



Queensland

Building and Other Legislation Amendment Act 2006

Act No. 36 of 2006



Queensland

Building and Other Legislation Amendment Act 2006

Contents

		Page
Part 1	Preliminary	
1	Short title	18
2	Commencement	18
Part 2	Amendment of Building Act 1975	
3	Act amended in pt 2	18
4	Replacement of long title	18
5	Replacement of pts 1 and 2	19
	Chapter 1 Preliminary	
	Part 1 Introduction	
1	Short title	19
2	Act binds all persons	19
3	Simplified outline of main provisions of Act	19
	Part 2 Interpretation	
	Division 1 Dictionary	
4	Definitions.	21
	Division 2 Key definitions	
5	What is building work	21
5A	What is a building development application	22
5B	What is building assessment work	22
5C	Who is a building certifier	22
5D	Private certifiers and their classes	22
5E	What is a building certifying function	22
5F	Who is the assessment manager for a building development application.	23
5G	What is the Building Code of Australia (or BCA)	24

5H	What is the Queensland Development Code (or QDC)	24
5I	When building work complies with the BCA or QDC	24
Division 3	Other references	
5J	References to changed BCA or QDC provision	25
5K	Reference in Act to applicants, development, assessment managers, referral agencies, building work or building certifiers	26
5L	Reference in Act to local government.	27
5M	Reference to local government includes any other assessment manager under IPA	27
5N	Reference to a proposed building or structure	28
Chapter 2	When building work is assessable, self-assessable or exempt development	
5O	Building work that is assessable development for IPA	29
5P	Building work that is self-assessable for IPA	29
5Q	Building work that is exempt development for IPA	29
Chapter 3	Additional requirements for building development applications	
Part 1	Requirements for supporting documents	
5R	Operation of pt 1.	30
5S	Required information for supporting documents	30
5T	General requirements for supporting documents.	31
5U	Requirements if alternative solution used	32
Part 2	Other requirements	
5V	Application for building work for budget accommodation building	32
5W	Application to build swimming pool on residential land must include fencing	33
5X	Application must include required site works	33
Chapter 4	Assessment of building development applications and carrying out self-assessable building work	
Part 1	Laws and other documents under which building work must be assessed	
Division 1	General provisions about the laws and documents for the assessment	
5Y	Relevant laws and other documents for assessment of building work	34
5Z	Building assessment provisions form a code for IDAS	35

6	Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions	35
6A	Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings	36
6B	Relationship between IDAS and other building assessment provisions	37
6C	Relationship between the BCA and the QDC	37
6D	When building assessment provisions must be applied	37
6E	Provision for changes to building assessment provisions	37
Division 2	Variation of how particular building assessment provisions apply	
6F	Applying to vary how particular building assessment provision applies	38
6G	Applying for fast-track decision	39
6H	Effect of variation application on IDAS process	39
6I	Deciding variation application	40
6J	Criteria for decision	40
6K	Notice of decision	40
6L	Effect of variation	41
Part 2	Persons responsible for assessing building development applications	
Division 1	Who carries out building assessment work	
6M	Generally a building certifier must assess	41
6N	Concurrence agencies may carry out building assessment work within their jurisdiction	41
Division 2	Functions of private certifiers	
6O	Operation of div 2	42
6P	Functions of private certifier (class A)	42
6Q	Functions of private certifier (class B)	44
6R	Restrictions on building certifying functions that a private certifier (class B) can perform	44
Division 3	Functions of local government	
6S	Function to act on building development application or development approval unless private certifier (class A) engaged	44
6T	Restriction on local government issuing building development approval	46

6U	Local government may rely on particular compliance certificates and other documents	46
6V	Local government may rely on documents private certifier gives it for inspection or purchase	46
Division 4	Power of particular replacement assessment managers to decide status under IDAS	
6W	Power to decide what stage of IDAS application is to resume or start	47
Part 3	Discretionary matters in the assessment of building development applications	
6X	Building certifier's discretion—BCA	48
6Y	Building certifier's or concurrence agency's discretion—QDC	48
6Z	Survey certificate	49
7	Discretion for building development applications for particular budget accommodation buildings	49
7A	Building certifier may rely on particular compliance certificates and other documents	50
7B	Alterations to safe existing work may be approved on basis of earlier building assessment provisions . .	50
Part 4	Requirements for and restrictions on assessing or approving building development applications	
7C	Requirement to consider any advice agency response	51
7D	Restriction on granting building development application for budget accommodation building	52
7E	Required report before assessing application for temporary building or structure with special fire service	52
7F	Land subject to registered easement or statutory covenant	52
7G	Special structures.	53
7H	Temporary building or structure that does not comply with other building assessment provisions. . .	53
7I	Particular alterations not permissible	54
Part 5	Conditions of building development approvals	
Division 1	Conditions taken to be imposed	
7J	Operation of div 1	55
7K	Engineering drawings.	56
7L	When demolition, removal and rebuilding must start and be completed.	56
7M	Building work in erosion prone area	57

7N	Obligation to make current drawing available for inspection	57
7O	Inspection and testing of special fire service installation	58
7P	Earthworks and retaining walls.	58
7Q	Drainage of buildings or land	58
7R	Building work over existing sanitary drainage	59
Division 2	Conditions that may be imposed	
7S	Survey certificate	59
7T	Hazardous buildings.	59
7U	Alterations to unsafe existing work.	60
7V	Building development approval for particular alterations may require existing building or structure to comply with building assessment provisions	60
Part 6	Regulation of building assessment work and the issuing of building development approvals by private certifiers	
7W	Application of pt 6.	61
7X	General restrictions on granting building development approval	61
7Y	Approval must not be inconsistent with particular earlier approvals or self-assessable development	63
7Z	Additional requirement for decision notice	64
8	Requirements on approval of application	64
8A	Local government acknowledgement.	65
8B	When applicant is to be given the approval documents	65
Part 7	Provisions about lapsing of building development approvals and related matters	
Division 1	Building work for demolition or removal	
8C	Application of div 1	66
8D	Relevant period under IPA, s 3.5.21 for development approval	66
8E	Lapsing of building development approval	66
8F	Local government may complete particular work if condition not complied with	67
8G	Releasing security	67
Division 2	Other building work	
8H	Application of div 2	67
8I	Reminder notice requirement for lapsing	68

8J	Extension of lapsing time because of application to extend relevant period under IPA, s 3.5.21	69
8K	Restriction on private certifier (class A) extending relevant period under IPA, s 3.5.21 more than once	69
Chapter 5	Inspections, building classification and the use of buildings	
Part 1	Giving of inspection documentation for single detached class 1a buildings and class 10 buildings or structures	
8L	Application of pt 1	70
8M	Obligation to give owner inspection documentation on final inspection.	70
Part 2	Certificates of classification for other buildings	
Division 1	Preliminary	
8N	Application of pt 2.	71
8O	Meaning of substantially completed	71
Division 2	Giving of certificate	
8P	Obligation to give certificate of classification on inspection after particular events	73
8Q	Certificate requirements	74
8R	Interim certificate if building is remote	74
8S	Certificates for a building occupied in stages	75
Division 3	Miscellaneous provisions about certificates of classification	
8T	Term of certificate of classification	76
8U	Building certifier's obligation to give referral agency certificate and other documents	76
8V	Additional obligations if certificate of classification given by private certifier (class A)	77
Part 3	Changes to BCA classification	
8W	What is a BCA classification change to a building	77
8X	Restriction on making BCA classification change	77
8Y	Provision for applying to local government to obtain approval for BCA classification change	78
8Z	Concessional approval for particular existing buildings	79
9	Obligation of building certifier approving BCA classification change to give new certificate of classification	80
Part 4	Restrictions on the use of buildings	
9A	No occupation or use of particular buildings without certificate of classification	80

9B	Occupation and use of building must comply with relevant BCA and QDC provisions	81
9C	Exception for use of government buildings for emergency	82
9D	Enforcement action required	82
9E	Restriction on use of buildings built on or after 1 April 1976	83
9F	Further restriction on occupation of building for residential purposes	83
Part 5	Miscellaneous provisions	
9G	BCA classification as special structure	83
9H	Doubtful BCA classifications	83
9I	Building certifier's obligation to give owner inspection documentation if building development approval lapses	83
9J	Certificate of classification for particular buildings built before 30 April 1998	84
9K	Building certifier's obligation to give information notice about particular decisions	84
Chapter 6	Provisions about private certifiers and other building certifiers	
Part 1	General provisions about building certifiers	
Division 1	Regulation of the performance of building certifying functions	
9L	Person must not perform building certifying functions without licence	85
9M	Building certifier performing building certifying function must be appropriately licensed	86
9N	Building certifier's duty to act in public interest in performing building certifying function	86
9O	Building certifier must not perform building certifying function if there is a conflict of interest	87
Division 2	Code of conduct	
9P	Code of conduct	88
9Q	Tabling and inspection of amendment or replacement not part of or attached to regulation	88
9R	Access to code of conduct	88
Division 3	Miscellaneous provisions	
9S	Effect of building certifier not complying with Act if no penalty provided	89
9T	Additional functions of BSA for building certification	89
Part 2	Private certifiers	

Division 1	Regulation of private certifying functions	
9U	Restriction on performing functions of private certifier (class A)	90
9V	Restriction on private certifier performing functions for building development applications.	90
9W	Offence for private certifier not to act in public interest in performing private certifying function.	91
9X	Private certifier must not perform private certifying function if there is a conflict of interest	91
Division 2	Engagement of private certifiers	
9Y	Power to contract to perform private certifying functions	92
9Z	General restrictions on private certifier entering into engagement	93
10	Restriction on engagement of private certifier (class B)	93
10A	Requirements for engagement of private certifier	94
10B	Engagement of private certifier (class A) taken to include inspection and certification	94
10C	Notice of engagement to local government	94
10D	Restriction on discontinuing engagement	95
10E	Effect of transfer of functions for building development approval to local government or replacement private certifier.	95
10F	Agreed fee recoverable despite valid refusal of particular actions	96
Division 3	Record-keeping and related requirements	
10G	Building development applications and approval documents	97
10H	Obligation to give inspection documentation to owner of building	97
10I	Obligation to give inspection documentation and any reminder notice to local government	98
10J	Obligation to keep inspection documentation.	99
Part 3	Licensing of building certifiers	
Division 1	Licence levels and their roles	
10K	Levels	99
10L	Role of building surveyor	99
10M	Role of assistant building surveyor.	99
10N	Role of building surveying technician.	100
Division 2	Applying for and obtaining license	

10O	Who may apply	100
10P	Requirements for licence application	100
10Q	Decision on licence application	101
10R	Steps after making decision	101
10S	Duration of licence	101
Division 3	Private certification endorsements	
10T	Endorsements	102
10U	Who may apply for endorsement	102
10V	Requirements for endorsement application	102
10W	Restrictions on making endorsement	102
10X	Notice of refusal	103
Division 4	Renewals	
10Y	Notice of expiry of licence	103
10Z	Automatic expiry on failure to apply for renewal	103
11	Applying for renewal	103
11A	Existing licence taken to be in force while application is being considered	104
11B	Decision on renewal application	104
11C	Steps after making decision	105
Division 5	Cancellation and suspension of, and other changes to, licences and cancellation of endorsements	
Subdivision 1	BSA's powers	
11D	Power to amend, cancel or suspend licence	105
11E	Power to change licence level	105
11F	Cancellation of endorsement of licence to act as private certifier	106
11G	Notice of particular events to interstate licensing authorities and other entities	106
Subdivision 2	Show cause notice procedure	
11H	Show cause notice	107
11I	Submissions about show cause notice	108
11J	Decision on proposed action	108
11K	Notice and taking effect of decision	108
Division 6	General provisions about licences	
11L	Register of building certifiers	108
11M	Access to register	109
11N	Surrendering licence	110

	11O	Obtaining replacement licence	110
	11P	Obligation of building certifier to give notice of change in particular circumstances	110
	Division 7	Miscellaneous provisions	
	11Q	Accreditation standards bodies	111
	11R	Function of accreditation standards body.	111
	11S	Criteria for deciding suitability of applicants and licensees	112
	11T	BSA may seek information from applicants about suitability	112
	11U	Refund of particular licence fees accompanying applications	113
	11V	Appeals to Commercial and Consumer Tribunal about decisions under pt 3	113
6		Replacement of pt 2A, hdg (Fire safety for budget accommodation buildings)	113
7		Amendment of pt 2A, div 1 hdg (Interpretation)	114
8		Amendment of s 12A (Definitions for pt 2A)	114
9		Amendment of pt 2A, div 2 hdg (Fire safety standard)	114
10		Amendment of s 12C (Fire safety standard).	114
11		Omission of ss 12E and 12F	115
12		Amendment of pt 2A, div 3, hdg (Budget accommodation buildings built, approved or applied for, before 1 January 1992)	115
13		Amendment of s 12G (Application of div 3)	115
14		Amendment of s 12I (Approval of longer period for conformity with fire safety standard)	115
15		Amendment of s 12J (Advice as to conformity with fire safety standard)	116
16		Omission of s 12K (Appeals about conformity with fire safety standard)	116
17		Amendment of s 12L (Stay of operation of local government decision)	116
18		Amendment of s 12M (Local government decisions)	117
19		Amendment of pt 2A, div 4, hdg (All budget accommodation buildings)	117
20		Amendment of s 12N (Application of div 4)	117
21		Amendment of s 12O (Obligation about fire safety management plan)	117
22		Omission of s 12Q (Development approval for building work for budget accommodation buildings).	117
23		Amendment of pt 2A, div 5, hdg (Miscellaneous).	118

24	Insertion of new ss 12SA and 12SB.	118
	12SA Local government's fire safety record-keeping obligations	118
	12SB Owner's fire safety record-keeping obligation.	118
25	Replacement of pt 3, hdg (Swimming pool fencing).	119
26	Amendment of s 12T (Definitions for pt 3)	119
27	Omission of s 13 (Local law for fencing of swimming pools)	120
27A	Amendment of s 16B (Constructing outdoor swimming pool) . . .	120
28	Amendment of s 16D (Steps to be taken after application decided)	120
29	Amendment of s 16E (Revocation of exemption)	121
30	Insertion of new s 16F	121
	16F Register of exemptions.	121
31	Amendment of s 17 (Advice as to compliance)	122
32	Omission of s 20 (Appeals about swimming pool fencing).	122
33	Replacement of pt 4, hdg (Show cause and enforcement notices)	122
34	Amendment of s 22 (Enforcement notices)	122
35	Amendment of s 23 (Specific requirements of enforcement notices)	123
36	Amendment of s 24 (Appeals against enforcement notices)	123
37	Amendment of s 25 (Register of notices given)	123
38	Omission of pt 5 (Accreditation and provisions about building certifiers)	123
39	Relocation and renumbering of pt 5A (Complaints, investigations and disciplinary proceedings relating to building certifiers)	123
40	Amendment of s 34 (Building certifier must be advised of complaint)	124
41	Amendment of s 34A (BSA may recommend mediation to resolve complaint)	124
42	Amendment of s 34B (Mediation process).	124
43	Amendment of s 36 (BSA may require documents to be produced)	124
44	Insertion of new ss 36A and 36B	124
	36A Issue of identity card to auditor	124
	36B Production or display of identity card	125
45	Amendment of s 38 (Power to enter and inspect building).	125
46	Insertion of new s 38A	126
	38A Procedure before entry.	126

47	Amendment of s 40 (Decision after investigation or audit completed)	127
48	Amendment of s 41B (Representations and decision)	127
49	Amendment of pt 6, hdg (General provisions)	127
50	Omission of s 47 (Giving security in certain cases)	128
51	Amendment of s 48 (Information to be supplied by the State) . . .	128
52	Omission of s 49 (Owner liable for offences under Standard Building Regulation)	128
53	Amendment of s 50 (Prosecution of offences)	128
54	Insertion of new ss 51A to 51C	129
	51A Guidelines	129
	51B Access to guidelines.	129
	51C Evidentiary aids	129
55	Amendment of s 52 (Regulation-making power)	130
56	Omission of s 53 (Day when Standard Building Regulation was made for Statutory Instruments Act 1992)	130
57	Amendment of pt 7, hdg (Savings and transitional provisions) . .	130
58	Amendment of pt 7, div 1, hdg (Transitional provision for Local Government Act 1993)	131
59	Amendment of pt 7, div 2, hdg (Transitional provisions for Building and Integrated Planning Amendment Act 1998).	131
60	Amendment of s 55 (References to Standard Building Law etc.) .	131
61	Amendment of s 56 (Existing referees)	131
62	Amendment of s 57 (Existing registrar)	131
63	Amendment of s 58 (Lawfully constructed buildings and structures protected)	132
64	Amendment of pt 7, div 3, hdg (Transitional provisions for Building Amendment Act 2003)	132
65	Amendment of s 58A (Definitions for div 3)	132
66	Amendment of pt 8, hdg (Transitional provisions for Plumbing and Drainage Act 2002)	132
67	Amendment of s 60 (Definitions for pt 8)	132
68	Amendment of s 61 (Swimming pool fences for existing tourist resort complexes exempted)	133
69	Insertion of new ch 11, pt 5 and schedule 1.	133
	Part 5 Transitional provisions for Building and Other Legislation Amendment Act 2006	
	66 Undecided building development applications	133
	66A Consequential amendments to the QDC	134
	67 Consequential amendments to code of conduct	134

	68	Local government building surveying technicians . . .	134
	69	Amendment to renumber	135
70		Amendment of schedule (Dictionary)	138
Part 3		Amendment of Integrated Planning Act 1997	
71		Act amended in pt 3	149
72		Amendment of s 1.3.5 (Definitions for terms used in development)	150
73		Insertion of new s 3.2.2B	150
	3.2.2B	Approved operational work for retaining walls required for certain development	151
74		Amendment of s 3.3.15 (Referral agency assesses application) .	151
75		Amendment of s 3.3.16 (Referral agency's response)	151
76		Amendment of s 3.3.17 How a concurrence agency may change its response)	152
77		Amendment of s 3.3.18 (Concurrence agency's response powers)	152
78		Amendment of s 3.5.13 (Decision if application requires code assessment)	153
79		Amendment of s 3.5.15 (Decision notice)	153
80		Amendment of s 4.2.1 (Establishing building and development tribunals)	154
81		Amendment of s 4.2.7 (Jurisdiction of tribunals)	154
82		Replacement of s 4.2.12A (Appeals for plumbing and drainage matters)	154
	4.2.12A	Appeals for building and plumbing and drainage matters	154
83		Amendment of s 4.3.18 (Proceedings for offences)	156
84		Amendment of s 4.3.22 (Proceeding for orders)	156
85		Omission of ch 5, pt 3 (Private certification)	156
86		Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase)	156
87		Replacement of s 5.7.3 (Documents local government must keep available for inspection only)	158
	5.7.3	Documents local government must keep available for inspection only.	158
88		Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)	158
89		Amendment of s 5.7.6 (Documents chief executive must keep available for inspection and purchase)	160
90		Amendment of s 6.1.1 (Definitions for pt 1)	161

91	Amendment of s 6.1.29 (Assessing applications (other than against the Standard Building Regulation))	161
92	Amendment of s 6.1.30 (Deciding applications (other than under the Standard Building Regulation))	161
93	Amendment of sch 8 (Assessable development and self-assessable development)	161
94	Amendment of sch 8A (Assessment manager for development applications)	162
95	Amendment of sch 10 (Dictionary)	162
Part 3A	Amendment of Integrated Planning and Other Legislation Amendment Act 2006	
95A	Act amended in pt 3A	164
95B	Amendment of s 2 (Commencement)	164
95C	Amendment of s 75 (Amendment of s 6.5.1 (When particular development approvals lapse))	164
Part 3B	Amendment of Local Government Act 1993	
95D	Act amended in pt 3B	164
95E	Amendment of s 492 (Exemptions)	165
95F	Amendment of s 492A (Required procurement and asset disposal manuals)	166
95G	Amendment of s 1070 (Entry on land for local government purposes) 166	
Part 4	Amendment of Plumbing and Drainage Act 2002	
96	Act amended in pt 4	166
96A	Amendment of s 85 (Process for assessing plans)	167
96B	Omission of s 85A (Local government's power to stop further greywater use facility requests for premises in a sewerred area)	167
96C	Amendment of s 85B (Restrictions on giving compliance permit for greywater use facility in a sewerred area)	167
97	Amendment of s 91 (Applying for chief executive approval)	167
98	Amendment of s 125 (Restriction on building or installing particular on-site sewerage treatment plant)	167
99	Amendment of s 128E (Restrictions on operating particular on-site sewerage treatment plant)	168
99A	Amendment of s 128M (Offences about discharging greywater other than kitchen greywater from premises)	168
100	Insertion of new pt 10, div 4	169
	Division 4 Transitional provisions for Building and Other Legislation Amendment Act 2006	
172	Provisions for chemical, composting or incinerating toilets	169
173	Provision about offences under s 128M	169

Part 5	Amendment of other Acts	
101	Amendment of other Acts	170
Schedule	Consequential and minor amendments of other Acts	171
	Brisbane Markets Act 2002	171
	Fire and Rescue Service Act 1990	171
	Local Government Act 1993	172
	Plumbing and Drainage Act 2002	172
	Private Health Facilities Act 1999	173
	Public Health (Infection Control for Personal Appearance Services) Act 2003	173
	Queensland Building Services Authority Act 1991	174
	Southern Moreton Bay Islands Development Entitlements Protection Act 2004	174



Queensland

Building and Other Legislation Amendment Act 2006

Act No. 36 of 2006

An Act to amend the *Building Act 1975*, and for other purposes

[Assented to 10 August 2006]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Building and Other Legislation Amendment Act 2006*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- part 3A
- part 3B, heading
- sections 95D to 95F
- part 4
- section 101 and the schedule to the extent they amend the *Plumbing and Drainage Act 2002*.

Part 2 Amendment of Building Act 1975**3 Act amended in pt 2**

This part amends the *Building Act 1975*.

4 Replacement of long title

Long title—

omit, insert—

‘An Act to regulate building development approvals, building work, building classification and building certifiers, and for other purposes’.

5 Replacement of pts 1 and 2

Parts 1 and 2—

omit, insert—

‘Chapter 1 Preliminary

‘Part 1 Introduction

‘1 Short title

‘This Act may be cited as the *Building Act 1975*.

‘2 Act binds all persons

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

‘(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

‘3 Simplified outline of main provisions of Act

‘(1) Chapter 2 provides for what building work is assessable development for IPA.

