), a person’.

(2) Section 42(4) to (6)—

renumber as section 42(5) to (7).

(3) Section 42(7)—

renumber as section 42(9).

(4) Section 42—

insert—

‘**(4)** A person is not stopped under subsection (3) from claiming reasonable remuneration for carrying out building work, but only if the amount claimed—

- (a) is not more than the amount paid by the person in supplying materials and labour for carrying out the building work; and
- (b) does not include allowance for any of the following—
 - (i) the supply of the person’s own labour;
 - (ii) the making of a profit by the person for carrying out the building work;
 - (iii) costs incurred by the person in supplying materials and labour if, in the circumstances, the costs were not reasonably incurred; and
- (c) is not more than any amount agreed to, or purportedly agreed to, as the price for carrying out the building work; and
- (d) does not include any amount paid by the person that may fairly be characterised as being, in substance, an amount paid for the person’s own direct or indirect benefit.’.

(5) Section 42—

insert—

‘**(8)** An unlicensed person who carries out, or undertakes to carry out, design work does not contravene this section if—

- (a) the person carries on business as a landscape architect; and

-
- (b) the person carries out the design work, or undertakes to carry it out, as part of the person's work as a landscape architect; and
 - (c) the design work is of a type ordinarily carried out as an appropriate or necessary component of a landscape architect's work.'

(6) Section 42—

insert—

'**(10)** Subsection (4) applies to building work carried out on or after 1 July 1992, unless the entitlement to payment for the carrying out of the building work was—

- (a) before the commencement of this section, decided by—
 - (i) a court; or
 - (ii) the tribunal; or
 - (iii) an arbitrator or another entity authorised to make a binding decision about the entitlement; or
- (b) before 2 March 1999, the subject of—
 - (i) a claim or counter claim filed in a court; or
 - (ii) an application made to the tribunal; or
 - (iii) a reference to an arbitrator or another entity authorised to make a binding decision about the entitlement; or
- (c) provided for as a term of a binding agreement entered into before the commencement of this subsection, but only if the binding agreement—
 - (i) is between—
 - (A) 1 or more consumers and 1 or more building contractors; or
 - (B) 1 or more building contractors and 1 or more other building contractors; and
 - (ii) was entered into to resolve a dispute between some or all of the parties to the binding agreement; and

- (iii) is not the contract for the carrying out of the building work as originally entered into, or as originally entered into and as subsequently varied.’.

Amendment of s 46 (Notification on certificate of title)

22.(1) Section 46(2) to (5)—

renumber as section 46(3) to (6).

(2) Section 46—

insert—

‘**(2)** If the authority becomes aware that building work has been carried out, and that a permit should have been, but was not, obtained under section 44 for carrying out the building work, the authority must notify the registrar of titles of the carrying out of the building work without a permit.’.

Amendment of s 48 (Cancellation or suspension of licence)

23.(1) Section 48(d)—

omit.

(2) Section 48(h), after ‘condition’—

insert—

‘to which the licence is subject under section 35 or that is’.

Replacement of s 49A (Immediate cancellation of licence)

24. Section 49A—

omit, insert—

‘Immediate suspension of licence

‘**49A.(1)** The authority may suspend a licensee’s licence without allowing the licensee time to make written representations before the suspension takes effect if the authority believes, on reasonable grounds, there is a real likelihood that serious financial loss or other serious harm will happen to any of the following if the licence is not immediately

suspended—

- (a) other licensees;
- (b) the employees of other licensees;
- (c) consumers;
- (d) suppliers of building materials or services.

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

- (a) tells the licensee—
 - (i) the reasons for the suspension; and
 - (ii) that the licensee may make written representations for a lifting of the suspension; and
 - (iii) that the licensee may apply to the tribunal for a review of the authority’s decision to immediately suspend the licence; and
- (b) briefly explains how the suspension could lapse under subsection (3).

‘(3) The suspension under subsection (1) lapses if—

- (a) the authority does not, within 10 days after the licensee is given notice of the suspension, give the licensee notice under section 49(1) of the authority’s reasons for a proposed cancellation or suspension of the licence under section 48 (a “**section 49 notice**”); or
- (b) the authority, within 10 days after the licensee is given notice of the suspension, gives the licensee a section 49 notice, but the licence is not suspended or cancelled under section 48 within 3 months, or a longer period decided under subsections (4) and (5), after the section 49 notice is given; or
- (c) the authority suspends or cancels the licence under section 48.

‘(4) The authority may extend the period of 3 months mentioned in subsection (3)(b), but only if it appears to the authority that, in the circumstances, it is in the interests of the licensee to do so.

‘(5) The period may be extended more than once, but whenever it is extended, it must not be extended for more than 1 month.’

Insertion of new pt 3, div 9A

25. After section 50—

insert—

‘Division 9A—Monitoring continued satisfaction of financial requirements

‘Approved audit program

‘50A.(1) The Minister may approve a program (an **“approved audit program”**) under which the authority may audit licensees to find out if they continue to satisfy the relevant financial requirements stated in the board’s policies.

‘(2) An approved audit program must state the following—

- (a) the purpose of the program;
- (b) when the program starts;
- (c) the period over which the program is to be carried out;
- (d) objective criteria for selecting licensees who are to be the subject of audit;
- (e) if the licensees to be audited are to be selected from licensees holding licences of a particular class, a description of the class.

‘(3) Despite anything in an approved audit program, a licensee may be the subject of an audit under an approved audit program only if there has not been an audit of the licensee under an approved audit program within the preceding 2 years.

‘Notice of proposed audit program

‘50B.(1) At least 14 days, but not more than 28 days, before an approved audit program starts, the authority must give notice of the program.

‘(2) The notice must be published in the gazette, and may be published in any other publication the authority considers appropriate.

‘(3) The notice must state the following—

- (a) the purpose of the approved audit program;
- (b) when the program starts;
- (c) the period over which the program is to be carried out;
- (d) the objective criteria for selecting licensees who are to be the subject of audit;
- (e) if the licensees to be audited are to be selected from licensees holding licences of a particular class, a description of the class;
- (f) how licensees selected for audit under the program will be advised they have been selected;
- (g) the obligations to be complied with by licensees selected for audit under the program.

‘Supply of financial information under approved audit program or for other reason

‘50C.(1) This section applies to a licensee if—

- (a) the licensee is selected to be audited under an approved audit program; or
- (b) the authority is satisfied, because of information received by the authority, there are reasonable grounds for concern that the licensee does not satisfy the relevant financial requirements stated in the board’s policies.

‘(2) The authority may give written notice to the licensee requiring the licensee to give the authority copies of, or access to, the financial records described in the notice.

‘(3) The financial records described in the written notice must be only the financial records of the licensee the authority reasonably requires for deciding whether the licensee satisfies the relevant financial requirements stated in the board’s policies.

‘(4) The licensee must comply with the written notice within 21 days after the licensee receives the written notice, unless the licensee has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(5) Also, if the licensee does not comply with the written notice within 21 days after the licensee receives it, the licensee is taken, for section 48(h), to have contravened a condition imposed under section 36 on the licensee’s licence.’

Replacement of s 51 (False representation)

26. Section 51—

omit, insert—

‘Improper use of licence card, certificate or number

‘51.(1) A licensed contractor must not allow another person to make use of the licensed contractor’s licence if the licensed contractor knows, or ought reasonably to know, that the other person intends to make use of the licence—

- (a) if the other person is not also a licensed contractor—to pretend to be a licensed contractor; or
- (b) if the other person is also a licensed contractor—to pretend to be the holder of a contractor’s licence authorising carrying out building work the other person is not authorised to carry out.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

‘(2) A person who is not a licensed contractor must not make use of a licensed contractor’s licence to pretend to be a licensed contractor.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

‘(3) A licensed contractor (the “**first contractor**”) must not make use of another licensed contractor’s licence to pretend to be the holder of a

contractor's licence authorising carrying out building work the first contractor is not authorised to carry out.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

‘(4) In this section—

“**make use of**” a licensed contractor's licence, means make use of the number of the licensed contractor's licence or the licensed contractor's licence card or certificate.

‘Other offences relating to unlawful carrying out of building work

‘**51A.(1)** A licensed contractor must not help another person to carry out building work if the licensed contractor knows, or ought reasonably to know, that in carrying out the building work the other person is committing an offence against section 42.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

‘(2) A licensed contractor must not carry out, or undertake to carry out, building work using a name or number other than the licensed contractor's name or number unless the contractor has a reasonable excuse.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

‘(3) Section 42(2) also applies for this section.’

Insertion of new ss 53A and 53B

27. After section 53—

insert—

‘Satisfying financial requirements at renewal

‘53A.(1) The authority must not renew a contractor’s licence if the authority is not given information, in a form approved by the board, and within the time allowed under a regulation, about the contractor’s continued satisfaction of the relevant financial requirements stated in the board’s policies.

‘(2) The form approved by the board may require some or all of the information to be given by a person suitably qualified and experienced in accountancy.

‘(3) If the contractor does not give the authority the information mentioned in subsection (1), the authority may, by written notice given to the licensee, suspend the licence.

‘(4) A suspension imposed under this section ends when the authority is given the information.

‘(5) 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.

‘False or misleading documents about financial requirements

‘53B.(1) A person must not give a document to the authority about a contractor’s satisfaction of financial requirements stated in the board’s policies if—

- (a) the person knows the document contains information that is false or misleading; or
- (b) the document contains information that is false or misleading and the person did not take reasonable steps to make sure that the information was not false or misleading.

Maximum penalty—100 penalty units or 2 years imprisonment.

‘(2) Subsection (1)(a) does not apply to a person who, when giving the

document—

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

‘(3) A complaint against a person for an offence against subsection (1)(a) is sufficient if it states the document was false or misleading to the person’s knowledge.’.

Insertion of new pt 3A

28. After section 56—

insert—

‘PART 3A—EXCLUDED AND PERMITTED INDIVIDUALS AND EXCLUDED COMPANIES

‘Division 1—Preliminary

‘Definitions for pt 3A

‘56AA. In this part—

“**excluded company**” see section 56AC(7).

“**excluded individual**”, for a relevant event, see section 56AC(3) and (4).

“**influential person**”, for a company, means an individual, other than a director or secretary of the company, who is in a position to control or substantially influence the conduct of the company’s affairs, including, for example, a shareholder with a significant shareholding, a financier or a senior employee.

“**permitted individual**”, for a relevant event, means an individual who, under this part, is categorised as a permitted individual for the relevant event.

“**relevant bankruptcy event**” see section 56AC(1)(a).

“relevant company event” see section 56AC(2)(b).

“relevant event” means a relevant bankruptcy event or a relevant company event.

‘Operation of pt 3A

‘56AB. This part has effect despite anything in part 3.

‘Excluded individuals and excluded companies

‘56AC.(1) This section applies to an individual if—

- (a) after the commencement of this section, the individual takes advantage of the laws of bankruptcy or becomes bankrupt (**“relevant bankruptcy event”**); and
- (b) 5 years have not elapsed since the relevant bankruptcy event happened.

‘(2) This section also applies to an individual if—

- (a) after the commencement of this section, a company, for the benefit of a creditor—
 - (i) has a provisional liquidator, liquidator, administrator or controller appointed; or
 - (ii) is wound up, or is ordered to be wound up; and
- (b) 5 years have not elapsed since the event mentioned in paragraph (a)(i) or (ii) (**“relevant company event”**) happened; and
- (c) the individual—
 - (i) was, when the relevant company event happened, a director or secretary of, or an influential person for, the company; or
 - (ii) was, at any time after the commencement of this section and within the period of 1 year immediately before the relevant company event happened, a director or secretary of, or an influential person for, the company.

‘(3) If this section applies to an individual because of subsection (1), the

individual is an **“excluded individual”** for the relevant bankruptcy event.

‘(4) If this section applies to an individual because of subsection (2), the individual is an **“excluded individual”** for the relevant company event.

‘(5) An excluded individual for a relevant bankruptcy event (the **“first event”**) does not also become an excluded individual for another relevant bankruptcy event (the **“other event”**) if the first event and the other event are both consequences flowing from what is, in substance, the one set of circumstances applying to the individual.

‘(6) An excluded individual for a relevant company event (the **“first event”**) does not also become an excluded individual for another relevant company event (the **“other event”**) if the first event and the other event are both consequences flowing from what is, in substance, the one set of circumstances applying to the company.

‘(7) A company is an **“excluded company”** if an individual who is a director or secretary of, or an influential person for, the company is an excluded individual for a relevant event.

‘Division 2—Categorisation as permitted individual

‘Becoming a permitted individual

‘**56AD.(1)** An individual may apply to the authority to be categorised as a permitted individual for a relevant event if the individual has been advised by the authority, or has otherwise been made aware, that the authority considers the individual to be an excluded individual for the relevant event.

‘(2) However, if as a result of the application the individual is not categorised as a permitted individual for the relevant event, the individual may not, while the individual is an excluded individual for the relevant event, again apply to be categorised as a permitted individual for the relevant event.