‘(2) Chapter 3 imposes requirements, in addition to those under IPA, for making a building development application.

‘(3) Chapter 4—

(a) provides for the laws and other documents for the assessment of building development applications and the carrying out of self-assessable building work; and

- (b) provides for who is responsible for carrying out building assessment work for building development applications; and
 - (c) regulates the assessment and approval of building development applications.
- ‘(4) Chapter 5—
- (a) provides for the giving of final inspection certificates and other inspection documentation for particular buildings; and
 - (b) provides for the giving of certificates of classification for other buildings; and
 - (c) regulates the making of BCA classification changes; and
 - (d) restricts the occupation and use of particular buildings.
- ‘(5) Chapter 6—
- (a) regulates private certifiers and other building certifiers and the performance of building and private certifying functions; and
 - (b) regulates the engagement of private certifiers; and
 - (c) provides for the licensing of, and complaints, investigations, and disciplinary proceedings against, private certifiers and other building certifiers.
- ‘(6) Chapter 7 makes provisions about fire safety for budget accommodation buildings.
- ‘(7) Chapter 8 regulates swimming pool fencing.
- ‘(8) Chapter 9 provides for the giving of show cause and enforcement notices for particular building work.

‘Part 2 Interpretation

‘Division 1 Dictionary

‘4 Definitions

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

‘Division 2 Key definitions

‘5 What is *building work*

‘(1) *Building work* is—

- (a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
- (b) excavating or filling—
 - (i) for, or incidental to, the activities mentioned in paragraph (a); or
 - (ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or
- (c) supporting, whether vertically or laterally, land for activities mentioned in paragraph (a); or
- (d) other work regulated under the building assessment provisions, other than IDAS.

‘(2) For subsection (1)(d), work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure.

Example—

a management procedure under the fire safety standard relating to a budget accommodation building

‘5A What is a *building development application*

‘A *building development application* is an application for development approval under IPA to the extent it is for building work.

‘5B What is *building assessment work*

‘*Building assessment work* is the assessment, under the building assessment provisions, of a building development application for compliance with those provisions.

‘5C Who is a *building certifier*

- ‘(1) A *building certifier* is an individual who, under chapter 6, part 3, is licensed as a building certifier.
- ‘(2) A reference to building certifier includes a reference to a private certifier.
- ‘(3) In chapter 6, the term also includes a reference to a former building certifier.

‘5D Private certifiers and their classes

- ‘(1) A *private certifier* is a building certifier whose licence has, under section 10T, private certification endorsement.
- ‘(2) A *private certifier (class A)* is a private certifier whose licence has development approval endorsement.
- ‘(3) A *private certifier (class B)* is a private certifier whose licence does not have development approval endorsement.

‘5E What is a *building certifying function*

‘A *building certifying function* is doing any of the following—

- (a) carrying out building assessment work, other than a part of building assessment work that, under section 6N,¹ a concurrence agency may carry out;
- (b) the giving of a certificate (a *compliance certificate*) in the approved form that, other than for aspects of building assessment work that under section 6N must be assessed by a concurrence agency, states building work complies with the building assessment provisions;
- (c) for a building development approval—inspecting the building work to decide whether to certify the work;
- (d) for building work for a single detached class 1a building or a class 10 building or structure, the giving of—
 - (i) a certificate in the approved form for the stage of the building work that is after excavation of foundation material and before the footings for the building are laid; and
 - (ii) a certificate (a *final inspection certificate*) in the approved form for the final stage of the building work;
- (e) the giving of a certificate of classification for a building or structure of another class.

‘5F Who is the *assessment manager* for a building development application

- ‘(1) Generally, the *assessment manager* for a building development application is the assessment manager for the application as defined under IPA, section 3.1.7.
- ‘(2) However, if under section 6P a private certifier (class A) is performing functions for the application, the certifier is the assessment manager for the application.

¹ Section 6N (Concurrence agencies may carry out building assessment work within their jurisdiction)

‘5G What is the *Building Code of Australia* (or *BCA*)

- ‘(1) The *Building Code of Australia* (or *BCA*) is the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board.
- ‘(2) A reference to the code includes the edition as amended from time to time by amendments published by the board.

‘5H What is the *Queensland Development Code* (or *QDC*)

- ‘(1) The *Queensland Development Code* (or *QDC*) is the parts, or aspects of the parts, of the document called ‘Queensland Development Code’ published by the department and stated in schedule 1.
- ‘(2) The chief executive may amend the QDC by—
 - (a) adding another part to it; or
 - (b) amending or replacing a part, or an aspect of a part, stated in schedule 1 or added under paragraph (a), or any amendment or replacement of the part or aspect.
- ‘(3) However, the amendment does not take effect until the chief executive publishes the amendment on the department’s website and a regulation approves the amendment.
- ‘(4) The regulation must state the day on which the amendment was published.
- ‘(5) A reference to the QDC is taken to include any amendment under subsection (2) that has taken effect.

‘5I When building work *complies* with the *BCA* or *QDC*

- ‘(1) This section applies if in this Act there is a reference to building work complying with—
 - (a) the *BCA* or *QDC*; or
 - (b) the building assessment provisions to the extent they include the *BCA* and *QDC*.

- ‘(2) Building work ***complies*** with the BCA or QDC (the ***code***) only if it complies with all relevant performance requirements under the code.
- ‘(3) For subsection (2), the building work complies with a relevant performance requirement only if it achieves a relevant building solution under the code for the requirement.
- ‘(4) For subsection (3), a relevant building solution is achieved for a performance requirement only by—
- (a) complying with the following (the ***relevant requirement***)—
 - (i) if the code is the BCA—the relevant deemed-to-satisfy provisions under the BCA for the performance requirement;
 - (ii) if the code is the QDC—the relevant acceptable solution under the QDC for the performance requirement; or
 - (b) formulating an alternative solution that—
 - (i) complies with the performance requirement; or
 - (ii) is shown to be at least equivalent to the relevant requirement; or
 - (c) a combination of paragraphs (a) and (b).

‘Division 3 Other references

‘5J References to changed BCA or QDC provision

‘Section 14H² of the *Acts Interpretation Act 1954* applies to a reference to the BCA or QDC as if the reference were a reference to a law.

² Section 14H (References taken to be included in reference to law) of the *Acts Interpretation Act 1954*

‘5K Reference in Act to applicants, development, assessment managers, referral agencies, building work or building certifiers

- ‘(1) In a provision of this Act about a building development application, a reference to any of the following persons or matters is a reference to the person or matter stated for the referred person or matter—
- (a) the applicant—the person who made the application;
 - (b) building work—building work the subject of the application;
 - (c) the building—the building the subject of the application;
 - (d) the development—the development the subject of the application;
 - (e) the assessment manager—the assessment manager for the application;
 - (f) a referral agency, concurrence agency or advice agency—a referral agency, concurrence agency or advice agency for the application;
 - (g) the decision notice—the decision notice for the application.
- ‘(2) In a provision of this Act about a building development approval, a reference to any of the following persons or matters is a reference to the person or matter stated for the referred person or matter—
- (a) the applicant—the person who applied for the approval;
 - (b) building work—building work the subject of the approval;
 - (c) the building—the building the subject of the approval;
 - (d) the development—the development the subject of the approval;
 - (e) the building certifier—the building certifier who performed, or is performing, building certifying functions for the relevant building development application or the approval.

- ‘(3) In a provision of this Act about a building or building work a reference to any of the following persons or matters is a reference to the person or matter stated for the referred person or matter—
- (a) the building development approval—each building development approval to which the building or building work is subject;
 - (b) the assessment manager—the assessment manager for the building development application for the building development approval to which the building or building work is subject.

‘5L Reference in Act to local government

‘In a provision of this Act, a reference to a local government, for any of the following matters, means the local government for the area stated for the matter—

- (a) a building or proposed building—the area in which the building is, or is proposed to be, situated;
- (b) building work or other work—the area in which the work is, or is proposed to be, carried out;
- (c) a building development application or development approval—the area in which the building work is, or is proposed to be, carried out.

‘5M Reference to local government includes any other assessment manager under IPA

‘If—

- (a) a provision of this Act about a building development application refers to the local government; and
- (b) under IPA schedule 8A,³ an entity other than the local government is the assessment manager;

the provision applies as if the reference to the local government were a reference to the entity.

³ IPA, schedule 8A (Assessment manager for development applications)

‘5N Reference to a proposed building or structure

‘In this Act—

- (a) a reference to a building or structure includes a reference to a proposed building or structure; and
- (b) a reference to the owner of a building or structure is a reference to the person who, if the proposed building or structure were completed, would be its owner; and
- (c) a reference to the use of a proposed building or structure is a reference to its proposed use on its completion.

‘Chapter 2 When building work is assessable, self-assessable or exempt development

Notes—

- 1 Under IPA, sections 3.1.4 and 4.3.1⁴—
 - (a) a development permit is required for assessable development; and
 - (b) subject to some qualifications, a development permit is not required for self-assessable building work or building work that is exempt development.
- 2 Under IPA, schedule 10, assessable development is—
 - (a) development specified in IPA, schedule 8, part 1; or
 - (b) for a planning scheme area—development that is not specified in IPA, schedule 8, part 1 but is declared under the planning scheme for the area to be assessable development.
- 3 For the stages of IDAS for applying for and obtaining a building development approval, see generally IPA, chapter 3, parts 2 to 5.
- 4 Chapters 3 and 4 contain additional provisions for applying for and obtaining a building development approval or for carrying out self-assessable building work.

4 IPA, sections 3.1.4 (When is a development permit necessary) and 4.3.1 (Carrying out assessable development without permit)

‘50 Building work that is assessable development for IPA

‘All building work is assessable development, unless—

- (a) under section 5Q, it is exempt development; or
- (b) under section 5P it is self-assessable development; or
- (c) it is operational work mentioned in IPA, section 3.2.2B.⁵

‘5P Building work that is self-assessable for IPA

‘(1) Building work (*self-assessable building work*) is declared to be self-assessable for IPA, schedule 8,⁶ part 2, table 1 if it—

- (a) is prescribed under a regulation; and
- (b) complies with—
 - (i) generally—the BCA and QDC; or
 - (ii) if alternative provisions under section 6A⁷ apply to the building work—
 - (A) the alternative provisions; and
 - (B) the provisions of the BCA and QDC, other than the QDC boundary clearance and site cover provisions.

‘(2) Subsection (1) is subject to section 6E.⁸

‘5Q Building work that is exempt development for IPA

‘Building work prescribed under a regulation is declared to be exempt development for IPA, schedule 8, part 1, table 1, item 1 and part 2, table 1, item 1.

5 IPA, section 3.2.2B (Approved operational works for retaining walls required for certain developments)

6 IPA, schedule 8 (Assessable development and self-assessable development)

7 Section 6A (Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings)

8 Section 6E (Provision for changes to building assessment provisions)

‘Chapter 3 Additional requirements for building development applications

Note—

For the general requirements for development applications, see IPA, section 3.2.1.⁹

‘Part 1 Requirements for supporting documents

‘5R Operation of pt 1

‘This part imposes requirements for documents (*supporting documents*) that under IPA, section 3.2.1(2)(b),¹⁰ are given or required to be given for a building development application.

‘5S Required information for supporting documents

‘(1) Each supporting document must—

- (a) state the following details of the person who prepared them—
 - (i) the person’s name;
 - (ii) if the person is a designated person—the person’s registration or licence number as a designated person; or
- (b) be accompanied by another document that—
 - (i) states the information mentioned in paragraph (a); and
 - (ii) identifies each supporting document.

‘(2) In this section—

designated person means a person who—

⁹ IPA, section 3.2.1 (Applying for development approval)

¹⁰ IPA, section 3.2.1 (Applying for development approval)

- (a) is an architect under the *Architects Act 2002*; or
- (b) is a licensed builder; or
- (c) under the *Queensland Building Services Authority Act 1991*, holds a licence of any of the following classes—
 - (i) building design—low rise;
 - (ii) building design—medium rise;
 - (iii) building design—open; or
- (d) is a registered professional engineer under the *Professional Engineers Act 2002*.

‘5T General requirements for supporting documents

- ‘(1) Each supporting document must on its face demonstrate that the carrying out of the building work will comply with the building assessment provisions, other than IDAS.
- ‘(2) Each supporting document must state each of the following—
 - (a) whether any of the following (a *relevant authorisation*) is necessary for the application—
 - (i) the consent of a registered easement or statutory covenant holder mentioned in section 7F(1);
 - (iii) a development permit, preliminary approval or concurrence agency assessment mentioned in section 7X(1);¹¹
 - (b) if the application relates to relevant authorisation that has not lapsed or been withdrawn—how the application is consistent with the authorisation;
 - (c) if—
 - (i) the application relates to self-assessable development under IPA because it has been declared under a planning scheme to be self-assessable development for IPA; and

11 Sections 7F (Land subject to registered easement or statutory covenant) and 7X (General restrictions on granting building development approval)

- (ii) the development may affect the position, height or form of the building work;
how the building work is consistent with requirements for the development under the planning scheme;
- (d) if the application requires site works—
 - (i) if they are assessable development—how they comply with the building assessment provisions; or
 - (ii) if they are self-assessable building work—their location and type.

‘5U Requirements if alternative solution used

‘If an alternative solution is used in the supporting documents, the documents must—

- (a) state—
 - (i) the performance requirements with which the building work purports to comply; and
 - (ii) how the building work complies with the performance requirements; and
- (b) contain details of—
 - (i) how the alternative solution is different from the relevant deemed-to-satisfy provisions under the BCA or acceptable solutions under the QDC; and
 - (ii) inspection or test results and other documents or information relied on to prepare the application.

‘Part 2 Other requirements

‘5V Application for building work for budget accommodation building

‘A building development application for a budget accommodation building must be accompanied by a fire safety management plan that will, after the building work is

carried out, comply with the *Fire and Rescue Service Act 1990*, section 104FC.¹²

‘5W Application to build swimming pool on residential land must include fencing

‘A building development application for the construction of a swimming pool on residential land must also be for the construction of fencing for the pool.

‘5X Application must include required site works

‘A building development application must include any site works that, under the building assessment provisions, must be carried out as part of or for the development.

¹² *Fire and Rescue Service Act 1990*, section 104FC (Meaning of *fire safety management plan*)

‘Chapter 4 Assessment of building development applications and carrying out self-assessable building work

‘Part 1 Laws and other documents under which building work must be assessed

‘Division 1 General provisions about the laws and documents for the assessment

‘5Y Relevant laws and other documents for assessment of building work

- ‘(1) Building assessment work and self-assessable building work must be carried out under the following laws and documents (the *building assessment provisions*)—
- (a) IDAS;
 - (b) chapter 3 and this chapter;
 - (c) the fire safety standard;
 - (d) any provisions of a regulation made under this Act relating to building assessment work or self-assessable building work;
 - (e) any relevant local law, planning scheme provision or resolution made under section 6 or 6A;
 - (f) the BCA;
 - (g) subject to section 6A, the QDC.
- ‘(2) However, for any particular building assessment work or self-assessable building work, subsection (1) is subject to—

- (a) how, under this division, the building assessment provisions apply to the work; and
- (b) any variation of them under division 2.

‘5Z Building assessment provisions form a code for IDAS

- ‘(1) For IPA, each of the building assessment provisions, other than IDAS, is a code for IDAS for the carrying out of building assessment work or self-assessable building work.
- ‘(2) However, for any particular building assessment work or self-assessable building work the provisions of each of the codes are subject to—
 - (a) how, under this division, the provisions apply to the work; and
 - (b) any variation of them under division 2.
- ‘(3) For IPA, section 3.1.3(4),¹³ each code under subsection (1) is a code that can not be changed under a local law, local planning instrument or local government resolution.
- ‘(4) Subsection (3) is subject to sections 6 and 6A.

‘6 Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions

- ‘(1) A local government may make or amend—
 - (a) a local planning instrument that designates, for the BCA or QDC, matters prescribed under a regulation; or

Example of a matter that may be prescribed—

designated bush fire prone areas for the BCA
 - (b) a provision of a local law or planning scheme or a resolution about an aspect of, or matter related or incidental to, building work prescribed under a regulation; or

¹³ IPA, section 3.1.3 (Code and impact assessment for assessable development)

Examples of aspects that may be prescribed—

swimming pool fencing or land liable to flooding

(c) alternative provisions under section 6A.

- ‘(2) To remove any doubt, it is declared that subsection (1) does not prevent a local government from, under IPA, making or amending a provision in a planning scheme that deals with building work for matters not within the scope of the building assessment provisions.

‘6A Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings

- ‘(1) This section applies for work (*relevant work*) that—
- (a) is building assessment work or self-assessable building work; and
 - (b) is for a single detached class 1 building or a class 10 building or structure located on the same allotment as a single detached class 1 building.
- ‘(2) A planning scheme may include provisions (*alternative provisions*) that, for relevant work, are alternative or different to the QDC boundary clearance and site cover provisions.
- ‘(3) However, a planning scheme may include alternative provisions only if the provisions are a qualitative statement or quantifiable standard.
- ‘(4) If there are alternative provisions for relevant work, the QDC boundary clearance and site cover provisions only apply to the extent the alternative provisions do not apply to the work.
- ‘(5) Alternative provisions can not be made other than under a planning scheme.
- ‘(6) In this section—

qualitative statement means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed.

quantifiable standard means a standard that achieves a performance or outcome sought under a qualitative statement.

‘6B Relationship between IDAS and other building assessment provisions

‘IDAS applies to building assessment work and self-assessable building work subject to the other building assessment provisions mentioned in section 5Y(1).

‘6C Relationship between the BCA and the QDC

‘If the BCA is inconsistent with a part of the QDC, the part prevails to the extent of the inconsistency.

‘6D When building assessment provisions must be applied

- ‘(1) This section applies subject to sections 6E and 7B.¹⁴
- ‘(2) Building assessment work, other than building assessment work carried out under section 6N,¹⁵ must comply with the building assessment provisions in force when the application is approved.

‘6E Provision for changes to building assessment provisions

- ‘(1) This section applies to building work if—
 - (a) the lawful carrying out of the work starts before a building assessment provision is amended; or
 - (b) the building development approval was given before a building assessment provision is amended, but the work does not start before the amendment commences; or
 - (c) a building development application is made for the work before a building assessment provision is amended, but the application is not decided before the amendment commences; or

14 Section 7B (Alterations to safe existing work may be approved on basis of earlier building assessment provisions)

15 Section 6N (Concurrence agencies may carry out building assessment work within their jurisdiction)

- (d) planning for carrying out the work started before a building assessment provision is amended and the building certifier for the building development approval is satisfied that to require the work to be replanned to comply with the amended provision would cause financial hardship to the person for whom the work is to be carried out, having regard to—
 - (i) the stage the planning has reached; and
 - (ii) the nature of the work; and
 - (iii) the person’s means and circumstances.
- ‘(2) Despite the amendment, a building development approval for the work may be given if the approval is given under the building assessment provisions in force immediately before the amendment, and IDAS.
- ‘(3) For subsection (1)(a) the work is lawfully carried out if it is carried out under the building assessment provisions in force immediately before the amendment.
- ‘(4) For subsections (1) and (3), an amendment of the building assessment provisions includes an amendment of a document adopted by, or to which a reference is made in, any of the provisions.
- ‘(5) In this section—
building assessment provisions does not include IDAS.

‘Division 2 Variation of how particular building assessment provisions apply

‘6F Applying to vary how particular building assessment provision applies

- ‘(1) If—
 - (a) building work is proposed to be carried out, is being carried out or has been carried out; and
 - (b) the building work will not, or does not, comply with a provision of any of the building assessment provisions, other than IDAS;

a person may apply (the **variation application**) to the chief executive to vary how the provision applies to the building work.

- ‘(2) However, the variation application can not be made if the provision permits an assessment manager to exercise discretion about the matter for which the variation is sought.

Example of a provision mentioned in subsection (2)—

part 3¹⁶

- ‘(3) The variation application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

‘6G Applying for fast-track decision

- ‘(1) The applicant under the variation application, may, in the application, ask the chief executive to decide the application within 2 business days after making the application.
- ‘(2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.
- ‘(3) The chief executive may grant or refuse the request.
- ‘(4) If the chief executive grants the request, the chief executive may, as a condition of granting the request, require the applicant to pay any reasonable additional costs that would be incurred by the chief executive in deciding the variation application within the 2 business days.

‘6H Effect of variation application on IDAS process

‘If the variation application is about building work proposed to be carried out for which work a building development application has been made, the process under IDAS for the building development application—

- (a) stops on the day the variation application is received by the chief executive; and

16 Part 3 (Discretionary matters in the assessment of building development applications)

- (b) starts again the day the chief executive gives the applicant under the variation application notice under section 6K.

‘6I Deciding variation application

- ‘(1) If the building work is being or is to be carried out by or for someone other than the State, the chief executive must consult with the assessment manager about the variation application before deciding it.
- ‘(2) The chief executive may consult with any other person about the variation application before deciding it.
- ‘(3) After considering the variation application, the chief executive must decide to vary or refuse to vary how the provision applies to the building work.
- ‘(4) The chief executive must decide the variation application within 20 business days after the application is made.

‘6J Criteria for decision

- ‘(1) In making the decision the chief executive must consider all relevant matters, including for example—
 - (a) whether the building work substantially complies with the other building assessment provisions, other than IDAS; and
 - (b) whether compliance with the provision is unnecessary in the particular circumstances; and
 - (c) whether the proposed variation is as effective as, or more effective than, compliance with the provision.
- ‘(2) However, the chief executive may vary how the provision applies to the building work only if the chief executive considers the general safety and structural standards of the relevant building or structure would not be at risk.

‘6K Notice of decision

- ‘(1) The chief executive must, within 5 business days after deciding the variation application, give the applicant and the

assessment manager for the building work notice of the decision.

- ‘(2) If the decision is to refuse to vary how the provision applies to the building work, the notice must be an information notice.

Note—

For appeals against a decision for which an information notice must be given under this section, see IPA, section 4.2.12A.

‘6L Effect of variation

- ‘(1) This section applies if the chief executive decides to vary how the provision applies to the building work.
- ‘(2) Subject to any appeal against the chief executive’s decision, the provision, as varied by the decision, applies to the building work.
- ‘(3) An assessment manager must not refuse to approve a building development application to which the chief executive’s decision relates only on the ground that the building work does not comply with the provision without the variation.