‘(3) If the individual applies, the application must include the reasons why the authority should categorise the individual as a permitted individual for the relevant event.

‘(4) If the individual is a director or secretary of, or influential person for,

a company that is a licensee, the company is taken to be a party to the application, and may make submissions to the authority about the application.

‘(5) The authority must give its decision on the categorisation within 28 days, or a longer period agreed between the individual and the authority.

‘(6) If the authority does not give its decision within the time required under subsection (5), the authority is taken, for section 98,² to have refused to categorise the individual as a permitted individual for the relevant event.

‘(7) Nothing in subsection (6) stops the authority, after the time required under subsection (5) has elapsed, from confirming the authority’s refusal to categorise the individual as a permitted individual for the relevant event.

‘(8) The authority may categorise the individual as a permitted individual for the relevant event only if the authority is satisfied, on the basis of the application, that the individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event.

‘(9) If an individual is categorised as a permitted individual for a relevant event, the individual is taken not to be an excluded individual for the relevant event.

Division 3—Licence exclusion and cancellation

‘Exclusion from contractor’s licence

‘56AE. The authority must not grant a person a contractor’s licence if the person is—

- (a) an excluded individual for a relevant event; or
- (b) an excluded company.

² Section 98 (Reviewable decisions)

‘Procedure if licensee is excluded individual

‘56AF.(1) This section applies if the authority considers that an individual who is a licensee is an excluded individual for a relevant event.

‘(2) The authority must give the individual a written notice identifying the relevant event and stating the following—

- (a) why the authority considers the individual is an excluded individual for the relevant event;
- (b) the individual may apply to the authority to be categorised as a permitted individual for the relevant event if the individual has not already done so;
- (c) the authority must cancel the licence if—
 - (i) the individual has not already applied to be categorised as a permitted individual for the relevant event, and the individual does not apply for the categorisation within 28 days after the authority gives the individual the written notice; or
 - (ii) both of the following apply—
 - (A) the individual has already applied to be categorised as a permitted individual for the relevant event, or the individual applies for the categorisation within the 28 days mentioned in the subparagraph (i);
 - (B) the authority refuses the application.

‘(3) The authority must cancel the individual’s licence by written notice given to the individual if—

- (a) the individual has not already applied to be categorised as a permitted individual for the relevant event, and the individual does not apply for the categorisation within 28 days after the authority gives the individual the written notice under subsection (2); or
- (b) the individual has already applied to be categorised as a permitted individual for the relevant event, or the individual applies for the categorisation within the 28 days mentioned in paragraph (a), but—
 - (i) the authority refuses the application; and

- (ii) either of the following applies—
 - (A) the period for applying for a review of the decision to refuse has ended and no application for review has been made;
 - (B) an application for review has been made and the authority's decision is confirmed, or the application is not proceeded with.

‘(4) Section 49 does not apply to a cancellation under subsection (3).

‘Procedure if licensee is excluded company

‘**56AG.(1)** This section applies if the authority considers that a company that is a licensee is an excluded company.

‘(2) The authority must give the company a written notice stating the following—

- (a) particulars identifying the individual (the “**relevant individual**”) who is a director or secretary of, or an influential person for, the company and who is an excluded individual for a relevant event;
- (b) particulars identifying the relevant event;
- (c) within 28 days after the authority gives the company the written notice, the relevant individual must—
 - (i) stop being a director, secretary or influential person; or
 - (ii) if the individual is eligible to do so but has not already done so, apply to the authority to be categorised as a permitted individual for the relevant event;
- (d) the authority must cancel the licence if—
 - (i) within the 28 days mentioned in paragraph (c), the relevant individual—
 - (A) does not stop being a director, secretary or influential person; or
 - (B) if the relevant individual is eligible to do so but has not already done so, does not apply to be categorised as a

permitted individual for the relevant event; or

- (ii) the relevant individual has already applied to be categorised as a permitted individual for the relevant event, or the relevant individual applies for the categorisation within the 28 days mentioned in paragraph (c), but the authority refuses the application and the relevant individual does not stop being a director, secretary or influential person; or
- (iii) the relevant individual is not eligible to apply to the authority to be categorised as a permitted individual for the relevant event and the relevant individual does not, within the 28 days mentioned in paragraph (c), stop being a director, secretary or influential person.

‘(3) The authority must cancel the company’s licence by written notice given to the company if, within the 28 days mentioned in subsection (2)(c), the relevant individual—

- (a) does not stop being a director or secretary of, or an influential person for, the company; and
- (b) if the relevant individual is eligible to do so but has not already done so, does not apply to be categorised as a permitted individual for the relevant event.

‘(4) The authority must also cancel the company’s licence by written notice given to the company if all of the following apply—

- (a) the relevant individual has already applied to be categorised as a permitted individual for the relevant event, or the relevant individual applies for the categorisation within the 28 days mentioned in subsection (2)(c);
- (b) the authority refuses the application and the relevant individual does not stop being a director, secretary or influential person;
- (c) either—
 - (i) the period for applying for a review of the decision to refuse has ended and no application for review has been made; or
 - (ii) an application for review has been made and the authority’s decision is confirmed, or the application is not proceeded

with.

‘(5) The authority must also cancel the company’s licence by written notice given to the company if the relevant individual is not eligible to apply to the authority to be categorised as a permitted individual for the relevant event and the relevant individual does not, within the 28 days mentioned in subsection (2)(c), stop being a director, secretary or influential person.

‘(6) Section 49 does not apply to a cancellation under subsection (3).

‘Review by tribunal of authority’s opinion

‘**56AH.(1)** If the authority considers under section 56AF or 56AG (the “**relevant section**”) that a person is an excluded individual or excluded company, or that an individual is still a director or secretary of, or an influential person for, a company, the authority’s decision is subject to review under section 98.

‘(2) If a person applies for a review of the decision, the application for review does not affect anything already done or in force under the relevant section, but periods of time mentioned in the relevant section are taken to stop running until the review is finished.’.

Insertion of new pt 4A

29. After section 67—

insert—

‘PART 4A—BUILDING CONTRACTS OTHER THAN DOMESTIC BUILDING CONTRACTS

‘Division 1—Preliminary

‘Definitions for pt 4A

‘67A. In this part—

“**approved security provider**” means a financial institution that is an approved security provider under the *Financial Management Standard*

1997.

“building contract” means a contract or other arrangement, other than a domestic building contract, for carrying out building work in Queensland.

“carry out building work” means—

- (a) carry out building work personally; or
- (b) directly or indirectly, cause building work to be carried out; or
- (c) provide advisory, administrative, management or supervisory services for carrying out building work.