‘Part 2 Persons responsible for assessing building development applications

‘Division 1 Who carries out building assessment work

‘6M Generally a building certifier must assess

‘Subject to section 6N, building assessment work must be carried out by a building certifier.

‘6N Concurrence agencies may carry out building assessment work within their jurisdiction

- ‘(1) This section applies if, under IPA, a concurrence agency has jurisdiction for a part of building assessment work.

- ‘(2) Only the concurrence agency may assess the part.
- ‘(3) Assessment of the part by the concurrence agency must be done under the building assessment provisions.
- ‘(4) Subject to sections 6E and 7B,¹⁷ the assessment must be carried out under the building assessment provisions in force when the assessment is made.
- ‘(5) If the part is assessing compliance with the fire safety standard, the concurrence agency must appoint or employ a building certifier to carry out the assessment.

Notes—

- 1 For a list of the concurrence agencies and the parts of building assessment work that they decide, see IPA Regulation, schedule 2, table 1.
- 2 For the treatment of matters within a concurrence agency’s jurisdiction under IPA, see IPA, sections 3.1.8, 3.2.15 to 3.3.18 and 3.5.11.

‘Division 2 Functions of private certifiers

‘6O Operation of div 2

- ‘(1) This division confers functions on private certifiers for building development applications.
- ‘(2) The functions are in addition to the building certifying functions that private certifiers may perform as building certifiers.
- ‘(3) The additional functions, together with building certifying functions, are *private certifying functions*.

‘6P Functions of private certifier (class A)

- ‘(1) A private certifier (class A) may—

¹⁷ Sections 6E (Provision for changes to building assessment provisions) and 7B (Alterations to safe existing work may be approved on basis of earlier building assessment provisions)

- (a) receive and assess a building development application; and
 - (b) decide the application and grant or refuse the building development approval applied for as if the certifier were the person, who, under IPA, section 3.1.7, is the assessment manager; and
 - (c) decide whether enforcement action under this Act or IPA ought to be taken for a building development approval granted by—
 - (i) the private certifier (class A); or
 - (ii) another private certifier (class A) employed by the same private certifier employer when the decision to take the enforcement action is made.
- ‘(2) For IPA, chapter 4, part 3, divisions 2 and 3,¹⁸ a reference to an assessing authority includes a reference to a private certifier (class A) performing functions under subsection (1)(c).
- ‘(3) For section 22,¹⁹ a reference to a local government includes a reference to a private certifier (class A) performing functions under subsection (1)(c).
- ‘(4) However, subsection (1)(c), (2) and (3) apply only until the giving of a final inspection certificate for the building work or a certificate of classification for the building.
- ‘(5) To remove any doubt, it is declared that subsection (1)(c), (2) and (3) do not limit the local government’s functions or powers under this Act or IPA, chapter 4, part 3, divisions 2 and 3.
- ‘(6) If—
- (a) under this section a private certifier (class A) gives a person an enforcement notice under this Act or IPA; and
 - (b) the person does not comply with the notice;
- the certifier must ensure the local government is given notice of that fact.

18 IPA, chapter 4, part 3, divisions 2 (Show cause notices) and 3 (Enforcement notices)

19 Section 22 (Enforcement notices)

Note—

See also section 9S.²⁰

‘6Q Functions of private certifier (class B)

‘A private certifier (class B) may—

- (a) receive a building development application; and
- (b) carry out all building assessment work for the application other than in relation to the QDC boundary clearance and site cover provisions.

‘6R Restrictions on building certifying functions that a private certifier (class B) can perform

- ‘(1) A private certifier (class B) can not give a final inspection certificate or certificate of classification.
- ‘(2) A private certifier (class B) can only give a compliance certificate about whether building work complies with the BCA or a provision of the QDC, other than the QDC boundary clearance and site cover provisions.

‘Division 3 Functions of local government

‘6S Function to act on building development application or development approval unless private certifier (class A) engaged

- ‘(1) This section applies if—
 - (a) a person wishes to make a building development application to the local government; and
 - (b) if the application were made, it would be a properly made application; and
 - (c) a private certifier (class A) is not engaged for the application; and

²⁰ Section 9S (Effect of building certifier not complying with Act if no penalty provided)

- (d) if a private certifier (class B) is engaged for the application—the private certifier (class B) has not entered into an agreement mentioned in section 10(3)²¹ for the proposed application.
- ‘(2) The local government must do the following—
- (a) under IDAS, receive, assess and decide the application;
- (b) appoint or employ a private certifier or another building certifier to perform building certifying functions for—
- (i) the application; and
- (ii) if the building development approval applied for is granted—the building work.

Note—

If a private certifier is appointed or employed, the functions can not include private certifying functions that are not also building certifying functions. See section 9Y.

- ‘(3) If—
- (a) a private certifier (class A) has granted a building development approval; and
- (b) the engagement of a private certifier to inspect and certify the building work is discontinued; and
- (c) the building work has not been certified;
- the local government for the approval must, if asked in writing by the nominated owner of the building, appoint or employ a building certifier to perform building certifying functions for the building work.
- ‘(4) This section is subject to sections 5Y and 6T.²²
- ‘(5) In this section—
- nominated owner***, of a building, means the person who, under the most recent building development application for the building, was nominated on the approved form under IPA,

21 Section 10 (Restriction on engagement of private certifier (class B))

22 Sections 5Y (Relevant laws and other documents for assessment of building work) and 6T (Restriction on local government issuing building development approval)

section 3.2.1(2),²³ as the person to receive the inspection documentation for building work for the building.

‘6T Restriction on local government issuing building development approval

‘The local government for a building development application may issue the building development approval applied for only if—

- (a) a local government building certifier has carried out the building assessment work for the application; and
- (b) the building certifier is appropriately licensed to carry out the building assessment work.

‘6U Local government may rely on particular compliance certificates and other documents

‘(1) This section applies if—

- (a) a building certifier gives the local government for a building development application (the *original application*) a compliance certificate or other document; and
- (b) the certificate or other document was made by or given to the building certifier to carry out building assessment work under the original application.

‘(2) The local government may, in carrying out functions under this Act for the following, accept and, without further checking, rely and act on the certificate or other document—

- (a) the original application;
- (b) another building development application for all or part of the building work under the original application.

‘6V Local government may rely on documents private certifier gives it for inspection or purchase

‘If—

²³ IPA, section 3.2.1 (Applying for development approval)

- (a) under this Act, a private certifier gives the local government for a building development application a document; and
 - (b) under IPA, the local government must make the document available for inspection or purchase;
- the local government may accept and, without further checking, rely and act on the document for the purpose of making it available for inspection or purchase.

‘Division 4 Power of particular replacement assessment managers to decide status under IDAS

‘6W Power to decide what stage of IDAS application is to resume or start

- ‘(1) This section applies if—
 - (a) a private certifier (class A) is engaged to assess or decide a building development application; and
 - (b) the engagement is discontinued; and
 - (c) the application has not been decided; and
 - (d) a new private certifier (class A) is engaged for the application.
- ‘(2) This section also applies if—
 - (a) a building development approval lapses under part 7; and
 - (b) the owner of the land to which the approval attached immediately before it lapsed makes a new building development application for all or part of the building work under the lapsed approval.
- ‘(3) The assessment manager for the application or new application may resume or start the application process at any stage of IDAS the assessment manager considers appropriate.

- (b) the part allows a discretionary decision about a building design or specification; and

Example of discretionary decision—

QDC uses the word ‘suitable’ or ‘adequate’

- (c) the application proposes the use of the discretion.
- ‘(2) The building certifier or concurrence agency must decide whether the design or specification complies with—
- (a) generally—the QDC; or
 - (b) if, for the application, the QDC is varied under part 1, division 2—the QDC as varied.

‘6Z Survey certificate

- ‘(1) A building certifier may, before assessing a building development application, require that a cadastral survey, including a survey commonly called in the surveying profession an identification survey, be carried out to show—
- (a) the boundaries of the allotment on which the building work is proposed; and
 - (b) the location of any proposed or existing buildings or structures on the allotment.
- ‘(2) The absence of a requirement under subsection (1) does not prevent the requirement being made by a condition of the building development approval, under section 7S.

‘7 Discretion for building development applications for particular budget accommodation buildings

- ‘(1) This section applies to the assessment of a building development application to the extent it is for building work required to ensure the building complies, under section 12H,²⁵ with the fire safety standard.

²⁵ Section 12H (Owner must ensure building conforms with fire safety standard)

- ‘(2) The decision on the application may compromise the achievement of the desired environmental outcomes in a relevant planning scheme.²⁶

Example—

A desired environmental outcome in a relevant planning scheme is that the building does not affect the amenity and aesthetics of the neighbourhood of the building. An external stairway required under the site safety standard does not comply with the outcome. The application may be approved despite the noncompliance.

‘7A Building certifier may rely on particular compliance certificates and other documents

- ‘(1) This section applies if—
- (a) a building certifier has given anyone else a compliance certificate or other document; and
 - (b) the certificate or other document made by or given to the building certifier to carry out building assessment work for a building development application (the *original application*).
- ‘(2) Another building certifier may, in carrying out functions under this Act for the following, accept and, without further checking, rely and act on the certificate or other document—
- (a) the original application;
 - (b) another building development application for all or part of the building work under the original application.

‘7B Alterations to safe existing work may be approved on basis of earlier building assessment provisions

- ‘(1) This section applies for a building development application if—
- (a) the building work is alterations to an existing building or structure; and
 - (b) the building certifier is satisfied the general safety and structural standards of the building or structure would

²⁶ See IPA, section 3.5.13(4) (Decision if application requires code assessment)

not be at risk if the alterations were to be carried out under earlier building assessment provisions.

‘(2) The building certifier may carry out building assessment work for the application on the basis that the building work is to be carried out under the earlier building assessment provisions.

‘(3) In this section—

building assessment provisions includes the former Standard Building By-laws and Standard Building Law under this Act and the repealed *Standard Building Regulation 1993*.

earlier building assessment provisions means the building assessment provisions as they were in force at a particular time before the application was made.

‘Part 4 Requirements for and restrictions on assessing or approving building development applications

‘7C Requirement to consider any advice agency response

‘(1) This section applies if, under IPA, an advice agency for a building development application has jurisdiction for a part of building assessment work for the application.

‘(2) The assessment manager must not approve the application unless IPA, section 3.5.4(2)(b) or 3.5.5(2)(a) has been complied with.²⁷

Notes—

1 For what are the advice agencies for building development applications and the issues they may advise on, see IPA Regulation, schedule 2, table 1.

2 For the treatment of matters within an advice agency’s jurisdiction under IPA, see IPA sections 3.1.8, 3.3.15 to 3.3.1 and 3.5.11.

27 IPA section 3.5.4 (Code assessment) or 3.5.5 (Impact assessment)

‘7D Restriction on granting building development application for budget accommodation building

If a building development application is for a budget accommodation building, the assessment manager must not approve the application unless the assessment manager is satisfied—

- (a) the fire safety management plan accompanying the application complies with the *Fire and Rescue Service Act 1990*, section 104FC;²⁸ or
- (b) the building work involves an alternative solution, for performance requirements under the BCA, that includes a fire safety management procedure as a condition of the occupation and use of the building and the fire safety management plan adequately reflects the procedure.

‘7E Required report before assessing application for temporary building or structure with special fire service

- ‘(1) This section applies to a building development application for a temporary building or structure that is proposed to have a special fire service.
- ‘(2) Before carrying out building assessment work for the application, the building certifier must obtain from QFRS a report on the suitability of the proposed service.

‘7F Land subject to registered easement or statutory covenant

- ‘(1) This section applies if a building development application is for land subject to—
 - (a) a registered easement; or
 - (b) a registered statutory covenant for which the registered holder of the covenant is—
 - (i) the State; or

²⁸ *Fire and Rescue Service Act 1990*, section 104FC (Meaning of *fire safety management plan*)

- (ii) a statutory body representing the State; or
 - (iii) a local government.
- ‘(2) The assessment manager must not approve the application unless each registered holder of the easement or covenant has consented to the building work.
- ‘(3) In this section—
registered means registered under the *Land Act 1994* or *Land Title Act 1994*.

‘7G Special structures

- ‘(1) This section applies to a building development application for a building that, under section 9G, is classified as a special structure.
- ‘(2) The assessment manager must not approve the application unless the special structure—
 - (a) complies with the building assessment provisions; and
 - (b) reasonably provides for all of the following—
 - (i) the safety of persons using the structure if there is a fire (including, for example, means of egress);
 - (ii) the prevention and suppression of fire;
 - (iii) the prevention of the spread of fire;
 - (iv) the health and amenity of persons using the structure.

‘7H Temporary building or structure that does not comply with other building assessment provisions

- ‘(1) This section applies to a building development application for a temporary building or structure that, apart from this section, would not comply with the building assessment provisions.
- ‘(2) The assessment manager must not approve the application unless subsections (3) and (4) have been complied with.
- ‘(3) The building certifier must have decided that the temporary building or structure—

- (a) is structurally sound and capable of withstanding the loadings likely to arise from its use; and
 - (b) reasonably provides for all of the following—
 - (i) the safety of persons to be accommodated in the building or structure if there is a fire (including, for example, means of egress);
 - (ii) the prevention and suppression of fire;
 - (iii) the prevention of the spread of fire;
 - (iv) the health and amenity of persons to be accommodated in the building or structure.
- ‘(4) The approval must include a condition that—
- (a) limits the period during which the temporary building or structure may remain in place; and
 - (b) requires removal or demolition of the temporary building or structure at the end of the period.

‘71 Particular alterations not permissible

- ‘(1) This section applies to a building development application for alterations to an existing building or structure.
- ‘(2) However, this section does not apply if—
 - (a) the alterations are for a budget accommodation building, to which chapter 7, part 3,²⁹ applies; and
 - (b) the purpose of the alterations is to ensure the building or structure complies with the fire safety standard.
- ‘(3) The assessment manager must not approve the application unless the building certifier has decided the alterations do not unduly reduce the following—
 - (a) the existing level of fire protection for persons accommodated in, or using, the building or structure;
 - (b) the existing level of resistance to fire of the building or structure;

²⁹ Chapter 7 (Fire safety for budget accommodation buildings), part 3 (Budget accommodation buildings built, approved or applied for, before 1 January 1992)

- ‘(6) If there is a conflict between an imposed condition and another condition of a building development approval, the imposed condition prevails to the extent of the inconsistency.

‘7K Engineering drawings

- ‘(1) This section applies if—
- (a) supporting documents for a building development application are in the form of engineer’s drawings or other engineering details; and
 - (b) the drawings or details were not included with the application; and
 - (c) the application is approved.
- ‘(2) Work on any footings for the building work must not start until the drawings and details for the footings have been approved by the building certifier.
- ‘(3) A stage of the building work must not be started until the drawings and details for the stage have been approved by the building certifier.

‘7L When demolition, removal and rebuilding must start and be completed

- ‘(1) This section applies to a building development approval for building work to—
- (a) demolish or remove a building or structure; or
 - (b) rebuild, after removal, a building or structure.
- ‘(2) The building work must substantially start within 2 months after the giving of the approval.
- ‘(3) Within 6 months after the giving of the approval—
- (a) the building work must be completed; and
 - (b) if the building work is rebuilding, after removal, of a building or structure, either—
 - (i) if, under the approval or a regulation, the building work must be inspected, a final inspection showing

that the building work complies with the approval or regulation is carried out; or

- (ii) under chapter 5, a certificate of classification must be given for the building.

‘(4) The condition under subsection (3) is the ***demolition/removal completion condition***.

‘7M Building work in erosion prone area

‘(1) This section applies to a building development approval for an erosion prone area under the *Coastal Protection and Management Act 1995*.

‘(2) All material excavated from land for the building work must be placed, levelled and stabilised against wind erosion—

- (a) on the land seaward of the building or structure; or
- (b) at another location, stated in the approval, within the erosion prone area.

‘(3) If the building work includes the erection or alteration of a roof drainage system or stormwater drain for the building or other structure, the system or drain must not be erected or altered in a way that is likely to cause erosion of the area.

‘(4) However, the conditions under subsections (2) and (3) do not apply if the approval states that the person carrying out the building assessment work for the application is satisfied the conditions are not necessary for coastal management, including, in particular, the prevention of erosion or tidal inundation.

‘7N Obligation to make current drawing available for inspection

‘The applicant for a building development approval must ensure 1 legible set of the current drawings for the building is, while the building work is being carried out, available for inspection by anyone who, under an Act, is entitled to inspect the relevant building site.

‘7O Inspection and testing of special fire service installation

- ‘(1) This section applies to a building development approval for a building served by a special fire service.
- ‘(2) The person installing the service must—
 - (a) give QFRS—
 - (i) while the installation of the service is being carried out but before it is finished—a notice to inspect the installation; and
 - (ii) after the installation of the service but before interior surface finishes are applied—a notice to test the service; and
 - (b) give a copy of the notices to the assessment manager when they are given to QFRS.
- ‘(3) QFRS may inspect and test the building work only about special fire services.

‘7P Earthworks and retaining walls

‘If soil conditions, ground levels, excavation or filling make it necessary to protect land, buildings or structures in the neighbourhood of building work—

- (a) retaining walls must be built, or other suitable methods used, to prevent soil movement; and
- (b) drainage of the land, buildings or structures must be provided.

‘7Q Drainage of buildings or land

‘If a building development approval permits a building or land to be drained, the drainage must be carried out in a way that protects land, buildings and structures in the neighbourhood of the building or land.

‘7R Building work over existing sanitary drainage

‘Building work over or adjacent to existing sanitary drainage must comply with the Standard Plumbing and Drainage Regulation.

‘Division 2 Conditions that may be imposed**‘7S Survey certificate**

- ‘(1) A building development approval may include a condition that the building certifier must be given a cadastral survey, including a survey commonly called in the surveying profession an identification survey, showing—
- (a) the boundaries of the allotment; and
 - (b) the actual location of the building or structure on the allotment.
- ‘(2) A survey under subsection (1) must be given—
- (a) as soon as the actual location of the building or structure on the allotment can be established; or
 - (b) at a later time the building certifier allows.

‘7T Hazardous buildings

- ‘(1) This section applies to a building development approval for a class 5, 6, 7 or 8 building—
- (a) with a total floor area greater than 36000m²; or
 - (b) for which the building certifier considers special provision should be made to restrict or combat the spread of fire within or from the building because of the purpose or purposes for which the building is being or is to be used.
- ‘(2) The building development approval may include conditions the building certifier considers appropriate about restricting or combating the spread of fire in or from the building.
- ‘(3) However, the conditions may be imposed only if the building certifier has consulted QFRS about their appropriateness.

‘7U Alterations to unsafe existing work

- ‘(1) This section applies to a building development approval if—
- (a) the building work is alterations to an existing building or structure; and
 - (b) the building certifier decides the building or structure is unsafe or structurally unsound.
- ‘(2) The building development approval may include a condition that all, or a stated part, of the building or structure must comply with the building assessment provisions in force—
- (a) when the approval was granted; or
 - (b) at another stated time that the building certifier considers will ensure the building or structure is made safe and structurally sound.

‘7V Building development approval for particular alterations may require existing building or structure to comply with building assessment provisions

- ‘(1) This section applies to a building development approval for alterations to an existing building or structure if—
- (a) the total of the following represents more than half the total volume of the existing building or structure, measured over its roof and external walls—
 - (i) the alterations;
 - (ii) any previous structural alterations to it approved or completed in the previous 3 years; or
 - (b) the building certifier has decided the alterations pose a risk—
 - (i) to the safety of persons accommodated in or using the building or structure; or
 - (ii) of spreading fire to adjoining buildings or structures.
- ‘(2) However, this section does not apply if—

- (a) the alterations are for a budget accommodation building, to which chapter 7, part 3,³² applies; and
 - (b) the purpose of the alterations is to ensure the building or structure complies with the fire safety standard.
- ‘(3) The building development approval may include a condition that all, or a stated part, of the existing building or structure must comply with all or a stated part of the building assessment provisions as if it were a new building or structure.
- ‘(4) This section does not limit chapter 5, part 3.³³

‘Part 6 Regulation of building assessment work and the issuing of building development approvals by private certifiers

‘7W Application of pt 6

‘This part applies if, under section 6P,³⁴ a private certifier (class A) is assessing a building development application or deciding and issuing the decision notice.

‘7X General restrictions on granting building development approval

- ‘(1) The private certifier must not grant the building development approval applied for—
- (a) if the building development application includes development other than building work—until, under IPA, all necessary development permits are effective for the other development; and

32 Chapter 7 (Fire safety for budget accommodation buildings), part 3 (Budget accommodation buildings built, approved or applied for, before 1 January 1992)

33 Section 7I (Particular alterations not permissible)
Chapter 5, part 3 (Changes to BCA classification).

34 Section 6P (Functions of private certifier (class A))

Example—

A proposal involves building work, a material change of use and reconfiguring a lot, under IPA. The private certifier is engaged to carry out the building assessment work and decide the building development application. The application must not be decided until all necessary development permits are effective for the change of use and reconfiguring of the lot.

- (b) until all necessary preliminary approvals under IPA are effective for other assessable parts of the development; and

Example—

A proposal requires building assessment work against a planning scheme under IPA and the building assessment provisions. The private certifier is engaged to carry out the building assessment work and decide the building development application. The application must not be decided until all necessary preliminary approvals are effective for the assessment of the building work against the planning scheme.

- (c) until the building assessment work for the application has been carried out under the building assessment provisions; and
- (d) if, under IPA, a concurrence agency has jurisdiction for a part of building assessment work—
 - (i) that part has been assessed by the concurrence agency, under the building assessment provisions; and
 - (ii) if the concurrence agency is the local government—any security it has required for the carrying out of the building work has been given; and
- (e) if proposed works relating to the development include installing or changing on premises an on-site sewerage facility under the *Plumbing and Drainage Act 2002*—until a compliance permit under that Act has been given for the installation or change; and
- (f) if the building work is over or adjacent to a sewer or water main—until consent under the *Water Act 2000*,

section 823 has been granted for the work to be over or adjacent to the sewer or water main.

Maximum penalty—165 penalty units.