“commercial building contract” means a building contract that is not a construction management trade contract or a subcontract.

“construction management trade contract” means a building contract described in section 67B.

“contracted party”, for a building contract, means the party to the contract who is to carry out the building work the subject of the contract.

“contracting party”, for a building contract, means the party to the contract for whom the building work the subject of the contract is to be carried out.

“contract price”, for a building contract, means the amount payable under the contract for carrying out the building work the subject of the contract, including, if the contract has been the subject of a variation, the contract as varied.

“principal” means a person who is the contracting party for a building contract and who—

- (a) is not a building contractor; or
- (b) is a building contractor, but did not enter into the building contract in the course of carrying on business as a building contractor.

“progress payment”, for a building contract, means the payment of an amount that is a part of the contract price for the contract, other than an amount that is, or is in the nature of, a deposit under the contract.

“retention amount”, for a building contract, means an amount described in section 67C.

“security”, for a building contract, means something—

- (a) given to, or for the direct or indirect benefit of, the contracting party for the contract by or for the contracted party for the contract; and
- (b) intended to secure, wholly or partly, the performance of the contract; and
- (c) in the form of either, or a combination of both, of the following—
 - (i) an amount, other than an amount held as a retention amount for the contract;
 - (ii) 1 or more valuable instruments, whether or not exchanged for, or held instead of, a retention amount for the contract.

“subcontract” means a building contract described in section 67D.

“valuable instrument” means any of the following—

- (a) a banker’s undertaking;
- (b) a bond;
- (c) inscribed stock;
- (d) a guarantee policy;
- (e) an interest bearing deposit.

“variation”, of a building contract, means an addition to, or an omission from, the building work the subject of the contract.

“written form”, for a building contract or the variation of a building contract, means in handwritten or typewritten form, or in a combination of handwritten and typewritten forms.

‘Meaning of “construction management trade contract” in pt 4A

‘67B.(1) For this part, a building contract is a **“construction management trade contract”** if—

- (a) the contracting party for the building contract is a principal; and
- (b) the contracted party for the building contract is the holder of a licence, other than a licence identified under a regulation as a

general building licence; and

- (c) the building work the subject of the building contract is part of a wider project of building work (the **“project”**) involving the principal in entering into 1 or more other building contracts, also as a principal, for the carrying out of other building work that is also part of the project.

‘(2) For deciding whether a principal has entered into a building contract, it does not matter if the building contract was entered into on behalf of the principal, including, for example, by a person described in the contract as a construction manager.

‘Meaning of “retention amount” in pt 4A

‘67C. For this part, an amount is a **“retention amount”** for a building contract if—

- (a) the amount is payable as part of the contract price under the building contract, but, under the contract, may be withheld from payment to the contracted party for the building contract—
 - (i) during the progress of the building work the subject of the contract; or
 - (ii) for a period (a **“maintenance period”**) after the completion of the building work; or
 - (iii) both during the progress of the building work and for a maintenance period; and
- (b) the purpose of withholding the amount is to give financial protection to the contracting party in relation to the need to correct defects in the building work, or otherwise to secure, wholly or partly, the performance of the contract.

‘Meaning of “subcontract” in pt 4A

‘67D. For this part, a building contract is a **“subcontract”** if—

- (a) both the contracting party and the contracted party for the contract are building contractors; and

- (b) for the contract, the contracted party is a subcontractor for the contracting party; and
- (c) the building work the subject of the contract is the whole or a part of building work the subject of—
 - (i) another building contract, under which the contracting party mentioned in paragraphs (a) and (b) is the contracted party; or
 - (ii) a domestic building contract between the contracting party mentioned in paragraphs (a) and (b) and a consumer.

‘Operation of pt 4A

‘67E.(1) Subject to any provision of this part that expressly provides that a building contract, or a provision of a building contract, is void, this part does not have effect to make void or voidable a building contract, or a provision of a building contract, even if—

- (a) in entering into the building contract, or the building contract containing the provision, a party to the building contract commits an offence against this part; or
- (b) the building contract or the provision of the building contract is inconsistent with a condition to which the building contract is subject under this part.

‘(2) However, if a building contract, or a provision of a building contract, is inconsistent with a provision (the **“Act provision”**) of this part applying to the building contract, the building contract, or the provision of the building contract, has effect only to the extent it is not inconsistent with the Act provision.

‘(3) Without limiting subsection (2), a building contract is unenforceable against the contracted party for the contract to the extent that the contract provides for retention amounts or security in a way that is inconsistent with a condition to which the contract is subject under division 2.

‘(4) This part—

- (a) has effect in relation to a building contract despite anything in the building contract; and

-
- (b) applies to a building contract even if—
- (i) the contract was entered into outside Queensland; or
 - (ii) the parties to the contract have agreed that the law of Queensland does not apply to the contract or to a provision of the contract.

‘Division 2—All building contracts

‘Suggested forms of contract

‘67F. The authority may prepare and publish suggested forms for building contracts.

‘Building contracts to be in writing

‘67G.(1) A building contractor commits an offence if—

- (a) the building contractor enters into a building contract, whether as the contracting party or the contracted party for the contract; and
- (b) the building contract is not put into written form—
 - (i) if the reasonable cost of the building work the subject of the contract is more than \$10 000—before carrying out the building work is started; or
 - (ii) if the reasonable cost of the building work the subject of the contract is \$10 000 or less—before carrying out the building work is finished.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

‘(2) A building contractor commits an offence if—

- (a) the building contractor enters into a building contract, whether as the contracting party or the contracted party for the contract; and

- (b) the reasonable cost of the building work the subject of the building contract is \$10 000 or less; and
- (c) after the building contract is entered into but before the building contract has been put into written form, the reasonable cost of the building work the subject of the building contract becomes more than \$10 000 because of a variation of the building contract, whether or not the variation is the first variation of the building contract; and
- (d) the building contract, incorporating all variations, is not put into written form—
 - (i) if no building work has been carried out under the contract—before carrying out building work under the contract is started; or
 - (ii) otherwise—before there is further carrying out of building work under the contract.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

‘(3) A building contractor commits an offence if—

- (a) the building contractor enters into a building contract, whether as the contracting party or the contracted party for the contract; and
- (b) the building contract is put into written form; and
- (c) the building contract, in written form, does not comply with the formal requirements for a building contract stated in subsection (4).