- ‘(2) For subsection (1)(f), building work over or adjacent to a sewer includes building work in which the offset of the nearest point of the work from the centre line of the sewer is a distance less than the depth to the invert of the sewer.
- ‘(3) If the private certifier receives the application before all other assessments for permits and approvals mentioned in subsection (1) are completed, for timings under IDAS, the application is taken not to have been received until the day all other assessments under IDAS have been completed.
- ‘(4) This section does not limit part 4.³⁵

‘7Y Approval must not be inconsistent with particular earlier approvals or self-assessable development

- ‘(1) The private certifier must not approve the application if—
 - (a) the building development application relates to an earlier development approval granted by the local government; and
 - (b) the earlier approval has not lapsed; and
 - (c) the application is inconsistent with the earlier approval.

Maximum penalty—165 penalty units.

- ‘(2) Also, the private certifier must not approve the application if—
 - (a) the building development application relates to self-assessable development under IPA; and
 - (b) the development may affect the position, height or form of building work; and
 - (c) a local planning instrument declared the development to be self-assessable development; and

35 Part 4 (Requirements for and restrictions on assessing or approving building development applications)

- (d) the application is inconsistent with the local planning instrument.

Maximum penalty—165 penalty units.

‘7Z Additional requirement for decision notice

‘The private certifier must, when issuing the decision notice, include in the notice details of any self-assessable code under IPA that the applicant may need to comply with for the building work.

‘8 Requirements on approval of application

- ‘(1) If the private certifier approves the application, the certifier must—

- (a) within 5 business days, give the local government a copy of each of the following documents, identified in the way stated in subsection (2)—
 - (i) the application;
 - (ii) the approval documents for the application; and
- (b) give the local government the approved form for the documents mentioned in paragraph (a); and
- (c) pay the fee fixed by the local government under the *Local Government Act 1993*, section 1071A(1)(e) for accepting the application and the approval documents.

Maximum penalty—40 penalty units.

- ‘(2) For subsection (1)(a), the documents must be identified by—
 - (a) marking each of them as documents that relate to the application and that have been approved by the private certifier; or
 - (b) giving them to the local government with another document that—
 - (i) identifies each of the documents; and
 - (ii) states their edition number, if any; and
 - (iii) states that they relate to the application and that they have been approved by the private certifier.

Note—

Under IPA, section 5.7.4, the local government must make the documents required to be given to it under this section available for public inspection and purchase.

‘8A Local government acknowledgement

‘The local government must, when the private certifier complies with section 8(1), immediately give the certifier a document acknowledging the fee mentioned in subsection 8(1)(c) has been received.

‘8B When applicant is to be given the approval documents

‘(1) This section applies only if the private certifier approves the application.

‘(2) The private certifier must not give the applicant any of the approval documents for the application until the certifier has received the acknowledgment under section 8A from the local government.

Maximum penalty—50 penalty units.

‘(3) The private certifier must give the applicant the approval documents within 5 business days after receiving the acknowledgement.

Note—

See also section 9S.³⁶

³⁶ Section 9S (Effect of building certifier not complying with Act if no penalty provided)

‘Part 7 Provisions about lapsing of building development approvals and related matters

‘Division 1 Building work for demolition or removal

‘8C Application of div 1

‘This division applies to a building development approval for building work to which the demolition/removal completion condition applies.

‘8D Relevant period under IPA, s 3.5.21 for development approval

‘(1) For IPA, the period under the demolition/removal completion condition is taken to be the relevant period under IPA, section 3.5.21³⁷ for the development approval.

‘(2) The period can not be extended under IPA.

‘8E Lapsing of building development approval

‘(1) This section applies despite IPA section 3.5.21.

‘(2) The building development approval lapses if the demolition/removal completion condition has not been complied with by the end of the period under the demolition/removal completion condition.

‘(3) However, if section 8F applies, the approval does not lapse until the local government decides not to take any action under that section.

37 IPA, section 3.5.21 (When approval lapses)

‘8F Local government may complete particular work if condition not complied with

- ‘(1) This section applies if the building development approval lapses and the building work is other than demolition.
- ‘(2) The local government may take the action it considers necessary to complete the building work.
- ‘(3) If the local government takes action under subsection (2), until the local government completes the action—
 - (a) the approval is taken not to have lapsed; and
 - (b) the local government is taken to be the person entitled to the benefit of the approval.
- ‘(4) The action is taken to have been authorised under the approval.
- ‘(5) In taking the action the local government may use all or part of any security given to it for the carrying out of the building work.

‘8G Releasing security

- ‘(1) The local government may at any time, having regard to the progress of the building work, refund or release part of any security given to it for the carrying out of the building work.
- ‘(2) The local government must release all or any remaining part of the security if—
 - (a) the demolition/removal completion condition is complied with; or
 - (b) the building development approval lapses.

‘Division 2 Other building work

‘8H Application of div 2

- ‘(1) This division applies if a condition of a building development approval requires the development, or an aspect of the development, to be completed by a particular time (the *condition time*).

- ‘(2) However, this division does not apply to a building development approval for building work to which the demolition/removal completion condition applies.

Note—

For general provisions about when a development approval lapses, what conditions may be imposed and when a condition of a building development approval may be amended, see IPA, chapter 3, part 5, divisions 5 and 6.

‘8l **Reminder notice requirement for lapsing**

- ‘(1) Despite IPA, chapter 3, part 5, divisions 5 and 6 and the condition, the approval only lapses if—
- (a) the assessment manager has, under this section, given the owner of the building a reminder notice about the lapsing; and
 - (b) the time (the *lapsing time*) chosen by the assessment manager and stated in the reminder notice for the completion of the development or aspect has passed; and
 - (c) the development or aspect was not completed before the lapsing time.
- ‘(2) The lapsing time may be after, but must not be before, the condition time.
- ‘(3) The reminder notice must—
- (a) be given no more than 6 months, but at least 3 months, before the lapsing time; and
 - (b) state each of the following—
 - (i) the condition;
 - (ii) the lapsing time;
 - (iii) that the approval will lapse unless the development or aspect is completed by the lapsing time;
 - (iv) that if, under IPA, the relevant period under IPA, section 3.5.21³⁸ for the building development

38 IPA, section 3.5.21 (When approval lapses)

approval is extended past the lapsing time stated in the notice the lapsing time will, under subsection (4), be taken to be when the extended period ends.

- ‘(4) Only 1 reminder notice may be given under this section.
- ‘(5) Subject to section 8J, the assessment manager can not change the lapsing time.

‘8J Extension of lapsing time because of application to extend relevant period under IPA, s 3.5.21

- ‘(1) This section applies if—
 - (a) a reminder notice has been given under section 8I; and
 - (b) before the lapsing time stated in the notice, a request is made under IPA to extend the relevant period under IPA, section 3.5.21 for the relevant building development approval.
- ‘(2) For section 8I—
 - (a) the lapsing time is taken to have been extended until the request has been decided; and
 - (b) if the relevant period is extended past the lapsing time stated in the notice, the lapsing time is taken to be when the extended period ends.

‘8K Restriction on private certifier (class A) extending relevant period under IPA, s 3.5.21 more than once

- ‘(1) This section applies if the assessment manager is a private certifier (class A) and, under IPA, the relevant period under IPA, section 3.5.21³⁹ for the building development approval has already been extended.
- ‘(2) The private certifier may further extend the period only if the private certifier has consulted with the local government.
- ‘(3) Subsection (2) applies despite IPA chapter 3, part 5, divisions 5 and 6.

39 IPA, section 3.5.21 (When approval lapses)

‘Chapter 5 Inspections, building classification and the use of buildings

‘Part 1 Giving of inspection documentation for single detached class 1a buildings and class 10 buildings or structures

‘8L Application of pt 1

‘This part applies to a building certifier for a building development approval who is a local government building certifier or a private certifier (class A), if the building is—

- (a) a single detached class 1a building;
- (b) a class 10 building or structure.

‘8M Obligation to give owner inspection documentation on final inspection

- ‘(1) This section applies if at the inspection of the final stage of building work, the building certifier is satisfied, on an inspection carried out under best industry practice, that the work complies with the building development approval.

Note—

There is a right of appeal to a building and development tribunal against a decision by a building certifier about inspection of building work the subject of a building development approval. See section 9K and IPA, section 4.2.12A.⁴⁰

⁴⁰ Section 9K (Building certifier’s obligation to give information notice about particular decisions) and IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

‘(2) The building certifier must ensure the owner of the building is, within the required period, given—

- (a) a final inspection certificate for the building work; and
- (b) a copy of any other inspection documentation for inspection of the building work.

Maximum penalty—40 penalty units.

‘(3) In this section—

required period means the period that ends 5 business days after—

- (a) if the inspection documentation includes any certificates relied on by the building certifier—the certifier accepts the certificates; or
- (b) otherwise—all of the building work is inspected.

‘Part 2 **Certificates of classification for other buildings**

‘Division 1 **Preliminary**

‘8N **Application of pt 2**

‘This part applies to a building certifier for a building development approval who is a local government building certifier or a private certifier (class A), unless the building is—

- (a) a single detached class 1a building;
- (b) a class 10 building or structure.

‘8O **Meaning of *substantially completed***

‘(1) A building has been *substantially completed* when—

- (a) all wet areas are waterproof as required under the building assessment provisions; and

- (b) reticulated water is connected to and provided throughout the building; and
- (c) all sanitary installations are installed as required under the building assessment provisions; and
- (d) the local government has issued a compliance certificate under the *Plumbing and Drainage Act 2002* stating the plumbing work, drainage work and on-site sewerage work for the building has been completed under that Act; and
- (e) all fire safety installations are operational and installed as required under the building assessment provisions; and
- (f) all health and safety matters relating to the building comply with the building assessment provisions; and
- (g) electricity supply is connected to the building to the extent necessary for it to be used under the BCA classification sought; and
- (h) the building is weatherproof as required under the building assessment provisions; and
- (i) the building is structurally adequate as required under the building assessment provisions; and
- (j) all means of access and egress to the building comply with the building assessment provisions; and
- (k) if the relevant development approval includes conditions advised or required by a referral agency and the conditions are about the building work for the building—the conditions have been complied with.

‘(2) In this section—

building includes alterations to all or part of an existing building.

‘Division 2 Giving of certificate

‘8P Obligation to give certificate of classification on inspection after particular events

- ‘(1) This section applies if—
- (a) the building certifier has inspected the building and—
 - (i) decided that it has been substantially completed; or
 - (ii) given written consent to the occupation of part of the building before all of it has been substantially completed; or
 - (iii) if the development is alterations to an existing building—decided that they have been substantially completed; and
 - (b) if there is any fire safety installation installed in the building—the applicant has given the building certifier—
 - (i) a list of all of the installations; and
 - (ii) drawings showing their location; and
 - (c) any requirement under the building assessment provisions or a condition of the building development approval for a referral agency inspection of the building has been complied with or has ceased to apply.
- ‘(2) The building certifier must, as soon as practicable, ensure the owner of the building is given a certificate of classification by a building certifier that complies with the requirements under section 8Q for a certificate of classification (the *certificate requirements*).
- Maximum penalty—20 penalty units.
- ‘(3) If a requirement mentioned in subsection (1)(c) applies, the certificate must not be given until the requirement has been complied with or it has ceased to apply.

Notes—

- 1 There is a right of appeal to a building and development tribunal against a decision by a building certifier to whom this part applies not to give a certificate of classification because the relevant

building has not been substantially completed. See section 9K and IPA, section 4.2.12A.⁴¹

2 See also section 9S.⁴²

‘8Q Certificate requirements

‘A certificate of classification must—

- (a) be signed in the approved form; and
- (b) state the building’s classification, having regard to the use for which it was designed, built or adapted; and
- (c) if a part of the building is classified differently to another part—state the part to which each classification relates; and
- (d) if the development uses a building solution under the BCA and the solution restricts the use or occupation of the building—state the restriction; and
- (e) if the development uses an alternative solution—list the performance requirements that have been used.

‘8R Interim certificate if building is remote

- ‘(1) This section applies if, because of the remoteness of the building’s location, it is not practicable for the building certifier to inspect the building to decide whether it has been substantially completed.
- ‘(2) The building certifier may give the owner of the building an interim certificate of classification for the building pending the carrying out of the inspection.
- ‘(3) The interim certificate must—
 - (a) comply with the certificate requirements; and

41 Section 9K (Building certifier’s obligation to give information notice about particular decisions) and IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

42 Section 9S (Effect of building certifier not complying with Act if no penalty provided)

- (b) state that it is an interim certificate; and
 - (c) state when it will expire under subsection (5).
- ‘(4) The interim certificate may be based on information given to the building certifier by or for the owner of the building.
- ‘(5) The interim certificate expires when the earlier of the following happens—
- (a) the inspection is carried out and the owner is, under section 8P⁴³ given a certificate of classification;
 - (b) the end of 6 months after the interim certificate is given;
 - (c) its cancellation by the building certifier.
- ‘(6) For subsection (5)(c), the interim certificate may be cancelled only on the ground that the basis on which it was issued was incorrect.

‘8S Certificates for a building occupied in stages

- ‘(1) This section applies if—
- (a) the building is unfinished; and
 - (b) its owner has been given a certificate of classification for part of it; and
 - (c) the building certifier has consented to the occupation of a further part of the building.
- ‘(2) The building certifier must ensure the owner is given a further certificate of classification for the further part.
- ‘(3) The further certificate must comply with the certificate requirements.

Note—

See also section 9S.⁴⁴

43 Section 8P (Obligation to give certificate of classification on inspection after particular events)

44 Section 9S (Effect of building certifier not complying with Act if no penalty provided)

‘Division 3 Miscellaneous provisions about certificates of classification

‘8T Term of certificate of classification

‘A certificate of classification for the building, other than an interim certificate given under section 8R, continues in force until and unless it is replaced under section 9.⁴⁵

‘8U Building certifier’s obligation to give referral agency certificate and other documents

- ‘(1) This section applies if—
- (a) under a building development approval a referral agency must be given a notice to inspect a building; and
 - (b) a building certifier gives a certificate of classification for the building.
- ‘(2) The building certifier must, within 10 business days after giving the certificate, give the referral agency—
- (a) a copy of the certificate; and
 - (b) a copy of plans and specifications showing the aspects of the completed building work within the agency’s jurisdiction other than plans and specifications given to the agency under IPA, section 3.5.15(5); and
 - (c) if the agency is QFRS—
 - (i) a list of all fire safety installations installed in the building; and
 - (ii) drawings showing the location of the fire safety installations.

Maximum penalty—40 penalty units.

45 Sections 8R (Interim certificate if building is remote) and 9 (Obligation of building certifier approving BCA classification change to give new certificate of classification)

‘8V Additional obligations if certificate of classification given by private certifier (class A)

‘If a private certifier (class A) gives a certificate of classification the certifier must—

- (a) give the local government for the building development application a copy within 5 business days; and
- (b) keep a copy for at least 5 years.

Maximum penalty—40 penalty units.

‘Part 3 Changes to BCA classification

‘8W What is a *BCA classification change* to a building

‘A *BCA classification change* to a building is—

- (a) a change to the use for which the building was designed, built or adapted to be used to an extent that alters its BCA classification; or
- (b) if, under section 8Q(d),⁴⁶ a certificate of classification for the building states a restriction on its use or occupation—a change in circumstances that affects the way the building complies with the restriction.

Example of BCA classification change—

a change in the nature or quantity of materials displayed, stored or used in a building that increases the risk to life or safety, requiring building work to be carried out to comply with the BCA

‘8X Restriction on making BCA classification change

‘The owner of a building must ensure a BCA classification change is not made to the building unless—

- (a) a building certifier who is either of the following has approved the change and the building as changed complies with the building assessment provisions—

⁴⁶ Section 8Q (Certificate requirements)

- (i) a local government building certifier;
 - (ii) a private certifier (class A).; or
- (b) the change has been approved under section 8Z.
- Maximum penalty—165 penalty units.

‘8Y Provision for applying to local government to obtain approval for BCA classification change

- ‘(1) The owner of a building may apply to the local government for an approval mentioned in section 8X(a).
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) include enough information about the proposed change to allow a local government building certifier to comply with the certificate requirements.
- ‘(3) The local government building certifier must decide to grant or refuse the approval.
- ‘(4) This section does not prevent a private certifier (class A) engaged by the owner from granting an approval mentioned in section 8X(a).
- ‘(5) Subject to section 8Z, a local government building certifier or private certifier (class A) must not approve a BCA classification change to a building unless the building as changed complies with the building assessment provisions.
- ‘(6) Despite subsections (3) and (4), if the building assessment provisions or a condition of a building development approval provide for a referral agency inspection of the building about the BCA classification change, the approval must not be granted until the requirement has been complied with or it has ceased to apply.

‘8Z Concessional approval for particular existing buildings

- ‘(1) This section applies only to a building in existence before 14 December 1993.
- ‘(2) A building certifier who is either of the following may approve a BCA classification change for the building or part of the building without the building or part as changed having to comply with the building assessment provisions, other than the BCA, parts E1 and E4⁴⁷—
- (a) a local government building certifier;
 - (b) a private certifier (class A).
- ‘(3) However, the change may be approved only if the building certifier considers that the building or part—
- (a) will be structurally sound and capable of withstanding the loadings likely to arise from its use under the new BCA classification; and
 - (b) will reasonably provide for—
 - (i) the safety of persons in the building if there is a fire, including, for example, means of egress; and
 - (ii) the prevention and suppression of fire; and
 - (iii) the prevention of the spread of fire.
- ‘(4) Also, if the building contains a special fire service the building certifier must not approve the change unless the certifier has first received from QFRS a report on the suitability of the service.
- ‘(5) The approval may impose the conditions the building certifier considers necessary about any of the matters mentioned in—
- (a) the BCA, part E1 or E4; or
 - (b) subsection (3).

47 BCA, parts E1 (Fire fighting equipment) and E4 (Emergency lighting, exit signs and warning systems)

‘9 Obligation of building certifier approving BCA classification change to give new certificate of classification

- ‘(1) This section applies if a building certifier approves a BCA classification change to a building.
- ‘(2) The building certifier must ensure the owner of the building is given a certificate of classification for the building that complies with the certificate requirements.

Note—

See also section 9S.⁴⁸

- ‘(3) The certificate replaces any existing certificate of classification for the building.

‘Part 4 Restrictions on the use of buildings

‘9A No occupation or use of particular buildings without certificate of classification

- ‘(1) This section applies if—
 - (a) the building the subject of a building development approval is not—
 - (i) a single detached class 1a building; or
 - (ii) a class 10 building or structure; and
 - (b) a certificate of classification has not been given for the building.
- ‘(2) A person must not occupy or use the building unless the person has a reasonable excuse.

Maximum penalty—165 penalty units.

⁴⁸ Section 9S (Effect of building certifier not complying with Act if no penalty provided)

- ‘(3) The owner of the building must, unless the owner has a reasonable excuse, ensure the building is not occupied or used by someone else.

Maximum penalty—165 penalty units.

‘9B Occupation and use of building must comply with relevant BCA and QDC provisions

- ‘(1) A person must not, unless the person has a reasonable excuse, occupy or use a building if the building does not comply with the following for the use or occupation—

- (a) any relevant BCA provisions for its class of building;
- (b) any relevant QDC provisions for the building.

Maximum penalty—165 penalty units.

- ‘(2) For subsection (1), the relevant BCA provisions for the class of building and the relevant QDC provisions for the building are—

- (a) if there is a building development approval for the building, the provisions of the BCA for the class and the provisions of the QDC for the building in force—

- (i) generally—when the approval was granted; or
 - (ii) if, under this Act, the provisions, as they were in force at an earlier time applied to building assessment work for the approval—at the earlier time; or

- (b) otherwise, any provisions of the BCA for the class and the provisions of the QDC for the building in force when building work for the building started.

- ‘(3) However, the provisions are subject to—

- (a) any variation of them under this Act; and
- (b) any local law or local planning instrument that, under this Act, applied to the building work for the building.

- ‘(4) To remove any doubt, it is declared that subsection (1) applies even if a building development approval for the building is contrary to the provisions mentioned in subsection (1).

‘9C Exception for use of government buildings for emergency

- ‘(1) This section applies if—
- (a) an emergency situation exists, or is likely to exist, justifying the use of a government building for the situation or likely situation; and
 - (b) the building is structurally adequate and reasonably suitable for the emergency use; and
 - (c) the emergency use is, other than for sections 9A and 9B, lawful.

Examples of emergency situation—

- a cyclone
- local flooding
- a dangerous situation under the *Petroleum and Gas (Production and Safety) Act 2004*

- ‘(2) For section 9A and 9B, the use or occupation of the government building is a reasonable excuse.
- ‘(3) Subsection (2) does not limit what may be a reasonable excuse for section 9A or 9B.
- ‘(4) In this section—
- government building*** means a building owned or occupied by or for the State, including by State instrumentalities and government owned corporations.

‘9D Enforcement action required

- ‘(1) If there is a contravention of section 9A for a building, the assessment manager must take appropriate enforcement action against its owner.
- ‘(2) However, subsection (1) does not apply if the assessment manager is satisfied only building work of a minor nature is needed before a certificate of classification can be given for the building.
- ‘(3) If a private certifier (class A) gives the enforcement notice and the owner does not comply with it, the certifier must give the local government notice of that fact.

‘9E Restriction on use of buildings built on or after 1 April 1976

‘The owner of a building built after 1 April 1976 must ensure its use complies with its classification as stated in the last certificate of classification for the building.

Maximum penalty—165 penalty units.

‘9F Further restriction on occupation of building for residential purposes

‘A person must not use a building, other than a class 1, 2, 3 or 4 building, for residential purposes unless the use is approved by the local government for the building.

Maximum penalty—165 penalty units.

‘Part 5 Miscellaneous provisions

‘9G BCA classification as special structure

‘A building or structure that can not, under the BCA, part A3, be given a BCA classification must be classified as a special structure.

‘9H Doubtful BCA classifications

- ‘(1) This section applies if there is a doubt as to a building’s BCA classification.
- ‘(2) The BCA classification must be either of the following classifications a building certifier considers appropriate—
 - (a) a class of building mentioned in the BCA, part A3;
 - (b) a special structure.

‘9I Building certifier’s obligation to give owner inspection documentation if building development approval lapses

‘If a building development approval lapses, the building certifier must ensure the owner of the building is, within 5

business days after the lapsing, given a copy of the inspection documentation for inspection of the building work.

Maximum penalty—80 penalty units.

Note—

For the lapsing of building development approvals, see chapter 4, part 7 and IPA, chapter 3, part 5, divisions 5 and 6.

‘9J Certificate of classification for particular buildings built before 30 April 1998

- ‘(1) This section applies to a building if it was built before 30 April 1998.
- ‘(2) The owner of the building may apply to the local government for a local government building certifier to give the owner a certificate of classification for the building.
- ‘(3) The application must be written and include enough information about building’s use to allow the local government building certifier to comply with the certificate requirements.
- ‘(4) If the application complies with subsection (3), the local government building certifier must ensure the owner is given the certificate of classification that complies with the certificate requirements.

‘9K Building certifier’s obligation to give information notice about particular decisions

- ‘(1) This section applies if—
 - (a) a building certifier to whom part 1 applies decides not to give a final inspection certificate for the relevant building work because the work does not comply with the building development approval; or
 - (b) a building certifier to whom part 2 applies decides not to give a certificate of classification for the relevant building because the building has not been substantially completed; or
 - (c) a building certifier decides to refuse an application under this chapter; or

- (d) a private certifier (class A) decides to refuse to approve a BCA classification change for a client of the certifier; or
 - (e) under section 8Z,⁴⁹ a building certifier decides to approve a BCA classification change with a condition mentioned in section 8Z(5).
- ‘(2) The building certifier must give the applicant or client an information notice about the decision.
- ‘(3) For subsection (1), a failure to decide an application within 20 business days is taken to be a decision to refuse the application.

‘Chapter 6 Provisions about private certifiers and other building certifiers

‘Part 1 General provisions about building certifiers

‘Division 1 Regulation of the performance of building certifying functions

‘9L Person must not perform building certifying functions without licence

‘A person must not perform a building certifying function unless the person is a building certifier.

Maximum penalty—165 penalty units.

49 Section 8Z (Concessional approval for particular existing buildings)

‘9M Building certifier performing building certifying function must be appropriately licensed

‘A building certifier must not perform a building certifying function unless the certifier is appropriately licensed to perform the function.

Maximum penalty—165 penalty units.

‘9N Building certifier’s duty to act in public interest in performing building certifying function

‘(1) A building certifier who is not a private certifier must, in performing building certifying functions, always act in the public interest.

Notes—

- 1 See also section 9S.⁵⁰
- 2 For the corresponding provision for private certifiers, see section 9W.

‘(2) For subsection (1), the occasions when a building certifier does not act in the public interest in performing building certifying functions include, but are not limited to, when the certifier—

- (a) seeks, accepts or agrees to accept a benefit (whether for the certifier’s benefit or someone else) as a reward or inducement to act other than under this Act;
- (b) acts in a way contrary to a function of the certifier under this Act or IPA;
- (c) falsely claims to be appropriately licensed to carry out building assessment work of a particular type;
- (d) acts outside the scope of the certifier’s powers under this Act or IPA;
- (e) contravenes the code of conduct;
- (f) acts in a way, in relation to the certifier’s practice, that is grossly negligent or grossly incompetent.

⁵⁰ Section 9S (Effect of building certifier not complying with Act if no penalty provided)

‘90 Building certifier must not perform building certifying function if there is a conflict of interest

- ‘(1) A building certifier who is not a private certifier must not perform a building certifying function if, in performing the function, the certifier has a conflict of interest.

Note—

See also section 9S.⁵¹

- ‘(2) For subsection (1), the occasions when a building certifier has a conflict of interest include, but are not limited to, when the certifier—
- (a) is to carry out the building work the subject of the building certifying function; or
 - (b) is engaged by the owner of the building or the builder to perform a function other than—
 - (i) a building certifying function; or
 - (ii) to manage a development application; or
 - (iii) give regulatory advice about any matter; or
 - (c) has a direct or indirect pecuniary interest in the building.

- ‘(3) In this section—

builder means the person who will be carrying out the building work the subject of the building certifying function.

building work includes—

- (a) the preparation of the design of all or part of the building; or
- (b) carrying out all or part of building work.

owner means the owner of the building.

the building means the building or structure the subject of building assessment work to be carried out under the building certifying functions.

⁵¹ Section 9S (Effect of building certifier not complying with Act if no penalty provided)

‘Division 2 Code of conduct

‘9P Code of conduct

- ‘(1) The *code of conduct* is the document called ‘Code of Conduct for Building Certifiers’ made by the chief executive on 20 October 2003 and tabled in the Legislative Assembly on 14 November 2003, as amended or replaced from time to time under this section.
- ‘(2) The chief executive may amend or replace the document mentioned in subsection (1) or any amendment or replacement of it.
- ‘(3) However, the amendment or replacement does not take effect until it is approved under a regulation.
- ‘(4) A reference to the code of conduct is taken to include any amendment or replacement under subsection (2) that has taken effect.

‘9Q Tabling and inspection of amendment or replacement not part of or attached to regulation

- ‘(1) This section applies if—
 - (a) a regulation made under section 9P approves an amendment or replacement of the code of conduct; and
 - (b) the amendment or replacement is not part of, or attached to, the regulation.
- ‘(2) The Minister must, within 14 sitting days after the regulation is notified in the gazette, table a copy of the amendment or replacement in the Legislative Assembly.
- ‘(3) A failure to comply with subsection (2) does not invalidate or otherwise affect the regulation.

‘9R Access to code of conduct

‘The chief executive must make the code of conduct available for inspection as if it were a document that, under IPA,

chapter 5, part 7,⁵² the chief executive must make available for inspection.

‘Division 3 Miscellaneous provisions

‘9S Effect of building certifier not complying with Act if no penalty provided

‘(1) This section applies if—

- (a) a building certifier does not comply with a provision of this Act about building or private certifying functions; and
- (b) no penalty is stated for the failure to comply.

Examples of provisions mentioned in subsection (1)—

6P, 8B, 8P, 8S, 9N, 9O, 9X and 9Z

‘(2) The failure to comply is not an offence.

‘(3) For the definition of *unsatisfactory conduct* in schedule 2, the failure is taken to be conduct that is contrary to a function under this Act.

‘9T Additional functions of BSA for building certification

‘As well as its functions under the *Queensland Building Services Authority Act 1991*, BSA has the following functions under this Act—

- (a) under part 3, to license individuals as building certifiers and give private certification and development approval endorsements;
- (b) to monitor compliance with this chapter by building certifiers;
- (c) to carry out audits of building and private certifying functions;
- (d) under part 3, to investigate written complaints made to it about alleged unsatisfactory conduct or professional

52 IPA, chapter 5, part 7 (Public access to planning and development information)

misconduct by building certifiers or former building certifiers;

- (e) to take disciplinary action against building certifiers or former building certifiers for unsatisfactory conduct or professional misconduct;
- (f) to give the chief executive, at least once each year, a list of building certifiers and a summary of disciplinary action taken against building certifiers;
- (g) under part 3, to keep a register of building certifiers.

‘Part 2 Private certifiers

‘Division 1 Regulation of private certifying functions

‘9U Restriction on performing functions of private certifier (class A)

‘A person must not perform a function under section 6P⁵³ unless the person is a private certifier (class A).

Maximum penalty—165 penalty units.

‘9V Restriction on private certifier performing functions for building development applications

- ‘(1) A private certifier must not perform a private certifying function for a building development application unless the certifier is appropriately licensed to carry out the type of building assessment work required for the application.

Maximum penalty—165 penalty units.

- ‘(2) In performing a private certifying function, a private certifier must comply with the building assessment provisions, chapter 5 and this chapter.

Maximum penalty—165 penalty units.

53 Section 6P (Functions of private certifier (class A))

‘9W Offence for private certifier not to act in public interest in performing private certifying function

‘(1) A private certifier must, in performing a private certifying function, always act in the public interest.

Maximum penalty—1665 penalty units.

(2) For subsection (1), the occasions when a private certifier does not act in the public interest in performing a private certifying function include, but are not limited to, when the certifier—

- (a) seeks, accepts or agrees to accept a benefit (whether for the certifier’s benefit or someone else) as a reward or inducement to act other than under this Act;
- (b) acts in a way contrary to a function of the certifier under this Act or IPA;
- (c) falsely claims to be appropriately licensed to carry out building assessment work of a particular type;
- (d) acts outside the scope of the certifier’s powers under this Act or IPA;
- (e) contravenes the code of conduct;
- (f) acts in a way, in relation to the certifier’s practice, that is grossly negligent or grossly incompetent.

‘9X Private certifier must not perform private certifying function if there is a conflict of interest

‘(1) A private certifier must not perform a private certifying function if, in performing the function, the certifier has a conflict of interest.

Note—

See also section 9S.⁵⁴

‘(2) For subsection (1), the occasions when a private certifier has a conflict of interest in performing a private certifying function include, but are not limited to, when the certifier—

⁵⁴ Section 9S (Effect of building certifier not complying with Act if no penalty provided)

- (a) is to carry out the building work the subject of the building certifying function; or
 - (b) is engaged by the owner of the building or the builder to perform a function other than—
 - (i) a building certifying function; or
 - (ii) to manage a development application; or
 - (iii) give regulatory advice about any matter; or
 - (c) has a direct or indirect pecuniary interest in the building.
- ‘(3) In this section—

builder means the person who will be carrying out the building work the subject of the private certifying function.

building work includes—

- (a) the preparation of the design of all or part of the building; or
- (b) carrying out all or part of building work.

owner means the owner of the building.

the building means the building or structure the subject of building assessment work to be carried out under the private certifying function.

‘Division 2 Engagement of private certifiers

‘9Y Power to contract to perform private certifying functions

- ‘(1) Subject to sections 10 and 10A—
- (a) a private certifier may enter into a contract to perform private certifying functions; and
 - (b) a person or public sector entity (a *private certifier employer*) who employs private certifiers may enter into a contract to provide the services of any of the private certifiers to perform private certifying functions for others.

- ‘(2) However, a local government can not enter into a contract mentioned in subsection (1)(b).
- ‘(3) Subsection (2) does not prevent a local government from performing functions required of it under section 6S.
- ‘(4) A contract made under subsection (1) is an *engagement* of the private certifier or certifiers who, under the contract, are to perform private certifying functions.
- ‘(5) The person for whom private certifying functions are agreed to be performed under an engagement of a private certifier is the certifier’s *client*.

‘9Z General restrictions on private certifier entering into engagement

‘A private certifier must not enter into an engagement as a private certifier if, under the engagement, the certifier is to perform private certifying functions that, if performed, will, or are likely to, contravene section 9W or 9X.⁵⁵

Note—

See also section 9S.⁵⁶

‘10 Restriction on engagement of private certifier (class B)

- ‘(1) This section applies to any of the following persons (the *service provider*) who proposes to enter into an engagement of a private certifier for a building development application—
 - (a) a private certifier (class B);
 - (b) a private certifier employer who does not employ any private certifier (class A).
- ‘(2) The service provider must not enter into the engagement unless the service provider has disclosed in writing to the

55 Sections 9W (Offence for private certifier not to act in public interest when performing private certifying function) and 9X (Private certifier must not perform private certifying function if there is a conflict of interest)

56 Section 9S (Effect of building certifier not complying with Act if no penalty provided)

proposed client that the private certifier proposed to be engaged can not decide whether to grant or refuse a development approval for the application.

Maximum penalty—20 penalty units.

- ‘(3) If the engagement is entered into, the service provider may enter into a written agreement with any of the following persons to decide whether the development approval is to be granted or refused—
- (a) a private certifier (class A);
 - (b) a private certifier employer who employs a private certifier (class A).

‘10A Requirements for engagement of private certifier

- ‘(1) An engagement of a private certifier must be written and state the fees payable by the client to the certifier or, for an engagement of a private certifier employer, the employer.
- ‘(2) The mere making of a building development application to a private certifier does not, of itself, constitute an engagement of the certifier by the applicant.

‘10B Engagement of private certifier (class A) taken to include inspection and certification

‘If a private certifier (class A) is engaged to assess a building development application, the certifier is taken to have also been engaged to inspect and certify building work authorised by a development approval issued because of the application.

‘10C Notice of engagement to local government

‘If a private certifier is engaged by a client to perform private certifying functions for a building or building assessment work, the certifier must, within 5 business days after the engagement starts—

- (a) give notice of the engagement to the local government; and

- (b) if the owner of the building is not the client or the applicant under the relevant building development application, give the owner notice of—
 - (i) the private certifier’s name; and
 - (ii) the details, in an approved form, of the responsibilities of the private certifier performing the work.

Maximum penalty—40 penalty units.

‘10D Restriction on discontinuing engagement

- ‘(1) This section applies if—
 - (a) a party to an engagement of a private certifier may, under the engagement, discontinue it; and
 - (b) the party takes whatever action is required under the engagement to discontinue it.
- ‘(2) The discontinuance does not take effect until all other parties to the engagement have been given notice in the approved form of the discontinuance.
- ‘(3) The private certifier must, within 5 business days after the discontinuance takes effect under subsection (2), give the local government a copy of the notice.

‘10E Effect of transfer of functions for building development approval to local government or replacement private certifier

- ‘(1) This section applies if, for building work authorised by a building development approval, the engagement of a private certifier (the *original certifier*) is discontinued and—
 - (a) a replacement private certifier (the *replacement*) is engaged to inspect and certify the work; or
 - (b) if a replacement private certifier has not been engaged under paragraph (a)—a local government building

certifier for the approval (also the *replacement*) must, under section 6S⁵⁷ inspect and certify the work.

- ‘(2) The replacement is not liable for building certifying functions performed by the original certifier.
- ‘(3) The replacement may, in performing building certifying functions for the approval, accept and, without further checking, rely and act on any inspection documentation given by or for the original certifier.

‘10F Agreed fee recoverable despite valid refusal of particular actions

- ‘(1) This section applies if—
 - (a) a client engages a private certifier to perform a private certifying function and the certifier has carried out work under the engagement; and
 - (b) the certifier has refused to do any of the following for the work because the building assessment provisions or an applicable code under IDAS have not been complied with, or for another valid reason—
 - (i) approve a building development application;
 - (ii) issue a building development approval;
 - (iii) give a certificate of classification;
 - (iv) certify building work.
- ‘(2) The client must, despite the refusal, pay the private certifier the fee for the work agreed to under the engagement with the certifier.

57 Section 6S (Function to act on building development application or development approval unless private certifier (class A) engaged)

‘Division 3 Record-keeping and related requirements

‘10G Building development applications and approval documents

- ‘(1) This section applies if—
- (a) a private certifier is engaged for a building development application; and
 - (b) the building development approval applied for is granted.
- ‘(2) The private certifier must, for at least 5 years from the relevant day, keep a copy of the application and the approval documents for the application.

Maximum penalty—20 penalty units.

- ‘(3) In this section—
- relevant day* means—
- (a) for a private certifier (class A)—the latest of the following days—
 - (i) the day a final inspection certificate for the building work or a certificate of classification for the building is given;
 - (iii) if the approval for the building work lapses—the day the approval lapsed; or
 - (b) for a private certifier (class B)—the day the private certifier gave the compliance certificate for the building work.

‘10H Obligation to give inspection documentation to owner of building

- ‘(1) This section applies if the engagement of a private certifier for building work is discontinued before the giving of a final inspection certificate for the relevant building work or a certificate of classification for the relevant building.

- ‘(2) The private certifier must, within the following period, give the owner of the building a copy of the inspection documentation for inspection of the building work—
- (a) if the inspection documentation includes a certificate relied on by the private certifier—within 5 business days after the certifier accepts the certificates;
 - (b) otherwise—within 5 business days after the engagement is discontinued.

Maximum penalty—80 penalty units.

‘10I Obligation to give inspection documentation and any reminder notice to local government

- ‘(1) A private certifier must give the local government a copy of all inspection documentation prepared by or for the certifier for building work within 5 business days after the earlier of the following to happen—
- (a) the giving of a final inspection certificate for the building work or a certificate of classification for the relevant building;
 - (b) the discontinuance of the engagement of the private certifier;
 - (c) the lapsing of the building development approval.

Maximum penalty—40 penalty units.

- ‘(2) However, if the inspection documentation includes certificates relied on by the private certifier, subsection (1) does not apply until 5 business days after the certifier accepted all the certificates.
- ‘(3) If the building development approval lapses, the private certifier must, within 5 business days after the lapsing, also give the local government a copy of the relevant reminder notice given under section 8I.

Maximum penalty—40 penalty units.

‘10J Obligation to keep inspection documentation

‘A private certifier must keep all inspection documentation for building work for which the certifier is engaged for at least 5 years after the building work is completed.

Maximum penalty—20 penalty units.

‘Part 3 Licensing of building certifiers**‘Division 1 Licence levels and their roles****‘10K Levels**

‘BSA must, in exercising its power under division 2 to issue a licence to a building certifier, issue the licence at 1 of the following levels—

- (a) a building surveyor;
- (b) an assistant building surveyor;
- (c) a building surveying technician.

‘10L Role of building surveyor

‘A building surveyor may perform building certifying functions for all classes of buildings and structures.

‘10M Role of assistant building surveyor

‘An assistant building surveyor may only—

- (a) without the supervision of a building surveyor—perform building certifying functions on buildings and structures having a rise of no more than 3 storeys and a total floor area no more than 2000m²; or
- (b) under the supervision of a building surveyor—help in assessing and inspecting all classes of buildings and structures.

‘10N Role of building surveying technician

- ‘(1) A building surveying technician may only—
- (a) if employed by a local government, other than a designated local government—perform building certifying functions on buildings or structures having a rise of no more than 2 storeys and a total floor area no more than 500m²; or
 - (b) otherwise—under the supervision of a building surveyor or assistant building surveyor, help in assessing and inspecting buildings or structures having a rise of no more than 2 storeys and a total floor area no more than 500m².

- ‘(2) In this section—

designated local government means each of the following—

- (a) the city council for Brisbane, Bundaberg, Cairns, Caloundra, Gladstone, Gold Coast, Hervey Bay, Ipswich, Logan, Mackay, Maryborough, Redcliffe, Rockhampton, Thuringowa, Toowoomba or Townsville;
- (b) the shire council for Beaudesert, Burnett, Caboolture, Calliope, Cooloola, Crow’s Nest, Douglas, Livingstone, Mareeba, Maroochy, Noosa, Pine Rivers, Redland or Whitsunday.

‘Division 2 Applying for and obtaining license**‘100 Who may apply**

‘An individual may apply to BSA for a licence only if the individual holds a current accreditation issued by an accreditation standards body.

‘10P Requirements for licence application

‘The application must—

- (a) be in the approved form; and
- (b) state the level of licence applied for; and

- (c) be accompanied by each of the following—
 - (i) the application fee prescribed under a regulation;
 - (ii) the licence fee for the licence prescribed under a regulation;
 - (iii) evidence of the applicant’s identity;
 - (iv) a copy of the applicant’s certificate of accreditation from an accreditation standards body for the level of licence applied for.

‘10Q Decision on licence application

- ‘(1) Subject to section 11T,⁵⁸ BSA must consider the application and decide to—
 - (a) license the applicant at the level of licensing for which the applicant applied; or
 - (b) refuse to license the applicant.
- ‘(2) However, BSA may decide to license the applicant only if it is satisfied the applicant is a suitable person to hold a licence.
- ‘(3) BSA may impose conditions on the licence.

‘10R Steps after making decision

- ‘(1) If BSA decides to license the applicant, it must issue the licence to the applicant.
- ‘(2) If BSA decides to refuse to license the applicant or to impose conditions on any licence issue to the applicant, it must give the applicant an information notice about the decision.

‘10S Duration of licence

‘Subject to section 11A,⁵⁹ a licence remains in force for 1 year, unless it is earlier cancelled, suspended or surrendered under this Act.

58 Section 11T (BSA may seek information from applicants about suitability)

59 Section 11A (Existing licence taken to be in force while application is being considered)

‘Division 3 Private certification endorsements

‘10T Endorsements

‘Subject to section 10W, BSA may endorse on a building certifier’s licence that the certifier may—

- (a) perform building certifying functions as a private certifier (a *private certification endorsement*); and
- (b) if the licence has a private certification endorsement—perform the function under section 6P⁶⁰ of issuing building development approvals (a *development approval endorsement*).

‘10U Who may apply for endorsement

- ‘(1) A building certifier may apply for a private certification or development approval endorsement at any time.
- ‘(2) A person who has applied for a licence may, together with or after the making of the licence application, apply for a private certification or development approval endorsement on the licence if it is issued.

‘10V Requirements for endorsement application

‘The application must be in the approved form and accompanied by the fee prescribed under a regulation.

‘10W Restrictions on making endorsement

- ‘(1) A private certification endorsement may be made only if the applicant—
 - (a) has the insurance for private certification prescribed under a regulation; and
 - (b) is a building surveyor or assistant building surveyor.
- ‘(2) A development approval endorsement may be made only if the applicant has satisfactorily completed the course,

60 Section 6P (Functions of private certifier (class A))

prescribed under a regulation, about issuing building development approvals.

‘10X Notice of refusal

‘If BSA decides to refuse the application, it must give the applicant an information notice about the decision.

‘Division 4 Renewals

‘10Y Notice of expiry of licence

‘(1) BSA must, at least 20 business days before each building certifier’s licence expires, give the certifier notice of the expiry.

‘(2) The notice must state—

- (a) the day the licence will expire; and
- (b) that, if the building certifier wishes to renew the licence, the certifier must, on or before the expiry day—
 - (i) apply to renew the licence; and
 - (ii) pay the licence fee prescribed under a regulation for the period of the renewed licence; and
- (c) how to apply to renew the licence.

‘10Z Automatic expiry on failure to apply for renewal

‘(1) If a building certifier does not apply to renew the certifier’s licence on or before the day the licence expires, the licence expires at the end of the day.

‘(2) Subsection (1) applies whether or not BSA has complied with section 10Y in relation to the expiry.

‘11 Applying for renewal

‘(1) A building certifier may apply to BSA to renew the certifier’s licence.

- ‘(2) However, the application can not be made—
- (a) after the licence expires; or
 - (b) if the building certifier is, under section 100,⁶¹ not qualified to apply for a licence.
- ‘(3) The application must be in the approved form and accompanied by—
- (a) the licence fee prescribed under a regulation; and
 - (b) evidence of the applicant’s identity; and
 - (c) evidence that the applicant continues to holds accreditation from an accreditation standards body for the level of licence; and
 - (d) if the applicant’s licence has private certification endorsement and the applicant is applying to continue the endorsement—evidence that the applicant has the insurance for private certification prescribed under a regulation.