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

‘(4) A building contract in written form complies with the formal

requirements for a building contract if the contract states the following—

- (a) the scope of the building work the subject of the contract;
- (b) when the building work is to be completed;
- (c) the amount to be paid for carrying out the building work or, if appropriate, how the amount to be paid for carrying out the building work is to be worked out;
- (d) the parties' agreement about retention amounts and securities to be held;
- (e) the name of the building contractor who is the contracted party for the building contract;
- (f) the licence number of the building contractor mentioned in paragraph (e), as it appears on the building contractor's licence card;
- (g) the address of the land where the building work is to be carried out.

‘(5) This section does not apply to a building contractor who enters into a building contract as a principal.

‘(6) If, in contravention of subsection (1) or (2), a building contract is not put into written form, a building contractor who is a party to the contract is taken not to commit an offence against the provision if—

- (a) building work the subject of the contract must be carried out urgently; and
- (b) it is not reasonably practicable to enter into a written contract in the particular circumstances.

Example—

A cyclone has caused considerable damage at a remote community, repairs are urgently needed, the parties to the building contract are not both present at the community and communications failure prevents transmission of written material between the parties.

‘Agreed contract variations

‘67H.(1) A building contractor commits an offence if—

- (a) the building contractor is the contracting party or contracted party for a building contract; and
- (b) the building contractor agrees to a variation of the building contract; and
- (c) the variation is not put into written form and signed by the parties to it—
 - (i) if the building contract has been put into written form, and the variation provides only for the omission of some of the building work from the building contract—within the shortest practicable time; or
 - (ii) if the building contract has been put into written form but subparagraph (i) does not apply—before building work the subject of the variation is carried out; or
 - (iii) if the building contract has not yet been put into written form—when the building contract is put into written form and signed by the parties to the building contract.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

‘(2) A building contractor commits an offence if—

- (a) the building contractor agrees to a variation of a building contract; and
- (b) the variation is put into written form; and
- (c) the variation, in written form, does not comply with the formal requirements for a variation stated in subsection (3).

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

‘(3) A variation in written form of a building contract complies with the formal requirements for a variation if the variation—

- (a) states the scope of the building work the subject of the variation; and
- (b) states the change of the contract price for the building contract because of the variation, or the way the parties to the building contract are to work out the change of the contract price; and
- (c) is to the effect that any addition of building work must be allowed for in an increase in the first progress payment to be made after any part or the whole of the addition is carried out.

‘(4) This section does not apply to a building contractor who enters into a variation of a building contract if the building contractor is a party to the building contract as a principal.

‘(5) Despite subsection (3)(b), it is not necessary for the variation to state the change of the contract price because of the variation or the way the parties are to work out the change of the contract price if a provision of the building contract provides for how the change is to be worked out.

‘(6) If, in contravention of subsection (1) or (2), a variation of a building contract is not put into written form, a building contractor who is a party to the contract is taken not to commit an offence against the provision if—

- (a) building work the subject of the variation must be carried out urgently; and
- (b) it is not reasonably practicable to enter into a written variation in the particular circumstances.

Example—

Building work is in progress at a remote community, a cyclone causes considerable damage at the community, repairs are urgently needed, the parties to the building contract are not both present at the community and communications failure prevents transmission of written material between the parties.

‘Directions given under building contracts

‘67L(1) This section applies if under a building contract the contracting party for the contract, or another person authorised under the contract, may,

without the agreement of the contracted party for the contract, give a direction to the contracted party.

‘(2) Unless the building contract otherwise provides, a direction may initially be given other than in writing.

‘(3) However, if a direction is given other than in writing, the contracted party—

- (a) may ask for the direction to be given in writing; and
- (b) is not required to comply with the direction until it is given in writing.

‘(4) If a direction is given other than in writing, the contracting party commits an offence if the direction is not given to the contracted party in writing within 3 business days after it was given other than in writing.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

‘(5) In this section—

“**direction**” includes a direction for a variation of a building contract.

‘Set-offs under building contracts

‘67J.(1) The contracting party for a building contract may reduce an amount payable under the contract by an amount owed under the contract, or use a security for the building contract, wholly or partly, to obtain an amount owed under the contract, only if—

- (a) the reduction of the amount payable or the use of the security is permitted under the contract; and
- (b) the contracting party has given—
 - (i) written notice (the “**first notice**”) to the contracted party for the contract advising of the proposed reduction or use and, if the amount owed can be quantified when the first notice is given, of the amount owed; and

- (ii) if the amount owed can not be quantified when the first notice is given, a further written notice (the “**second notice**”) to the contracted party advising of the amount owed.

‘(2) The first notice must be given within 28 days after the contracting party becomes aware, or ought reasonably to have become aware, of the contracting party’s right to obtain the amount owed.

‘(3) If the second notice is required to be given, it must be given within 3 business days after the contracting party becomes able to quantify the amount owed.

‘(4) If, because of subsections (1) and (2) or (1), (2) and (3), the contracting party is stopped from reducing an amount payable under a building contract by an amount owed under the contract, or from using a security for a building contract to obtain an amount owed under the contract, the contracting party for the contract is not stopped from recovering the amount owed in another way.

‘(5) In this section—

“**amount owed**”, under a building contract, means an amount that, under the contract, and subject to its being quantified, is owed by the contracted party for the contract to the contracting party for the contract because of circumstances associated with the contracted party’s performance of the contract.

“**amount payable**”, under a building contract, means an amount that, under the building contract, is payable by the contracting party for the contract to the contracted party for the contract, including any amount payable to the contracted party from a retention amount for the contract.

‘Limits for retention amounts and securities for building contracts other than subcontracts

‘67K.(1) This section applies to a building contract if the contracting party under the contract is a principal.

‘(2) The building contract is subject to a condition that at any time before, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 5% of the contract price for the contract—

- (a) all retention amounts for the contract that are being withheld;
- (b) all securities for the contract given and still held.

‘(3) Subsection (2) does not apply to retention amounts or securities to the extent that the retention amounts or securities are for the financial protection of the contracting party, having regard to amounts paid by the contracting party that relate to something that has not yet been installed in accordance with the requirements of the contract.

‘(4) The building contract is not subject to the condition mentioned in subsection (2) if—

- (a) the contract—
 - (i) is in written form; and
 - (ii) explains the condition; and
 - (iii) expressly provides that the contract is not subject to the condition; and
- (b) the provision of the contract that expressly provides in the way mentioned in paragraph (a)(iii) is initialled by the parties to the contract.

‘Limits for retention amounts and securities for subcontracts

‘67L.(1) A subcontract is subject to a condition that, at any time before, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 5% of the contract price for the subcontract—

- (a) all retention amounts for the subcontract that are being withheld;
- (b) all securities for the subcontract given and still held.

‘(2) Subsection (1) does not apply to retention amounts or securities to the extent that the retention amounts or securities are for the financial protection of the contracting party, having regard to amounts paid by the contracting party that relate to something that has not yet been installed in accordance with the requirements of the contract.

‘Limits on deductions for retention amounts

‘67M.(1) This section applies if—

- (a) an amount (the **“relevant amount”**) is payable by the contracting party for a building contract to the contracted party for the building contract; and
- (b) the relevant amount relates to carrying out building work under the contract; and
- (c) the relevant amount, except for a retention amount for the building contract that is withheld, is paid to the contracted party.

‘(2) The building contract is subject to a condition that the retention amount withheld is to be not more than 10% of the relevant amount.

‘Limits for retention amounts and securities for building contracts after practical completion

‘67N.(1) A building contract is subject to a condition that, at any time after, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 2.5% of the contract price for the contract—

- (a) all retention amounts for the contract that are being withheld;
- (b) all securities for the contract given and still held.

‘(2) Subsection (1) does not apply to retention amounts or securities to the extent that the retention amounts or securities do not relate to the need to correct defects, identified in the defects liability period under the contract, in the building work under the contract.

‘Suspension of works

‘67O.(1) This section applies if—

- (a) the contracting party for a building contract has not complied with an order of a court or of the tribunal given in favour of the contracted party for the contract in relation to an issue arising under the contract; or

- (b) all of the following apply—
- (i) an amount is required to be paid to the contracted party for a building contract by a particular time;
 - (ii) the full amount is not paid, other than solely because of the retention of an amount lawfully permitted to be retained;
 - (iii) the requirement to pay the amount is not in dispute between the contracting party and the contracted party.

‘(2) The contracted party may give the contracting party a written notice stating—

- (a) details of the circumstance mentioned in subsection (1)(a), or of the circumstances mentioned in subsection (1)(b)(i) to (iii); and
- (b) that the contracted party intends to suspend building work the subject of the building contract if the order mentioned in subsection (1)(a) is not complied with, or if the amount mentioned in subsection (1)(b) is not paid, within the time stated in the written notice.

‘(3) The time stated in the written notice must be not less than 7 days after the written notice is given.

‘(4) If the order is not complied with, or the amount is not paid, within the time stated in the written notice, the contracted party may—

- (a) give the contracting party a further written notice that the contracted party is suspending the building work immediately; and
- (b) suspend the building work immediately the further written notice is given.

‘(5) If the contracted party suspends building work under subsection (4), the contracted party—

- (a) is not in breach of the building contract; and
- (b) keeps the contracted party’s rights under the contract, including any right to terminate the contract; and
- (c) may at any time lift the suspension, even if the order has not been complied with or the amount has not been paid.

‘(6) Subsection (7) applies if—

- (a) the order is complied with, or the amount is paid; and
- (b) the suspension is still in force; and
- (c) the contracting party gives written notice to the contracted party—
 - (i) advising the order has been complied with or the amount has been paid; and
 - (ii) requiring the contracted party to recommence the building work under the contract.

‘(7) The building contract is subject to a condition that the contracted party must recommence carrying out building work under the contract within 7 days after the contracted party receives the written notice mentioned in subsection (6)(c), or at a later time agreed to between the contracting party and the contracted party.

‘Late progress payments

‘67P.(1) This section applies if—

- (a) the contracting party for a building contract is required to pay an amount (the “**progress amount**”) to the contracted party for the building contract; and
- (b) the progress amount is payable as the whole or a part of a progress payment; and
- (c) the time (the “**payment time**”) by which the progress amount is required to be paid has passed, and the progress amount, or a part of the progress amount, has not been paid.

‘(2) For the period for which the progress amount, or the part of the progress amount, is still unpaid after the payment time, the contracting party is also required to pay the contracted party interest at the penalty rate, as applying from time to time, and worked out on a daily basis, on the progress amount or the part of the progress amount.

‘(3) In this section—

“penalty rate” means—

- (a) the percentage made up of the sum of the following percentages—
 - (i) 10%;
 - (ii) the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills; or
- (b) if the building contract provides for a higher rate of interest than the rate worked out under paragraph (a)—the higher rate.

‘Pay if or when paid clauses void

‘67Q. A provision of a building contract is void to the extent it provides that an amount becomes payable to the contracted party for the building contract only if the contracting party for the building contract is first paid an amount by someone else.

‘Division 3—Construction management trade contracts and subcontracts

‘Application of div 3

‘67R. This division applies to a building contract if the building contract is a construction management trade contract or a subcontract.

‘Lodgement of security instead of retention amount or security in money form

‘67S.(1) This section applies if the contracted party for a building contract is under a lawful obligation to lodge a security in the form of an amount of money (the **“relevant amount”**).

‘(2) The contracted party complies with the obligation if—

- (a) the contracted party lodges with the contracting party a security, in the form of a government bond or a valuable instrument from an approved security provider, to take the place of the security in the

form of money; and

- (b) the value of the security is equal to the relevant amount.

‘(3) If the contracted party lodges a security in the form of a valuable instrument from an entity that is an approved security provider, and the entity stops being an approved security provider, the contracted party must, if asked by the contracting party, lodge a further security, in a form mentioned in subsection (2)(a), to take the place of the security in the form of money.

‘Lodgement of security to replace retention amount or security in money form

‘67T.(1) This section applies if, under a building contract, the contracting party is holding—

- (a) an amount (the “**relevant amount**”) as a retention amount; or
(b) a security in the form of an amount of money (also the “**relevant amount**”).

‘(2) The building contract is subject to a condition that—

- (a) the contracted party may lodge with the contracting party a security, in the form of a government bond or a valuable instrument from an approved security provider, to take the place of the retention amount or of the security in the form of money; and
(b) on the lodging of the security, the contracting party must pay the contracted party the relevant amount.

‘(3) However, subsection (2) applies only if the value of the security lodged is equal to the relevant amount.

‘(4) If the contracted party lodges a security in the form of a valuable instrument from an entity that is an approved security provider, and the entity stops being an approved security provider, the contracted party must, if asked by the contracting party, lodge a further security, in a form mentioned in subsection (2)(a), to take the place of the retention amount or of the security in the form of money.

‘Implied conditions for prompt payment

‘67U.(1) A building contract is subject to the conditions stated in subsections (2) to (8).

‘(2) From when the building work under the contract is started until when, under the contract, practical completion of building work is reached, the contracted party for the contract has the right to receive progress payments for carrying out building work under the contract.

‘(3) The period between when the building work under the contract starts and when the contracted party has the right to submit a claim under the contract for the first progress payment must not be more than 1 month.