‘11A Existing licence taken to be in force while application is being considered

- ‘(1) If an application is made under section 11 to renew a licence, the licence is taken to continue in force from the day it would, apart from this section, have expired until the application is decided.
- ‘(2) Subsection (1) does not apply if the licence is earlier cancelled, suspended or surrendered under this Act.

‘11B Decision on renewal application

- ‘(1) Subject to section 11T,⁶² BSA must consider the application and decide to—

61 Section 100 (Who may apply)

62 Section 11T (BSA may seek information from applicants about suitability)

- (a) renew the licence at the level of licensing for which the applicant applied; or
 - (b) refuse to renew the licence.
- ‘(2) However, BSA may decide to renew the licence only if it is satisfied the applicant is still a suitable person to hold a licence.

‘11C Steps after making decision

- ‘(1) If BSA decides to renew the licence, it must issue the renewed licence to the applicant.
- ‘(2) If BSA refuses to renew the licence, it must give the applicant an information notice about the decision.

‘Division 5 Cancellation and suspension of, and other changes to, licences and cancellation of endorsements

‘Subdivision 1 BSA’s powers

‘11D Power to amend, cancel or suspend licence

- ‘(1) BSA may, on the ground that a building certifier is not a suitable person to hold a licence, do either of the following in relation to the certifier’s licence—
 - (a) amend it to impose or remove a condition;
 - (b) cancel or suspend it.
- ‘(2) The power under subsection (1) may be exercised at any time after BSA has complied with subdivision 2.

‘11E Power to change licence level

- ‘(1) If BSA is satisfied a building certifier no longer holds accreditation from an accreditation standards body for the level of certifier’s licence, it may do either of the following in relation to the certifier’s licence—

- (a) amend it to impose or remove a condition or change the certifier's level of licensing;
 - (b) cancel or suspend it.
- ‘(2) The power under subsection (1) may be exercised at any time after BSA has complied with subdivision 2.

‘11F Cancellation of endorsement of licence to act as private certifier

‘If BSA is satisfied a private certifier does not have the insurance for private certification prescribed under a regulation, it must—

- (a) give the certifier a show cause notice that it proposes to cancel the endorsement; and
- (b) subject to any submissions made under subdivision 2—amend the licence by cancelling the endorsement.

‘11G Notice of particular events to interstate licensing authorities and other entities

- ‘(1) This section applies if any of the following (the *event*) happens in relation to a building certifier's licence—
- (a) it is cancelled or suspended;
 - (a) it is amended under this subdivision.
- ‘(2) As soon as practicable after the happening of the event, BSA must give notice of the event to the authority in any other State or New Zealand of which it is aware the building certifier has a licence (however called) that is the same, or substantially the same, as a licence under this part.
- ‘(3) Also, BSA may give notice of the event to all or any of the following—
- (a) each accreditation standards body;
 - (b) any employer of or person who has appointed the building certifier to perform building or private certifying functions;

- (c) another entity BSA reasonably believes needs to know about the event.
- ‘(4) A notice under this section may include the information BSA considers appropriate in the circumstances.

‘Subdivision 2 Show cause notice procedure

‘11H Show cause notice

- ‘(1) If BSA believes grounds exist to act under subdivision 1, it must, before taking the action, give the relevant building certifier a notice (a *show cause notice*).
- ‘(2) The show cause notice must state each of the following—
 - (a) the proposed action;
 - (b) the grounds for taking the proposed action;
 - (c) the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is to the licence—the proposed amendment;
 - (e) if the proposed action is to suspend—the proposed suspension period;
 - (f) that the building certifier may, within a stated period (the *show cause period*), make submissions about why the proposed action should not be taken.
- ‘(3) The show cause period must end at least 20 business days after the building certifier is given the show cause notice.
- ‘(4) The proposed suspension period may be fixed by reference to the happening of a stated event.

Example—

If the ground for taking the proposed action is a failure to carry out a statutory obligation relating to a building or private certifying functions, the proposed suspension period could be until the obligation is complied with.

‘11I Submissions about show cause notice

- ‘(1) The building certifier may, within the show cause period, make submissions to BSA about the show cause notice.
- ‘(2) BSA must consider the submissions.

‘11J Decision on proposed action

- ‘(1) After considering the submissions for the show cause notice, BSA must decide whether to take the proposed action.
- ‘(2) If the proposed action is to cancel the building certifier’s licence, BSA may instead decide to suspend it for a stated period.

‘11K Notice and taking effect of decision

- ‘(1) If BSA decides not to take the proposed action, it must give the building certifier notice of the decision.
- ‘(2) If BSA decides to take the proposed action, it must give the building certifier an information notice about the decision.
- ‘(3) A decision to take the proposed action, takes effect when the information notice is given.

‘Division 6 General provisions about licences**‘11L Register of building certifiers**

- ‘(1) BSA must keep a register of building certifiers.
- ‘(2) The register may be kept in the way BSA considers appropriate, including, for example, in an electronic form.
- ‘(3) The register must contain the following particulars for each building certifier—
 - (a) their name, licence number and business contact details;
 - (b) the following information about their licence—
 - (i) its day of issue and expiry;

- (ii) any endorsements on the licence;
 - (iii) its level;
 - (iv) if conditions are imposed on the licence—the conditions;
 - (c) details of their eligibility for licensing as a building certifier;
 - (d) if, under section 40(1),⁶³ BSA decides the building certifier has engaged in unsatisfactory conduct—
 - (i) details of the decision; and
 - (ii) if the decision was that the building certifier has engaged in unsatisfactory conduct—details of the further decision required under section 40(4);
 - (e) if the Commercial and Consumer Tribunal makes an order about the building certifier—details of the order, other than any details identified in the order as details not to be included in the register.
- ‘(4) Particulars recorded under subsection (3)(d) must be removed from the register 5 years after they were recorded in the register.
- ‘(5) Particulars recorded under subsection (3)(e) must be removed from the register at the end of the period during which the order states the details are to be included in the register.

‘11M Access to register

‘BSA must—

- (a) make the register available for inspection by anyone while its office is open for business; and
- (b) give, on payment of any reasonable fee requested by it, anyone who asks for it a copy of all or part of the information held in the register; and
- (c) place, on its website, a link to the register.

⁶³ Section 40 (Decision after investigation or audit completed)

‘11N Surrendering licence

- ‘(1) A building certifier may surrender the certifier’s licence by notice to BSA.
- ‘(2) The surrender takes effect—
 - (a) on the day the notice is given to BSA; or
 - (b) if a later day of effect is stated in the notice—on the later day.
- ‘(3) The building certifier must, unless the certifier has a reasonable excuse, return the licence to BSA within 10 business days after the day the surrender takes effect.

Maximum penalty for subsection (3)—10 penalty units.

‘11O Obtaining replacement licence

- ‘(1) A building certifier may apply to BSA in the approved form for the replacement of the certifier’s licence if it has been damaged, destroyed, lost or stolen.
- ‘(2) If BSA is satisfied the licence has been damaged, destroyed, lost or stolen, BSA must—
 - (a) replace it with another licence; and
 - (b) give the applicant the replacement licence.

‘11P Obligation of building certifier to give notice of change in particular circumstances

- ‘(1) This section applies if a building certifier—
 - (a) changes address; or
 - (b) holds, in another State or New Zealand, a licence (however called) that is the same, or substantially the same, as a licence under this part and the licence is cancelled or suspended; or
 - (c) is, after the issuing of the building certifier’s licence under this part, convicted of a relevant offence.
- ‘(2) The building certifier must give BSA notice of the change, cancellation, suspension or conviction within 20 business days after it happened.

Maximum penalty—

- (a) if the offence relates to subsection (1)(a)—1 penalty unit; or
- (b) if the offence relates to subsection (1)(b) or (c)—40 penalty units.

‘Division 7 Miscellaneous provisions

‘11Q Accreditation standards bodies

- ‘(1) An *accreditation standards body* is—
 - (a) AIBS; and
 - (b) any other entity prescribed under a regulation to be an accreditation standards body.
- ‘(2) An entity may be prescribed under subsection (1)(b) only if it has identifiable competence and expertise in issuing accreditation to building certifiers.

‘11R Function of accreditation standards body

- ‘(1) The function of an accreditation standards body is to issue accreditation to individuals proposing to apply to be building certifiers.
- ‘(2) For subsection (1), an accreditation standards body must—
 - (a) set educational and experiential standards for each level of licensing as a building certifier; and
 - (b) ensure the standards comply with the national accreditation framework for building certifiers; and
 - (c) establish a professional development scheme approved by the chief executive.
- ‘(3) In this section—

national accreditation framework means the framework, as amended from time to time, approved by the body known as the Australian Building Codes Board.

‘11S Criteria for deciding suitability of applicants and licensees

- ‘(1) This section applies if, under this part, BSA is considering whether an applicant for, or for the renewal of, a licence or a licence holder is a suitable person to hold a licence.
- ‘(2) BSA must consider each of the following—
- (a) whether the applicant or holder has been convicted of a relevant offence;
 - (b) whether the applicant or holder has previously been refused a licence, or has had a licence suspended or cancelled, under this Act or another relevant Act;
 - (c) whether the applicant or holder has, under another relevant Act, been disqualified from holding a licence under that Act;
 - (d) dealings in which the applicant or holder has been involved and the standard of honesty and integrity demonstrated in the dealings;
 - (e) any failure by the applicant or holder to carry out statutory obligations relating to building or private certifying functions, and the reasons for the failure;
 - (f) whether the applicant or holder holds a current accreditation issued by an accreditation standards body;
 - (g) all other relevant circumstances.

‘11T BSA may seek information from applicants about suitability

- ‘(1) This section applies to an application for, or to renew, a licence.
- ‘(2) BSA may, by notice to the applicant, require the applicant to give it, within a stated reasonable period, documents or information BSA reasonably considers is needed to establish that the applicant is a suitable person to hold a licence.
- ‘(3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

‘11U Refund of particular licence fees accompanying applications

‘If an application for, or to renew, a licence is refused or withdrawn, BSA must refund the applicant the licence fee that accompanied the application.

‘11V Appeals to Commercial and Consumer Tribunal about decisions under pt 3

- ‘(1) This section applies if a person is given, or is entitled to be given, an information notice about a decision of BSA under this part.
- ‘(2) The person may appeal against the decision to the Commercial and Consumer Tribunal.
- ‘(3) The appeal must be started within 20 business days after the latest of the following—
 - (a) if the applicant has been given an information notice about the decision—the day the notice is given;
 - (b) if paragraph (a) does not apply—the day the applicant became aware of the decision.’.

6 Replacement of pt 2A, hdg (Fire safety for budget accommodation buildings)

Part 2A, heading—

omit, insert—

‘Chapter 7 Fire safety for budget accommodation buildings

Note—

Chapters 2 and 3 contain special provisions for obtaining building development approval for budget accommodation buildings. See sections 5V, 6N(4), 7 and 7D.⁶⁴.

64 Sections 5V (Application for building work for budget accommodation building), 6N (Concurrence agencies may carry out building assessment work within their jurisdiction), 7 (Discretion for building development applications for particular budget accommodation buildings) and 7D (Restriction on granting building development application for budget accommodation building)

7 Amendment of pt 2A, div 1 hdg (Interpretation)

Part 2A, division 1 heading, ‘Division 1’—

omit, insert—

‘Part 1’.

8 Amendment of s 12A (Definitions for pt 2A)

(1) Section 12A, heading, ‘pt 2A’—

omit, insert—

‘ch 7’.

(2) Section 12A, ‘part’—

omit, insert—

‘chapter’.

(3) Section 12A, definitions *BCA* and *IPA*—

omit.

(4) Section 12A, definition *fire safety management plan*—

relocate to schedule 2, as renumbered under section 70(1).

9 Amendment of pt 2A, div 2 hdg (Fire safety standard)

Part 2A, division 2 heading, ‘Division 2’—

omit, insert—

‘Part 2’.

10 Amendment of s 12C (Fire safety standard)

(1) Section 12C(1), before ‘for ensuring’—

omit, insert—

‘(1) The *fire safety standard* is—

(a) the QDC, part 14;⁶⁵ and

(b) any other standard prescribed under a regulation’.

65 QDC, part 14 (Fire safety in budget accommodation buildings)

- (2) Section 12C(2), ‘the fire safety standard’—
omit, insert—
‘a prescribed standard’.

11 Omission of ss 12E and 12F

Sections 12E and 12F—
omit.

12 Amendment of pt 2A, div 3, hdg (Budget accommodation buildings built, approved or applied for, before 1 January 1992)

Part 2A, division 3, heading, ‘Division 3’—
omit, insert—
‘**Part 3**’.

13 Amendment of s 12G (Application of div 3)

- (1) Section 12G, heading ‘div 3’—
omit, insert—
‘**pt 3**’.
- (2) Section 12G, ‘division’—
omit, insert—
‘part’.

14 Amendment of s 12I (Approval of longer period for conformity with fire safety standard)

- (1) Section 12I(4)(b), ‘written notice of’—
omit, insert—
‘an information notice about’.
- (2) Section 12I(5)—
omit.

- (3) Section 12I(6)—
renumber as section 12I(5)
- (4) Section 12I(5), as renumbered, ‘subsection (6)’—
omit, insert—
‘subsection (5)’.
- (5) Section 12I(5), as renumbered—
insert—
Note—

There is a right of appeal to a building and development tribunal against the decision on the application or a failure to decide the application. See IPA, section 4.2.12A.⁶⁶.

15 Amendment of s 12J (Advice as to conformity with fire safety standard)

- (1) Section 12J(2)(b) ‘written notice’—
omit, insert—
‘notice’.
- (2) Section 12J(3), from ‘must state’—
omit, insert—
‘must be, or include, an information notice about the decision.’.

16 Omission of s 12K (Appeals about conformity with fire safety standard)

Section 12K—
omit.

17 Amendment of s 12L (Stay of operation of local government decision)

Section 12L, ‘section 12K(1)(a)’—

⁶⁶ IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

omit, insert—
‘section 12J(3)’.

18 Amendment of s 12M (Local government decisions)

Section 12M(1), ‘written notice’—
omit, insert—
‘notice’.

19 Amendment of pt 2A, div 4, hdg (All budget accommodation buildings)

Part 2A, division 4, heading, ‘Division 4’—
omit, insert—
‘**Part 4**’.

20 Amendment of s 12N (Application of div 4)

- (1) Section 12N, heading ‘div 4’—
omit, insert—
‘**pt 4**’.
- (2) Section 12N, ‘division’—
omit, insert—
‘part’.

21 Amendment of s 12O (Obligation about fire safety management plan)

Section 12O(1)(a), ‘, under section 12Q(2),’—
omit.

22 Omission of s 12Q (Development approval for building work for budget accommodation buildings)

Section 12Q—
omit.

23 Amendment of pt 2A, div 5, hdg (Miscellaneous)

Part 2A, division 5, heading, ‘Division 5’—

omit, insert—

‘Part 5’.

24 Insertion of new ss 12SA and 12SB

Chapter 7, part 5, as renumbered under section 23, after section 12S—

insert—

‘12SA Local government’s fire safety record-keeping obligations

‘A local government must keep the following records until the building to which the record relates is demolished or removed—

- (a) for each application made to the local government under section 12I—all documents relating to the application;
- (b) for each inspection made by the local government under section 12R—a record of the inspection.⁶⁷

‘12SB Owner’s fire safety record-keeping obligation

- ‘(1) The owner of a budget accommodation building to which section 12R⁶⁸ applies must, as required under this section, keep complete and accurate records for the building showing the owner is complying with the fire safety standard.

Maximum penalty—20 penalty units.

- ‘(2) The records must include—

⁶⁷ Sections 12I (Approval of longer period for conformity with fire safety standard) and 12R (Random inspection of buildings for which development approval is given)

⁶⁸ Section 12R (Random inspection of buildings for which development approval is given)

- (a) if the building work for the building involved an alternative solution, within the meaning of the BCA⁶⁹—the records required under the alternative solution; and
 - (b) if the local government imposes conditions on an approval given under section 12I(3)⁷⁰—details of how the building complies with the conditions.
- ‘(3) The records must be kept until the building is demolished or removed, unless the owner has a reasonable excuse.’.

25 Replacement of pt 3, hdg (Swimming pool fencing)

Part 3, heading—

omit, insert—

‘Chapter 8 Swimming pool fencing

Note—

For appeals in relation to this chapter, see IPA, section 4.2.12A.⁷¹.

26 Amendment of s 12T (Definitions for pt 3)

- (1) Section 12T, heading, ‘pt 3’—

omit, insert—

‘ch 8’.

- (2) Section 12T, ‘part’—

omit, insert—

‘chapter’.

69 BCA, part A1 (Interpretation), section A1.1 (Definitions)—

Alternative Solution means a *Building Solution* which complies with the *Performance Requirements* other than by reason of satisfying the *Deemed-to-Satisfy Provisions*.

70 Section 12I (Approval of longer period for conformity with fire safety standard)

71 IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

27 Omission of s 13 (Local law for fencing of swimming pools)

Section 13—

omit.

27A Amendment of s 16B (Constructing outdoor swimming pool)

Section 16B(1)(c)—

omit, insert—

‘(c) the person—

(i) is, or is to become, the pool owner of the pool (the *owner*); or

(ii) has contracted with the owner to carry out the construction of the pool.’.

28 Amendment of s 16D (Steps to be taken after application decided)

(1) Section 16D(1), ‘written notice of’—

omit, insert—

‘an information notice about’.

(2) Section 16D(2)—

omit.

(3) Section 16D(3) to (5)—

renumber as section 16D(2) to (4).

(4) Section 16D(4), as renumbered, ‘subsection (5)’—

omit, insert—

‘subsection (4)’.

(5) Section 16D(4), as renumbered—

insert—

Note—

There is a right of appeal to a building and development tribunal against the decision on the application or a failure to decide the application. See IPA, section 4.2.12A.⁷².

29 Amendment of s 16E (Revocation of exemption)

- (1) Section 16E(1)(b)(ii), ‘section 16D(4)’—

omit, insert—

‘section 16D(3)’.

- (2) Section 16E(3), ‘written notice’—

omit, insert—

‘notice’.

- (3) Section 16E(4), ‘must specify’—

omit, insert—

‘must be, or be accompanied by, an information notice about the decision to give the notice and state’.

30 Insertion of new s 16F

After section 16E—

insert—

‘16F Register of exemptions

‘The local government must—

- (a) keep a register of exemptions it grants under this chapter that are still in force; and
- (b) make the register available for inspection and purchase as if it were a document that, under IPA, chapter 5, part 7,⁷³ the local government must make available for inspection and purchase.’.

⁷² IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

⁷³ IPA, chapter 5, part 7 (Public access to planning and development information)

31 Amendment of s 17 (Advice as to compliance)

(1) Section 17(2)(b), ‘written notice of’—

omit, insert—

‘an information notice about’.

(2) Section 17(3), before ‘advise’—

omit, insert—

‘(3) The information notice must also’.

32 Omission of s 20 (Appeals about swimming pool fencing)

Section 20—

omit.

33 Replacement of pt 4, hdg (Show cause and enforcement notices)

Part 4, heading—

omit, insert—

‘Chapter 9 Show cause and enforcement notices

Note—

For who may decide whether enforcement action ought to be taken for a building development approval, see sections 5E and 6P⁷⁴ and IPA, chapter 4, part 3, divisions 2 and 3.⁷⁵.

34 Amendment of s 22 (Enforcement notices)

(1) Section 22(3)—

omit.

(2) Section 22(4) and (5), ‘or private certifier’—

omit.

74 Sections 5E (What is a *building certifying function*) and 6P (Functions of private certifier (class A))

75 IPA, chapter 4, part 3, divisions 2 (Show cause notices) and 3 (Enforcement notices)

- (3) Section 22(6), ‘the *Integrated Planning Act 1997*’—
omit, insert—
‘IPA’.
- (4) Section 22(4) to (6)—
renumber as section 22(3) to (5).

35 Amendment of s 23 (Specific requirements of enforcement notices)

Section 23(1)(a), ‘under the *Integrated Planning Act 1997*’—
omit.

36 Amendment of s 24 (Appeals against enforcement notices)

Section 24(1), ‘the *Integrated Planning Act 1997*’—
omit, insert—
‘IPA’.

37 Amendment of s 25 (Register of notices given)

Section 25(1), ‘open to inspection by the public’—
omit.

38 Omission of pt 5 (Accreditation and provisions about building certifiers)

Part 5—
omit.

39 Relocation and renumbering of pt 5A (Complaints, investigations and disciplinary proceedings relating to building certifiers)

Part 5A—
relocate to chapter 6, as inserted under this Act, and *renumber* as chapter 6, part 4.

40 Amendment of s 34 (Building certifier must be advised of complaint)

Section 34(1), ‘written notice’—

omit, insert—

‘notice’.

41 Amendment of s 34A (BSA may recommend mediation to resolve complaint)

Section 34A(1), ‘written notice’—

omit, insert—

‘notice’.

42 Amendment of s 34B (Mediation process)

Section 34B(2)(d), ‘written notice’—

omit, insert—

‘notice’.

43 Amendment of s 36 (BSA may require documents to be produced)

Section 36(1), ‘written notice’—

omit, insert—

‘notice’.

44 Insertion of new ss 36A and 36B

After section 36—

insert—

‘36A Issue of identity card to auditor

‘(1) BSA must issue an identity card to each auditor.

‘(2) The identity card must—

(a) contain a recent photo of the auditor; and

(b) contain a copy of the auditor’s signature; and

- (c) identify the person as an approved auditor under this Act; and
 - (d) state an expiry date for the card.
- ‘(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.’

‘36B Production or display of identity card

- ‘(1) In exercising a power under this Act in relation to another person, an auditor must—
- (a) produce his or her identity card for the person’s inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- ‘(2) However, if it is not practicable to comply with subsection (1), the auditor must produce the identity card for the person’s inspection at the first reasonable opportunity.’.

45 Amendment of s 38 (Power to enter and inspect building)

- (1) Section 38, heading, ‘building’—
omit, insert—
‘building site relating to complaint or audit’.
- (2) Section 38(1), ‘building’—
omit, insert—
‘building site to which the complaint or audit relates’.
- (3) Section 38(2)(a), (3), (6) and (7)(a), ‘building’—
omit, insert—
‘building site’.
- (4) Section 38(2)—
insert—
‘(c) done when building work is being carried out at the building site.’.
- (5) Section 38(3) to (7)—

renumber as section 38(5) to (9).