‘(4) The period between when the contracted party submits a claim under the contract for a progress payment and when the contracted party has the right to submit a claim under the contract for the next progress payment must not be more than 1 month.

‘(5) The amount of the first progress payment must be worked out having regard to the amount of building work carried out from when the building work started until when the claim for the first progress payment is made.

‘(6) The amount of a progress payment (the “**current progress payment**”) other than the first progress payment must be worked out having regard to the amount of building work carried out from when the contracted party first submitted a claim under the contract for the progress payment most recently payable until the contracted party submitted a claim under the contract for the current progress payment.

‘(7) A progress payment must be made—

- (a) within 35 days after the contracted party submits a claim under the contract for its payment; or
- (b) if a shorter time is agreed under the contract—within the shorter time.

‘(8) If the contracting party for the contract disputes the payment of a progress payment for which the contracted party has submitted a claim under the contract, the contracting party must, within the time otherwise required for the payment of the whole of the progress payment, pay the contracted party the progress payment to the extent the contracting party’s

liability to pay the amount is not in dispute.

‘(9) A building contract is not subject to a condition mentioned in subsections (2) to (8) if—

- (a) the contract—
 - (i) is in written form; and
 - (ii) explains the condition; and
 - (iii) expressly provides that the contract is not subject to the condition; and
- (b) the provision of the contract that expressly provides in the way mentioned in paragraph (a)(iii) is initialled by the parties to the contract.

‘(10) Nothing in subsections (1) to (8)—

- (a) affects the operation of the *Subcontractors’ Charges Act 1974* in relation to a building contract; or
- (b) affects the right of a contracting party for a building contract to claim a set-off for an amount owed to the contracting party by the contracted party for the contract.

‘Division 4—Warning for construction management trade contracts

‘Offence of not warning that contract is construction management trade contract

‘67V.(1) The contracting party for a construction management trade contract commits an offence if—

- (a) the construction management trade contract does not include a warning complying with subsection (2); and
- (b) the warning is not initialled by the contracted party for the contract.

Maximum penalty—

- (a) for a first offence—40 penalty units; and

- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

‘(2) The warning—

- (a) must be in a form approved by the board; and
- (b) must be concerned with the possible dangers for the contracted party for the contract of entering into a construction management trade contract rather than a subcontract.

‘Division 5—Commercial building contracts

‘Implied conditions for prompt payment

‘67W.(1) A commercial building contract is subject to the conditions stated in subsections (2) to (8).

‘(2) From when the building work under the contract is started until when, under the contract, practical completion is reached, the contracted party for the contract has the right to receive progress payments for carrying out building work under the contract.

‘(3) The period between when the building work under the contract starts and when the contracted party has the right to submit a claim under the contract for the first progress payment must not be more than 1 month.

‘(4) The period between when the contracted party submits a claim under the contract for a progress payment and when the contracted party has the right to submit a claim under the contract for the next progress payment must not be more than 1 month.

‘(5) The amount of the first progress payment must be worked out having regard to the amount of building work carried out from when the building work started until when the claim for the first progress payment is made.

‘(6) The amount of a progress payment (the **“current progress payment”**) other than the first progress payment must be worked out having regard to the amount of building work carried out from when the contracted party first submitted a claim under the contract for the progress

payment most recently payable until the contracted party submitted a claim under the contract for the current progress payment.

‘(7) A progress payment must be made—

- (a) within 21 days after the contracted party submits a claim under the contract for its payment; or
- (b) if a longer or shorter time is agreed under the contract—within the longer or shorter time.

‘(8) If the contracting party for the contract disputes the payment of a progress payment for which the contracted party has submitted a claim under the contract, the contracting party must, within the time otherwise required for the payment of the whole of the progress payment, pay the contracted party the progress payment to the extent the contracting party’s liability to pay the amount is not in dispute.

‘(9) A commercial building contract is not subject to a condition mentioned in subsections (2) to (6) and (8) if—

- (a) the contract—
 - (i) is in written form; and
 - (ii) explains the condition; and
 - (iii) expressly provides that the contract is not subject to the condition; and
- (b) either of the following applies—
 - (i) before the contract was entered into, the contracted party was notified, in a form approved by the board, that the contract would expressly provide in the way mentioned in paragraph (a)(iii);
 - (ii) the provision of the contract that expressly provides in the way mentioned in paragraph (a)(iii) is initialled by the parties to the contract.

‘(10) Nothing in subsections (1) to (8) affects the right of a contracting party for a commercial building contract to claim a set-off for an amount owed to the contracting party by the contracted party for the contract.’

Amendment of s 68 (Payment of insurance premium)

30. Section 68(1), penalty, ‘20’—

omit, insert—

‘40’.

Amendment of s 69 (Insurance of building work)

31.(1) Section 69(2)(a), (b) and (c)—

omit, insert—

- ‘(a) the contract is imprinted with the licence card of a licensed contractor and, under the licensed contractor’s licence, the licensed contractor 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 and, under the licensed contractor’s licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
- (c) the contract is with a person fraudulently claiming to hold a licence under which the person may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme.’.

(2) Section 69—

insert—

‘**(4)** The certificate of insurance given to a consumer need not state the terms of the policy of insurance, but a copy of the policy must be given to the consumer when the certificate of insurance is given to the consumer and the certificate of insurance must include a clear reference to the policy.

‘**(5)** To remove doubt, it is declared that a policy of insurance under this section has effect according to its terms and a consumer can not avoid the consequences of a breach of a provision of the policy of insurance only because the policy of insurance forms part of a statutory insurance scheme.’.

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

32.(1) Section 72(1), ‘a reasonable’—

omit, insert—

‘the’.

(2) Section 72(2) to (10)—

renumber as section 72(5) to (13).

(3) Section 72—

insert—

‘**(2)** In deciding whether to give a direction under subsection (1), the authority may take into consideration all the circumstances it considers are reasonably relevant, and in particular, is not limited to a consideration of the terms of, including the terms of any warranties included in, the contract for carrying out the building work.

‘**(3)** The period stated in the direction must be at least 28 days unless the authority is satisfied that, if the direction is not required to be complied with within a shorter period—

- (a) a substantial loss will be incurred by, or a significant hazard will be caused to the health or safety of, a person because of the defective building work; or
- (b) the defective building work will cause a significant hazard to public safety or the environment generally.

‘**(4)** Subject to subsection (3), the period stated in the direction must be a period the authority considers to be appropriate in the circumstances.’.

(4) Section 72(11), as renumbered, ‘subsection (2)(c) and (d)’—

omit, insert—

‘subsection (5)(c) and (d)’.

(5) Section 72(12) and (13), as renumbered, ‘subsection (7)’—

omit, insert—

‘subsection (10)’.

(6) Section 72(12), as renumbered, ‘subsection (2)(a)’—

omit, insert—

‘subsection (5)(a)’.

(7) Section 72(13), as renumbered, ‘subsection (2)(b)’—

omit, insert—

‘subsection (5)(b)’.

(8) Section 72—

insert—

‘**(14)** The authority is not required to give a direction under this section to a person who carried out building work for the rectification of the building work if the authority is satisfied that, in the circumstances, it would be unfair to the person to give the direction.’

Example for subsection (14)—

The authority might decide not to give a direction for the rectification of building work because of the amount payable but unpaid under the contract for carrying out the building work.’.

Amendment of s 74 (Tenders for rectification work)

33.(1) Section 74(1), from ‘may call’ to ‘relevant panel’—

omit, insert—

‘must seek tenders for carrying out the work’.

(2) Section 74(2) and (3)—

renumber as section 74(3) and (7).

(3) Section 74—

insert—

‘**(2)** The authority must also seek tenders for carrying out building work if the authority—

- (a) is of the opinion that the building work is defective or incomplete; but
- (b) has decided not to give a direction under section 72 for the rectification of the building work.’.

(4) Section 74—*insert—*

‘(4) Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the authority to be reasonable in the circumstances.

‘(5) A licensed contractor from whom a tender may be sought must be—

- (a) a licensed contractor whose name is included on an appropriate panel; or
- (b) a licensed contractor whose name is not included on an appropriate panel, if the authority is satisfied it would be in the best interests of the efficient rectification of the building work if the licensed contractor were to provide a tender.

‘(6) The authority may authorise the person for whom the building work requiring rectification was, or was to be, carried out to act for the authority in seeking the necessary tenders.’

Amendment of s 101 (Disciplinary action)

34. Section 101(4)(d)(ii), ‘prescribed financial requirements for the licence’—

omit, insert—

‘relevant financial requirements stated in the board’s policies’.

Insertion of new s 109A

35. After section 109—

*insert—***‘Service of documents**

‘**109A.(1)** A document may be served under this Act on a licensee by leaving it at, or sending it by post, telex, facsimile or similar facility to, the address of the licensee in the register of licensees kept by the authority.

‘(2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 39.³’.

Insertion of new ss 111A–111C

36. After section 111—

insert—

‘Responsibility for acts or omissions of representatives

‘111A.(1) This section applies for—

- (a) a proceeding for an offence against this Act; and
- (b) an inquiry conducted by the tribunal under section 101 to decide whether proper grounds exist for taking disciplinary action under the section.

‘(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

‘(4) In this section—

“representative” means—

- (a) of a company—an executive officer, employee or agent of the company; or
- (b) of an individual—an employee or agent of the individual.

“state of mind” of a person includes—

³ *Acts Interpretation Act 1954*, section 39 (Service of documents)

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

'Executive officers must ensure company complies with Act

'111B.(1) The executive officers of a company must ensure the company complies with this Act.

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

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

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

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

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

'Liability of directors for amounts

'111C.(1) This section applies if—

- (a) a company is convicted of an offence against a provision of this Act; and
- (b) a penalty for the offence is imposed on the company; and
- (c) the amount of the penalty is not paid within the time required for its payment.

‘(2) This section also applies if—

- (a) under section 101(4), the tribunal finds that proper grounds exist for taking disciplinary action against a company; and
- (b) an order is made by the tribunal imposing a penalty on the company; and
- (c) the amount of the penalty is not paid within the time required for its payment.

‘(3) This section also applies if a company owes the authority an amount because of a payment made by the authority on a claim under the insurance scheme.

‘(4) If this section applies because of subsection (1), the liability to pay the penalty attaches to—

- (a) each individual who was a director of the company when the offence was committed; and
- (b) each individual who is a director of the company when the penalty is imposed.

‘(5) If this section applies because of subsection (2), the liability to pay the penalty attaches to—

- (a) each individual who was a director of the company when the act or omission happened giving rise to the finding of the tribunal; and
- (b) each individual who is a director of the company when the penalty is imposed.

‘(6) If this section applies because of subsection (3), the liability to pay the amount attaches to—

- (a) each individual who was a director of the company when building work the subject of the claim was, or was to have been, carried out; and
- (b) each individual who was a director of the company when the payment was made by the authority.

‘(7) A liability under subsection (4), (5) or (6) to pay a penalty or an amount applies regardless of the status of the company, including for

example, that the company is being or has been wound up.

‘(8) If a liability under subsection (4), (5) or (6) attaches to 2 or more persons, the persons are jointly and severally liable.’

Replacement of s 114 (Protection)

37. Section 114—

omit, insert—

‘Protection

‘114.(1) Neither the State, the general manager of the authority nor an officer or employee of the authority incurs any civil liability for an honest act or omission, other than a publication act, in the performance or purported performance of functions under this Act.

‘(2) A civil liability that would, apart from subsection (1), attach to an entity other than the authority attaches instead to the authority.

‘(3) Neither the State, the authority nor the general manager of the authority incurs any liability for a publication act.

‘(4) This section does not affect the liability of a person other than the authority to disciplinary action under the conditions of the person’s employment.

‘(5) In this section—

“**publication act**” means a disclosure or publication made by or for the authority in giving a warning to the public under section 18(2)(f) about—

- (a) building work; or
- (b) the commercial or business reputation of any person associated with building work; or
- (c) the quality or standard of building work performed by any person; or
- (d) a contravention or alleged contravention of this Act or the operation or enforcement of this Act.’

Amendment of schedule (Transitional and Validating provisions)

38.(1) Schedule, part 1, heading, after ‘**PROVISIONS**’—

insert—

‘FOR ACT No. 98 OF 1991 AND AMENDING ACTS UP TO AND INCLUDING ACT No. 70 OF 1997’.

(2) Schedule, part 2, heading, after ‘**PROVISIONS**’—

insert—

‘FOR ACT No. 70 OF 1997’.

(3) Schedule, after section 12—

insert—

‘PART 3—TRANSITIONAL PROVISIONS FOR QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT ACT 1999

‘Existing board goes out of office

‘13. On the commencement of this section, the members of the board in office immediately before the commencement go out of office.’.

(4) Schedule, as amended—

renumber as schedule 1.

Insertion of new schedule

39. After schedule 1 (as renumbered)—

insert—

‘SCHEDULE 2

‘DICTIONARY

*Queensland Building Services Authority
Amendment*

No. 43, 1999