(6) Section 38—

insert—

- ‘(3) However, an entry and inspection carried out only under subsection (2)(c) must not include a part of a building in which a person resides.
- ‘(4) For the purpose of asking the person in control of the building site for consent to enter, the auditor may, without the person’s consent or a warrant enter the site to the extent that is reasonable to contact the person.’.

46 Insertion of new s 38A

After section 38—

insert—

‘38A Procedure before entry

- ‘(1) This section applies if an auditor is, under section 38, intending to enter a building site, other than to the extent mentioned in section 38(4).
- ‘(2) Before entering the building site, the auditor must do or make a reasonable attempt to do each of the following things—
- (a) identify himself or herself to a person present at the building site who is an occupier of the building site, in the way stated in section 36B;
 - (b) if the entry is being made under a warrant—give the person a copy of the warrant;
 - (c) tell the person the auditor is, under section 38, permitted to enter the building site;
 - (d) give the person an opportunity to allow the auditor immediate entry to the building site without using force.
- ‘(3) However, the auditor need not comply with subsection (2) if the auditor believes on reasonable grounds that complying with the subsection may frustrate or otherwise prevent the investigation of the complaint or the conduct of the audit.’.

47 Amendment of s 40 (Decision after investigation or audit completed)

- (1) Section 40(2), ‘written notice of the decision’—
omit, insert—
‘an information notice about the decision’.
- (2) Section 40(3)—
omit, insert—
- ‘(3) If BSA is aware that the building certifier is employed or has been appointed by someone else to perform building or private certifying functions, it must give the employer or appointor a copy of the notice.’.
- (3) Section 40(5)(a), ‘written notice of’—
omit, insert—
‘an information notice about’.
- (4) Section 40(7)—
omit.
- (5) Section 40(8) to (10)—
renumber as section 40(7) to (9).
- (6) Section 40(9), as renumbered—
insert—
‘*assessable development* see IPA, schedule 10.’.

48 Amendment of s 41B (Representations and decision)

- Section 41B(3), ‘written notice’—
omit, insert—
‘notice’.

49 Amendment of pt 6, hdg (General provisions)

- Part 6, heading, ‘Part 6’—
omit, insert—
‘**Chapter 10**’.

50 Omission of s 47 (Giving security in certain cases)

Section 47—

omit.

51 Amendment of s 48 (Information to be supplied by the State)

Section 48, ‘the *Integrated Planning Act 1997*’—

omit, insert—

‘IPA’.

52 Omission of s 49 (Owner liable for offences under Standard Building Regulation)

Section 49—

omit.

53 Amendment of s 50 (Prosecution of offences)

(1) Section 50(1), from ‘(including’ to ‘area)’—

omit.

(2) Section 50(2)—

omit, insert—

‘(2) The person who may, for an offence against this Act, make a complaint is—

(a) for an offence against chapter 6—the general manager of BSA; or

(b) for another offence—a local government or a person authorised by a local government.’.

(3) Section 50(4)(b)(i), ‘part 5 or 5A’—

omit, insert—

‘chapter 6’.

54 Insertion of new ss 51A to 51C

‘After section 51—

insert—

‘51A Guidelines

‘The chief executive may make guidelines for matters within the scope of this Act to help compliance with this Act.

‘51B Access to guidelines

‘The chief executive must make any guidelines under section 12D or 51A available for inspection and purchase as if they were a document that, under IPA, chapter 5, part 7,⁷⁶ the chief executive must make available for inspection and purchase.

‘51C Evidentiary aids

- ‘(1) This section applies to a proceeding under, or in relation to, this Act or the *Queensland Building Services Authority Act 1991*.
- ‘(2) A certificate purporting to be signed by the general manager of BSA stating any of the following matters is evidence of the matter—
- (a) a stated document is a copy of, or an extract from or part of—
 - (i) a licence; or
 - (ii) the register; or
 - (iii) the BCA; or
 - (iv) the QDC; or
 - (v) another document kept or made under this Act;
 - (b) an edition of the BCA was the current edition of the BCA at a stated time or during a stated period;
 - (c) a particular version of the QDC was in force at a stated time or during a stated period;

⁷⁶ IPA, chapter 5, part 7 (Public access to planning and development information)

- (d) a particular part of the QDC was in force at a stated time or during a stated period;
- (e) on a stated day, or during a stated period, a licence—
 - (i) was, or was not in force; or
 - (ii) was, or was not, subject to a stated condition; or
 - (iii) was, or was not, cancelled or suspended.’.

55 Amendment of s 52 (Regulation-making power)

- (1) Section 52(2)(a) to (c)—
renumber as section 52(2)(e) to (h).
- (2) Section 52(2)—
insert—
 - ‘(a) building work; and
 - (b) the occupation of buildings; and
 - (c) the performance of building certifying functions and private certifying functions; and
 - (d) the licensing of building certifiers; and’.

56 Omission of s 53 (Day when Standard Building Regulation was made for Statutory Instruments Act 1992)

Section 53—
omit.

57 Amendment of pt 7, hdg (Savings and transitional provisions)

Part 7, heading, ‘Part 7’—
omit, insert—
‘Chapter 11’.

58 Amendment of pt 7, div 1, hdg (Transitional provision for Local Government Act 1993)

Part 7, division 1, heading, ‘Division 1’—

omit, insert—

‘Part 1’.

59 Amendment of pt 7, div 2, hdg (Transitional provisions for Building and Integrated Planning Amendment Act 1998)

Part 7, division 2, heading, ‘Division 2’—

omit, insert—

‘Part 2’.

60 Amendment of s 55 (References to Standard Building Law etc.)

Section 55, from ‘or the Standard Building Law’—

omit, insert—

‘, Standard Building Law or the repealed *Standard Building Regulation 1993* is a reference to this Act.’.

61 Amendment of s 56 (Existing referees)

Section 56, ‘the *Integrated Planning Act 1997*’—

omit, insert—

‘IPA’.

62 Amendment of s 57 (Existing registrar)

Section 57, ‘the *Integrated Planning Act 1997*’—

omit, insert—

‘IPA’.

63 Amendment of s 58 (Lawfully constructed buildings and structures protected)

Section 58, from ‘the Standard Building Regulation’ to ‘altered or removed’—

omit, insert—

‘it can not be altered or removed under this Act’.

64 Amendment of pt 7, div 3, hdg (Transitional provisions for Building Amendment Act 2003)

Part 7, division 3, heading, ‘Division 3’—

omit, insert—

‘Part 3’.

65 Amendment of s 58A (Definitions for div 3)

(1) Section 58A, ‘div 3’—

omit, insert—

‘pt 3’.

(2) Section 58A, ‘division’—

omit, insert—

‘part’.

66 Amendment of pt 8, hdg (Transitional provisions for Plumbing and Drainage Act 2002)

Part 8, heading, ‘Part 8’—

omit, insert—

‘Part 4’.

67 Amendment of s 60 (Definitions for pt 8)

Section 60, ‘pt 8’—

omit, insert—

‘pt 4’.

68 Amendment of s 61 (Swimming pool fences for existing tourist resort complexes exempted)

- (1) Section 61(1)(a), ‘is specified under a regulation’—

omit, insert—

‘was, under section 4 and schedule 2 of the repealed *Building Regulation 2003*, specified for section 13(3)(a) as in force immediately before the commencement’.

- (2) Section 61(2), from ‘continues’—

omit, insert—

‘is not land prescribed under a regulation as land to which this subsection is no longer to apply.’.

- (3) Section 61—

insert—

- ‘(3) In this section—

tourist resort complex means a complex that operates as a single integrated facility providing all, or substantially all, the recreational and personal needs of guests resident at the complex and visitors at the complex.’.

69 Insertion of new ch 11, pt 5 and schedule 1

After section 65—

*insert—***‘Part 5 Transitional provisions for Building and Other Legislation Amendment Act 2006****‘66 Undecided building development applications**

‘A building development application must be decided as if the *Building and Other Legislation Amendment Act 2006* had not been enacted if—

- (a) the application is a properly made application; and

- (b) immediately before the commencement of this section the application had not been decided.

‘66AA Exclusion of reminder notice requirement for existing building development approvals

‘Section 8I does not apply to a building development approval in force immediately before the commencement of this section.

‘66A Consequential amendments to the QDC

‘Section 5H(3) does not apply to an amendment to the QDC under section 5H(2) if the amendment is consequential to the *Building and Other Legislation Amendment Act 2006* or the repeal of the *Standard Building Regulation 1993*.

Examples—

amendments to the QDC to omit redundant references to the repealed regulation or replace references to provisions of the regulation with provisions of the Act that correspond, or substantially correspond, to them

‘67 Consequential amendments to code of conduct

‘Section 9P(3) does not apply to an amendment of the code of conduct if the amendment is consequential to the *Building and Other Legislation Amendment Act 2006* or the repeal of the *Standard Building Regulation 1993*.

Examples—

amendments to the code to omit redundant references to the repealed regulation or replace references to provisions of the regulation with provisions of the Act that correspond, or substantially correspond, to them

‘68 Local government building surveying technicians

‘(1) This section applies if—

- (a) a building surveying technician was, immediately before 21 October 2003, employed by a local government as a building certifier; and

- (b) the local government is a designated local government under section 10N.
- ‘(2) Despite section 10N(1)(a),⁷⁷ the building surveying technician may, until 20 October 2010, perform building certifying functions on the buildings or structures mentioned in that paragraph.

‘69 **Amendment to renumber**

- ‘(1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.⁷⁸
- ‘(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a **relevant provision**) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the **uncommenced provision**), with the following intent for the relevant provision—
 - (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—
 - (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
 - (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);
 - (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.
- ‘(3) Each reference in this Act, and each of the following references in another Act to a provision of this Act renumbered under subsection (1), is amended, when the

77 Section 10N (Role of building surveying technician)

78 *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions)

renumbering happens, by omitting the reference to the previous number and inserting the new number—

- (a) the *Fire and Rescue Service Act 1990*, sections 104FB and 104FH and schedule 6, definitions *budget accommodation building* and *Fire Safety Standard*;
 - (b) the *Integrated Planning Act 1997*, section 5.7.2 and schedule 10, definition *building assessment provisions*;
 - (c) the *Local Government Act 1993*, sections 761, 807 and 1082;
 - (d) the *Public Health (Infection Control for Personal Appearance Services) Act 2003*, schedule 2, definition *Queensland Development Code*;
 - (e) the *Queensland Building Services Authority Act 1991*, schedule 2, definition *Building Code of Australia*;
 - (f) the *Residential Services (Accreditation) Act 2002*, schedule 2, definition *budget accommodation building*.
- ‘(4) This section does not limit the operation of the *Acts Interpretation Act 1954*, section 14H,⁷⁹ including, for example, the operation of that Act in relation to a provision that is not mentioned in subsection (3).
- ‘(5) This section expires on the day after it commences.
- ‘(6) This section does not limit the *Reprints Act 1992*.
- ‘(7) In this section—
- amending Act*** means an Act that amends this Act.

⁷⁹ *Acts Interpretation Act 1954*, section 14H (References taken to be included in reference to law)

‘Schedule 1 The QDC as at the commencement of s 5H

section 5H(1)

Part or aspect	Date published by department
1—Workplaces	23 August 2002
2—Workplaces involving spray painting	23 August 2002
3—Detention centres	23 August 2002
4—Retail meat premises	23 August 2002
7—Private health facilities	23 August 2002
11—Design and siting standard for single detached housing on lots under 450m ² , but only— (a) the words under the heading ‘application’; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c).	1 March 2006
12—Design and siting standard for single detached housing on lots 450m ² and over, but only— (a) the words under the heading ‘application’; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c).	1 March 2006
14—Fire safety in budget accommodation buildings	22 August 2005
15—Higher risk personal appearance services	1 July 2004
20—Residential services building standard	23 August 2002

Part or aspect	Date published by department
21—Pastoral Workers' Accommodation	1 July 2003
22—Child care centres	23 November 2005
25—Rainwater tanks	2 August 2006
28—Tents	2 April 2004
29—Sustainable buildings	1 March 2006
31—Floating buildings	2 August 2006'.

70 Amendment of schedule (Dictionary)

- (1) Schedule, words before 'accreditation standards body', first mention—

omit, insert—

'Schedule 2 Dictionary

section 4'.

- (2) Schedule, definitions *accreditation standards body, assessment manager, building, building certifier, building certifying function, Building Code of Australia, building work, code of conduct, complaint, former building certifier, local government, national accreditation framework, private certifier, register, show cause notice, show cause period, Standard Building Regulation* and *tourist resort complex—*

omit.

- (3) Schedule—

insert—

'*accreditation standards body* see section 11Q(1).

advice agency means an advice agency under IPA.

AIBS means the Australian Institute of Building Surveyors.

allotment means a separate, distinct parcel of land on which a building is to be built, or is built.

alterations, to an existing building or structure, includes additions to the building or structure.

alternative solution means a material, system, method of building or other thing, other than the following, intended to be used by a person to comply with relevant performance requirements—

- (a) if the relevant performance requirements are under the BCA—a building solution under the BCA that complies with the deemed-to-satisfy provisions under the BCA for the performance requirements;
- (b) if the relevant performance requirements are under the QDC—an acceptable solution under the QDC for the performance requirements.

another relevant Act means any of the following—

- (a) IPA;
- (b) *Queensland Building Services Authority Act 1991*;
- (c) *Building and Construction Industry (Portable Long Service Leave) Act 1991*;
- (d) a law of another State or New Zealand that provides for the same matter as this Act or a provision of this Act.

appropriately licensed for—

- (a) a building certifying function—means licensed under chapter 6, part 3, division 1 at a level that allows the licensee to carry out that function; or
- (b) a private certifying function—means licensed as mentioned in paragraph (a) and endorsed under chapter 6, part 3, division 3, in a way that allows the licensee to carry out that function.

approval documents, for a building development application, means each of the following—

- (a) the decision notice or negotiated decision notice for the application;
- (b) a copy of the plans, drawings and specifications and other documents and information lodged by the applicant, stamped approved or otherwise endorsed by the assessment manager;
- (c) a list of required fire safety installations and required special fire services applying to the building work;

- (d) certificates relied on to decide the application;
- (e) a list, in the approved form, of any of the following information relied on to decide the application—
 - (i) the physical characteristics and location of infrastructure related to the application;
 - (ii) local government easements, encumbrances or estates or interests in land likely to be relevant to the application;
 - (iii) site characteristic information likely to affect the assessment of the application;

Examples—

- design levels of proposed road or footway works
 - design or location of stormwater connections
 - design or location of vehicle crossings
 - details of any heritage listed buildings
 - discharge of swimming pool backwash water
 - flood level information
 - limitations on driveway gradients
 - limitations on the capacity of sewerage, stormwater and water supply services
 - location of any erosion control districts
 - location of contaminated land
 - location of land-slip areas
 - location of mine subsidence areas
- (f) if the application relates to building work that uses an alternative solution—a notice of reasons for any approval.

assessment manager see section 5F.

assistant building surveyor means a building certifier who, under section 10K, is licensed as an assistant building surveyor.

BCA see section 5G.

BCA classification, for a building, means its classification under BCA.

Note—

For the classifications under the BCA, see BCA, part A3.

BCA classification change see section 8W.

budget accommodation building see section 12B.

building—

- 1 A *building* is a fixed structure that is wholly or partly enclosed by walls and is roofed.
- 2 The term includes a floating building and any part of a building.

building assessment provisions see section 5Y(1).

building assessment work see section 5B.

building certifier see section 5C.

building certifying function see section 5E.

Building Code of Australia see section 5G.

building development application see section 5A.

building development approval means a development approval to the extent it is for building work.

building site means a place where building work has been, is being, or is about to be, carried out.

building surveying technician means a building certifier who, under section 10K, is licensed as a building surveying technician.

building surveyor means a building certifier who, under section 10K, is licensed as a building surveyor.

building work see section 5.

certificate of classification—

- 1 a ***certificate of classification***, for a building or structure, is a certificate about its BCA classification, given under chapter 5, that, under section 8T, is still in force.
- 2 The term includes an interim certificate of classification given under section 8R.

certificate requirements see section 8P(2).

certify, for building work, means certifying, under this Act, that the work complies with the building development approval.

class, for a building or structure, means its particular BCA classification.

client, of a private certifier, see section 9Y(5).

code of conduct see section 9P(1).

complaint, for chapter 6, means a complaint made under chapter 6, part 4 about a building certifier or former building certifier.

compliance certificate see section 5E(b).

complies, with the BCA or QDC, see section 5I.

concurrency agency means a concurrency agency under IPA.

condition time, for chapter 4, part 7, division 2, see section 8H(1).

convicted, of a relevant offence—

1 *Convicted*, of a relevant offence, is a conviction, other than a spent conviction, for an offence—

- (a) under this Act or another relevant Act; or
- (b) involving fraud or dishonesty; or
- (c) against a law of another State if the act or omission that constitutes the offence would, if it happens in Queensland, be an offence under this Act or another relevant Act; or
- (d) committed anywhere in Australia before this section commenced that, apart from the non-commencement of this section, would have been an offence mentioned in paragraph (a) or (b).

2 For paragraph 1—

- (a) a conviction includes a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded; and
- (b) a spent conviction is a conviction—

- (i) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (i) that is not revived as prescribed by section 11 of that Act.

decision notice, for a development application, means a decision notice under IPA, section 3.5.15.

demolition/removal completion condition see section 7L(4).

development approval endorsement see section 10T(b).

enforcement action means the giving, under chapter 9, of a show cause notice and an enforcement notice and taking action under IPA, chapter 4 part 3, divisions 2 and 3.⁸⁰

engagement, of a private certifier, see section 9Y(4).

final inspection certificate, for building work, see section 5E(d)(ii).

fire safety installation—

1 A **fire safety installation**, for a building or structure, means any of the following items for the building or structure—

- (a) structural features—
 - access panels through fire-rated construction
 - fire control centres
 - fire curtains
 - fire dampers
 - fire shutters and fire doors
 - fire windows
 - penetrations through fire-rated construction
 - structural fire protection
 - systems required to have a fire-resistance level

80 IPA, chapter 4, part 3 (Development offences, notices and orders)

- (b) fire protection systems—
 - air-handling systems
 - fire detection and alarm systems
 - smoke and heat venting systems
 - smoke exhaust systems
 - special automatic fire suppression systems (including foam, deluge and gas flooding systems)
 - sprinklers (including wall-wetting sprinklers)
 - stairwell pressurisation systems
- (c) fire fighting equipment—
 - fire extinguishers (portable)
 - fire hose reels
 - fire hydrants (including hydrant boosters)
 - fire mains
- (d) occupant safety features—
 - emergency lifts
 - emergency lighting
 - emergency power supply
 - emergency warning and intercommunication systems
 - exit door hardware
 - exit signs
 - fire doors
 - smoke proof doors
 - solid core doors
- (e) other features—
 - services provided under conditions imposed under section 7T

- services required under BCA, clause E1.10
 - vehicular access for large isolated buildings.
- 2 However, the term does not include interconnected alarms in budget accommodation buildings to which chapter 7, part 3 applies.

fire safety standard see section 12C(1).

fire safety system, for chapter 7, see section 12A.

floor area, for a building, means the gross area of all floors in the building measured over the enclosing walls other than the area of a verandah, roofed terrace, patio, garage or carport in or attached to the building.

former building certifier means an individual who—

- (a) was a building certifier when a building certifying function, the subject of a complaint, was performed; but
- (b) is not licensed when—
 - (i) the complaint, or the decision taken about the complaint under section 40(1), is made; or
 - (ii) the Commercial and Consumer Tribunal makes an order under section 45A.

IDAS means the system detailed in IPA, chapter 3, for integrating State and local government assessment and approval processes for development.

imposed condition see section 7J(4).

information notice, about a decision, means a notice stating—

- (a) the decision, and the reasons for it; and
- (b) all rights of appeal against the decision under this Act or IPA; and
- (c) how the rights are to be exercised.

inspection documentation, for inspection of building work, means the following documents given for the building work—

- (a) a compliance certificate;

- (b) a notice, given to the builder for the work by or for the building certifier about an inspection of the work;
- (c) a certificate about an inspection under this Act;
- (d) a final inspection certificate;
- (e) a certificate of classification;
- (f) a certificate relating to the inspection of the building work relied on by the relevant building certifier.

IPA means the *Integrated Planning Act 1997*.

IPA Regulation means the *Integrated Planning Regulation 1998*.

licence means a licence as a building certifier, issued under chapter 6, part 3.

licensed builder means a licensed builder under the *Queensland Building Services Authority Act 1991*.

local government building certifier for—

- (a) a building—means a building certifier appointed or employed by the local government for the building; or
- (b) a building development application or development approval—means a building certifier appointed or employed by the local government for the application or approval.

negotiated decision notice see IPA, section 3.5.17(2).⁸¹

notice means a written notice.

performance requirements means any of the following—

- (a) the performance requirements under the BCA;
- (b) the performance criteria under the QDC;
- (c) a requirement for the assessment of building work for which a discretion may need to be exercised under this Act.

planning scheme see IPA, section 2.1.1.

⁸¹ IPA, section 3.5.17 (Changing conditions and other matters during the applicant's appeal period)

private certification endorsement see section 10T(a).

private certifier see section 5D(1).

private certifier (class A) see section 5D(2).

private certifier (class B) see section 5D(3).

private certifier employer see section 9Y(1)(b).

private certifying functions see section 6O(3).

properly made application, for a building development application, means a building development application that—

- (a) is a properly made development application under IPA; and
- (b) complies with any relevant additional requirements under chapter 3 for building development applications.

QDC see section 5H.

QDC boundary clearance and site cover provisions means the aspects, mentioned in schedule 1, of parts 11 and 12 of the document called ‘Queensland Development Code’, published by the department.

QFRS means the Queensland Fire and Rescue Service established under the *Fire and Rescue Service Act 1990*.

Queensland Development Code see section 5H.

referral agency means a referral agency under IPA.

register, when used as a noun, means the register of building certifiers that BSA keeps under section 11L.

self-assessable building work see section 5P(1).

show cause notice, for—

- (a) chapter 6, part 3—see section 11H(1); or
- (b) chapter 9—see section 21(1).

show cause period, for—

- (a) chapter 6, part 3—see section 11H(2)(f); or
- (b) chapter 6, part 4—see section 41A(2)(c).

site works means each of the following—

- (a) building work of a type mentioned in section 5(1)(b) or (c);
- (b) drainage for the building work, other than drainage that is plumbing work or drainage work under the *Plumbing and Drainage Act 2002*.

special fire service means any of the following—

- (a) fire mains (other than fire mains that connect only fire hose reels);
- (b) fire hydrants;
- (c) sprinklers (including wall-wetting sprinklers);
- (d) special automatic fire suppression systems (including foam, deluge and gas flooding systems);
- (e) fire detection and alarm systems (other than stand-alone smoke alarms not required to be interconnected or connected to a fire indicator panel);
- (f) fire control centres;
- (g) stairwell pressurisation systems;
- (h) air-handling systems used for smoke control;
- (i) smoke and heat venting systems;
- (j) smoke exhaust systems;
- (k) emergency warning and intercommunication systems;
- (l) emergency lifts;
- (m) vehicular access for large isolated buildings;
- (n) services provided under conditions imposed under section 7T;
- (o) services required under the BCA, clause E1.10.

special structure means a structure that can not be classified under the BCA, part A3.

State includes territory.

substantially completed, for a building, see section 8O.

supporting documents, for a building development application, see section 5R.

variation application see section 6F(1).'

- (4) Schedule, definitions, *building and development tribunal*, *development application*, *development approval*, *development permit* and *local planning instrument*, 'the *Integrated Planning Act 1997*'—

omit, insert—

'IPA'.

- (4A) Schedule, definition *indoor swimming pool*, after 'building'—

insert—

'or a swimming pool on a deck or roof top of a building if the pool is, under the usual ways of entering or leaving the building, only accessible from the inside of the building'.

- (5) Schedule, definition *residential land*, ', under the Standard Building Regulation,'—

omit.

- (6) Schedule, definition *unsatisfactory conduct*, paragraph (a), 'building certifying functions'—

omit, insert—

'building or private certifying functions'.

- (7) Schedule, definitions, *construct*, *fencing standards* and *pool owner*, 'part 3'—

omit, insert—

'chapter 8'.

Part 3 Amendment of Integrated Planning Act 1997

71 Act amended in pt 3

This part amends the *Integrated Planning Act 1997*.

72 Amendment of s 1.3.5 (Definitions for terms used in development)

- (1) Section 1.3.5, definition *building work*, paragraph 1(b)—

omit, insert—

‘(b) work regulated under the building assessment provisions under the *Building Act 1975* other than IDAS; or’.

- (2) Section 1.3.5, definition *operational work*, item 2, paragraph (a)—

omit, insert—

‘(a) for items 1(a) to (f) and (j), any element of the work that is—

- (i) building work other than building work for reconfiguring a lot; or

Example of building work for reconfiguring a lot—

building a retaining wall

- (ii) drainage work; or

- (iii) plumbing work; or’.

- (3) Section 1.3.5—

insert—

- ‘(2) For the definition of *building work* in subsection (1), paragraph (b), work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure.

Example—

a management procedure under the fire safety standard under the *Building Act 1975* relating to a budget accommodation building’.

73 Insertion of new s 3.2.2B

After section 3.2.2A—

insert—

‘3.2.2B Approved operational work for retaining walls required for certain development

- ‘(1) This section applies if, when an application is made—
- (a) a material change of use of premises or reconfiguration of a lot, the subject of an application, may not be performed unless a development permit exists for operational work that is the building of a retaining wall on or near the premises or lot; and
 - (b) there is no development permit for the operational work; and
 - (c) approval for the operational work has not been applied for in the application or a separate application.
- ‘(2) The application is taken also to be for the operational work.’.

74 Amendment of s 3.3.15 (Referral agency assesses application)

Section 3.3.15(2)(b), ‘Standard Building Regulation’—
omit, insert—
 ‘building assessment provisions’.

75 Amendment of s 3.3.16 (Referral agency’s response)

- (1) Section 3.3.16(3), ‘referral agency’—
omit, insert—
 ‘concurrence agency’.
- (2) Section 3.3.16—
insert—
- ‘(4) However, the referral agency’s response is taken to be a refusal of the application if—
- (a) the application is a building development application; and
 - (b) the concurrence agency is the local government; and

- (c) the matter being decided by the concurrence agency is a matter other than assessing the amenity and aesthetic impact of a building or structure; and
- (d) the concurrence agency does not give a response under subsection (1).’.

76 Amendment of s 3.3.17 How a concurrence agency may change its response)

Section 3.3.17(1), ‘section 3.3.16(1)’—

omit, insert—

‘section 3.3.16’.

77 Amendment of s 3.3.18 (Concurrence agency’s response powers)

- (1) Section 3.3.18(6) and (7)—

renumber as section 3.3.18(7) and (8).

- (2) Section 3.3.18—

insert—

- ‘(6) To the extent a local government’s concurrence agency jurisdiction is about assessing the amenity and aesthetic impact of a building or structure, the concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency considers—

- (a) the building or structure, when built, will have an extremely adverse effect on the amenity or likely amenity of its neighbourhood; or
- (b) the aesthetics of the building or structure, when built, will be in extreme conflict with the character of its neighbourhood.’.

- (3) Section 3.3.18(8), as renumbered, after ‘concurrence agency’s response’—

insert—

‘, other than a refusal taken to have been given, under section 3.3.16(4).’.

(4) Section 3.3.18—

insert—

‘(9) Subsection (8) does not apply to a refusal mentioned in section 3.3.16(4).’.

78 Amendment of s 3.5.13 (Decision if application requires code assessment)

Section 3.5.13(4), from ‘However—’ to ‘if the decision’—

omit, insert—

‘However, if the decision’.

79 Amendment of s 3.5.15 (Decision notice)

(1) Section 3.5.15(1)—

insert—

‘(d) if the application is a building development application—each designated person for the application.’.

(2) Section 3.5.15—

insert—

‘(2B) Also, if the application is a building development application, the decision notice must include the approved drawings for the development approval.’.

(3) Section 3.5.15(5A), ‘section 5.3.5’—

omit, insert—

‘the *Building Act 1975*, chapter 4, part 6⁸²’.

(4) Section 3.5.15(6) and (7)—

omit, insert—

‘(6) In this section—

82 *Building Act 1975*, chapter 4, part 6 (Regulation of building assessment work and the issuing of building development approvals by private certifiers)

designated person, for a building development application, means—

- (a) if the building to which the application relates is, under the Building Code of Australia, a single detached class 1a building or a class 10 building or structure—the owner of the building; and
- (b) any other person nominated on the approved form under section 3.2.1(2),⁸³ as the person to receive documents.’.

80 Amendment of s 4.2.1 (Establishing building and development tribunals)

Section 4.2.1(4), from ‘local government’s’ to ‘Standard Building Regulation’—

omit, insert—

‘referral agency’s response decision about the amenity and aesthetic impact of a building or structure’.

81 Amendment of s 4.2.7 (Jurisdiction of tribunals)

Section 4.2.7(2)(a), after ‘*Building Act 1975*’—

insert—

‘(other than a matter under that Act that may or must be decided by the Building Services Authority)⁸⁴’.

82 Replacement of s 4.2.12A (Appeals for plumbing and drainage matters)

Section 4.2.12A—

omit, insert—

‘4.2.12A Appeals for building and plumbing and drainage matters

‘(1) If—

83 Section 3.2.1 (Applying for development approval)

84 For appeals against the authority’s decisions under the *Building Act 1975*, see the *Building Act 1975*, section 11V (Appeals to Commercial and Consumer Tribunal about decisions under pt 3).

- (a) a person has been given, or entitled to be given—
 - (i) an information notice under the *Building Act 1975* about a decision other than a decision under that Act made by the Building Services Authority; or
 - (ii) an information notice under the *Plumbing and Drainage Act 2002*, about a decision under part 4 or 5 of that Act;⁸⁵ or
- (b) a person—
 - (i) was an applicant for a building development approval; and
 - (ii) is dissatisfied with a decision under the *Building Act 1975* by a building certifier or referral agency about inspection of building work the subject of the approval;

the person may appeal against the decision to a tribunal.

‘(2) An appeal under subsection (1) must be started within 20 business days after the day the person is given notice of the decision.

‘(3) If—

- (a) under the *Building Act 1975*, a person makes an application other than a building development application to a local government; and
- (b) the period required under that Act for the local government to decide the application (the *decision period*) has passed; and
- (c) the local government has not decided the application;

the person may appeal to a tribunal against the lack of the decision and for the tribunal to decide the application as it were the local government.

‘(4) An appeal under subsection (3) must be started within 20 business days after the end of the decision period.’.

⁸⁵ *Plumbing and Drainage Act 2002*, part 4 (Compliance assessment) or 5 (Chief executive approvals)

83 Amendment of s 4.3.18 (Proceedings for offences)

Section 4.3.18(3)(a), ‘Standard Building Regulation’—

omit, insert—

‘building assessment provisions’.

84 Amendment of s 4.3.22 (Proceeding for orders)

Section 4.3.22(2), ‘Standard Building Regulation’—

omit, insert—

‘building assessment provisions’.

85 Omission of ch 5, pt 3 (Private certification)

Chapter 5, part 3—

omit.

86 Amendment of s 5.7.2 (Documents local government must keep available for inspection and purchase)

(1) Section 5.7.2(1), ‘or a certified copy’—

omit, insert—

‘or the designated type of copy’.

(2) Section 5.7.2(1)—

insert—

‘(t) planning scheme maps for the designation, under the *Building Act 1975*, of bush fire prone areas for the Building Code of Australia;

(u) its register of resolutions about land liable to flooding, made under the *Building Act 1975*;

(v) its register of exemptions granted under the *Building Act 1975*, chapter 8;⁸⁶

86 *Building Act 1975*, chapter 8 (Swimming pool fencing)

- (w) each record that it must keep under the *Building Act 1975*, section 12SA;⁸⁷
 - (x) all development information it has about building development applications, other than information that may be purchased from the registrar of titles;
 - (y) its register mentioned in the *Building Act 1975*, section 25.⁸⁸.
- (3) Section 5.7.2—
insert—
- ‘(4) Despite subsection (1), the obligation under that subsection does not apply to the extent the local government is reasonably satisfied a document mentioned in subsection (1) (t) to (y) contains—
- (a) sensitive security information; or
 - (b) information of a purely private nature about an individual, including, for example, someone’s residential address.
- ‘(5) Also, the obligation under subsection (1)(x) only applies if the person seeking the information applies for it in the approved form.
- ‘(6) In this section—
designated type of copy, for a document, means—
- (a) for a document mentioned in subsection (1) (a) to (s)—a certified copy; or
 - (b) otherwise—an ordinary copy.
- development information***, for a building development application, means information about any of the following—
- (a) the physical characteristics and location of infrastructure related to the application;
 - (b) local government easements, encumbrances or estates or interests in land likely to be relevant to the application;

87 *Building Act 1975*, section 12SA (Local government’s fire safety record-keeping obligations)

88 *Building Act 1975*, section 25 (Register of notices given)

- (c) site characteristic information likely to affect the assessment of the application.

Examples of information mentioned in paragraph (c)—

- design levels of proposed road or footway works
- design or location of stormwater connections
- design or location of vehicle crossings
- details of any heritage listed buildings
- discharge of swimming pool backwash water
- flood level information
- limitations on driveway gradients
- limitations on the capacity of sewerage, stormwater and water supply services
- location of any erosion control districts
- location of contaminated land
- location of land-slip areas
- location of mine subsidence areas’.

87 Replacement of s 5.7.3 (Documents local government must keep available for inspection only)

Section 5.7.3—

omit, insert—

‘5.7.3 Documents local government must keep available for inspection only

‘A local government must keep the following documents available for inspection only—

- (a) an official copy of this Act, the *Building Act 1975*, and every regulation made under the Acts and still in force;
- (b) the Building Code of Australia.’.

88 Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)

- (1) Section 5.7.4(1), ‘or a certified copy’—

omit, insert—

‘or the designated type of copy’.

(2) Section 5.7.4(1)—

insert—

‘(h) for each building development application approved for a building in its area—

(i) if, under the *Building Act 1975*, the application was made to a private certifier (class A)—the documents relating to the application given to the local government, under section 8 of that Act;⁸⁹ or

(ii) if the application was made to the local government—the application and the approval documents for the application as defined under the *Building Act 1975*;

(i) inspection certificates or other documents about the inspection of building work that, under the *Building Act 1975*, the assessment manager must keep.’.

(3) Section 5.7.4—

insert—

‘(5) Despite subsection (1), the obligation under the subsection does not apply to the extent the assessment manager is reasonably satisfied a document mentioned in subsection (1) (h) or (i) contains—

(a) sensitive security information; or

(b) information of a purely private nature about an individual, including, for example, someone’s residential address.

‘(6) Also, the obligation under subsection (1)(h) applies only until—

(a) if the building the subject of the approval is, under the Building Code of Australia, a class 10 building, other than a swimming pool fence, the earlier of the following to happen—

(i) the building’s demolition or removal;

89 *Building Act 1975*, section 8 (Requirements on approval of application)

- (ii) the end of 10 years from when the approval was given; or
 - (b) if the building the subject of the approval is of any other class under the Building Code of Australia or is a swimming pool fence—the building’s demolition or removal.
- ‘(7) In this section—
- designated type of copy***, for a document, means—
- (a) for a document mentioned in subsection (1)(a) to (g)—a certified copy; or
 - (b) otherwise—an ordinary copy.’.

89 Amendment of s 5.7.6 (Documents chief executive must keep available for inspection and purchase)

- (1) Section 5.7.6(1), ‘or a certified copy’—
omit, insert—
‘or the designated type of copy’.
- (2) Section 5.7.6(1)—
insert—
‘(p) the Queensland Development Code.’.
- (3) Section 5.7.6—
insert—
- ‘(3) However, the chief executive must not charge anyone for supplying a copy of all or part of the Queensland Development Code.
- ‘(4) In this section—
- designated type of copy***, for a document, means—

 - (a) for the Queensland Development Code—an ordinary copy; or
 - (b) otherwise—a certified copy.

Queensland Development Code see the *Building Act 1975*, section 5H.’.

90 Amendment of s 6.1.1 (Definitions for pt 1)

Section 6.1.1, definition *applicable codes*, paragraph (a), ‘Standard Building Regulation’—

omit, insert—

‘building assessment provisions’.

91 Amendment of s 6.1.29 (Assessing applications (other than against the Standard Building Regulation))

Section 6.1.29, heading, ‘Standard Building Regulation’—

omit, insert—

‘building assessment provisions’.

92 Amendment of s 6.1.30 (Deciding applications (other than under the Standard Building Regulation))

Section 6.1.30, heading, ‘Standard Building Regulation’—

omit, insert—

‘building assessment provisions’.

93 Amendment of sch 8 (Assessable development and self-assessable development)

(1) Schedule 8, part 1, table 1, item 1 and heading—

omit, insert—

‘For the Building Act 1975 ^a ’	
1	Building work that is not — (a) self-assessable; and (b) declared under the <i>Building Act 1975</i> to be exempt development.’.

a Table 1, item 1 commenced 30 March 1998

(2) Schedule 8, part 2, table 1, item 1, ‘Standard Building Regulation’—

omit, insert—

‘*Building Act 1975*’.

- (3) Schedule 8, part 2, table 1, item 2 and heading—
omit, insert—

‘For the Building Act 1975 ^a ’	
2	Building work declared under the <i>Building Act 1975</i> to be self-assessable development.’.

a Table 1, item 2 commenced 30 March 1998

94 Amendment of sch 8A (Assessment manager for development applications)

Schedule 8A, table 1, item 1(a)(ii)—
omit, insert—

‘(ii) is for building work, that, under the *Building Act 1975*, is assessable against the building assessment provisions; or’.

95 Amendment of sch 10 (Dictionary)

- (1) Schedule 10, definitions *building referral agency, private certifier, replacement private certifier* and *Standard Building Regulation—*

omit.

- (2) Schedule 10—

insert—

‘***building assessment provisions*** see the *Building Act 1975*, section 5Y(1).⁹⁰

building certifier—

- 1 A building certifier is an individual who, under the *Building Act 1975*, is licensed as a building certifier.

⁹⁰ *Building Act 1975*, section 5Y (Relevant laws and other documents for assessment of building work)

- 2 A reference to a building certifier includes a reference to a private certifier.

Building Code of Australia—

- 1 The ***Building Code of Australia*** is the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board.
- 2 A reference to the code includes the edition as amended from time to time by amendments published by the board.

building development application means a development application to the extent it is for building work.

private certifier means a building certifier whose license under the *Building Act 1975* has private certification endorsement under that Act.

private certifier (class A) means a private certifier whose license under the *Building Act 1975* has development approval endorsement under that Act.’.

- (3) Schedule 10, definition *assessing authority*, paragraph (c)—

omit, insert—

- ‘(c) for assessable development for which a private certifier (class A) is, under the *Building Act 1975*, chapter 6,⁹¹ engaged to perform private certifying functions under that Act—the private certifier or the local government; or’.

91 *Building Act 1975*, chapter 6 (Provisions about private certifiers and other building certifiers)

Part 3A **Amendment of Integrated Planning and Other Legislation Amendment Act 2006**

95A Act amended in pt 3A

This part amends the *Integrated Planning and Other Legislation Amendment Act 2006*.

95B Amendment of s 2 (Commencement)

(1) Section 2, before ‘Sections’—

insert—

‘(1) Section 75, as amended by the *Building and Other Legislation Amendment Act 2006*, is taken to have commenced on 30 March 2006.

‘(2) ∴.

(2) Section 2, ‘, 75’—

omit.

95C Amendment of s 75 (Amendment of s 6.5.1 (When particular development approvals lapse))

Section 75(1), ‘June’—

omit, insert—

‘December’.

Part 3B **Amendment of Local Government Act 1993**

95D Act amended in pt 3B

This part amends the *Local Government Act 1993*.

95E Amendment of s 492 (Exemptions)

- (1) Section 492(1)(f)—
omit.
- (2) Section 492(1)(d) and (e)—
renumber as section 492(1)(e) and (f).
- (3) Section 492(1)(c)—
omit, insert—
 - ‘(c) for any non-current asset other than land—the local government has—
 - (i) decided by resolution, to prepare, for the disposal, a plan that complies with subsection (2); and
 - (ii) prepared the plan; or
 - ‘(d) for a disposal of a non-current asset other than land by way of a trade-in for the supply of goods or services to the local government—
 - (i) the supply is, or is to be, made under subdivision 2; and
 - (ii) the disposal is, or is to be, part of the contract for the supply; or’.
- (4) Section 492(2), (3) and (4)—
renumber as section 492(3), (4) and (2) respectively.
- (5) Section 492(2), as renumbered, ‘subsection (1)(f)’—
omit, insert—
‘subsection (1)(c)’.
- (6) Section 492(3), as renumbered, ‘subsection (1)(d)’—
omit, insert—
‘subsection (1)(e)’.
- (7) Section 492(4), as renumbered, ‘subsection (1)(e)’—
omit, insert—
‘subsection (1)(f)’.’.

95F Amendment of s 492A (Required procurement and asset disposal manuals)

Section 492A(3)(c), ‘section 492(4)’—

omit, insert—

‘section 492(2)’.

95G Amendment of s 1070 (Entry on land for local government purposes)

(1) Section 1070(2), example—

omit.

(2) Section 1070(2)(c)—

insert—

‘Examples of entry to land under paragraph (c)—

- 1 The employee or agent may enter the land to take urgent action, under a local law about the safety and convenience of the public, to remove a tree likely to fall and cause injury or damage.
- 2 The local government has received information that a swimming pool fence may be dangerous to children because it does not comply with the *Building Act 1975*. The employee or agent may enter the land on which the fence is constructed to assess whether the local government ought to take action under the *Building Act 1975* or this Act in relation to the fence.’.

Part 4 Amendment of Plumbing and Drainage Act 2002**96 Act amended in pt 4**

This part and the schedule amend the *Plumbing and Drainage Act 2002*.

96A Amendment of s 85 (Process for assessing plans)

Section 85(1), ‘sections 85A to 85E’—

omit, insert—

‘sections 85B to 85E’.

96B Omission of s 85A (Local government’s power to stop further greywater use facility requests for premises in a sewered area)

Section 85A—

omit.

96C Amendment of s 85B (Restrictions on giving compliance permit for greywater use facility in a sewered area)

Section 85B(2)(a)(iii)—

omit, insert—

‘(iii) is not part of a community titles scheme under the *Body Corporate and Community Management Act 1997*; and’.

97 Amendment of s 91 (Applying for chief executive approval)

Section 91—

insert—

‘(2) However, a person can not apply for a chief executive approval for a chemical, composting or incinerating toilet.’.

98 Amendment of s 125 (Restriction on building or installing particular on-site sewerage treatment plant)

Section 125, after ‘septic tank’—

insert—

‘or chemical, composting, or incinerating toilet’.

99 Amendment of s 128E (Restrictions on operating particular on-site sewerage treatment plant)

Section 128E(b)(ii)—

omit, insert—

‘(ii) if the on-site sewage treatment plant does not consist only of a chemical, composting or incinerating toilet—the chief executive approval for the plant.’.

99A Amendment of s 128M (Offences about discharging greywater other than kitchen greywater from premises)

(1) Section 128M(2) and (3), after ‘sewered area’—

insert—

‘and the premises is not a single detached dwelling’.

(2) Section 128M(2)(a)(i), ‘for area’s’—

omit, insert—

‘for the area’s’.

(3) Section 128M(2)(b) and (3)(b), after ‘lawn’—

insert—

‘on the premises’.

(4) Section 128M(4), ‘also’—

omit.

(5) Section 128M(4)(b), ‘any one’—

omit, insert—

‘anyone’.

(6) Section 128M—

insert—

‘(6) In this section—

single detached dwelling means a class 1a building under the Building Code of Australia.’.

100 Insertion of new pt 10, div 4

After section 171—

insert—

‘Division 4 Transitional provisions for Building and Other Legislation Amendment Act 2006**‘172 Provisions for chemical, composting or incinerating toilets**

- ‘(1) An application made before the commencement of this section for a chief executive approval for a chemical, composting or incinerating toilet is, on the commencement, taken to have been withdrawn.
- ‘(2) Section 125, as in force from 1 March 2006 to the commencement, is taken never to have applied to an on-site sewerage treatment plant that consists only of a chemical, composting, or incinerating toilet.

‘173 Provision about offences under s 128M

- ‘(1) A proceeding can not be started for an offence under pre-amended section 128M if the circumstances giving rise to the commission of the offence would not, if the circumstances happened after the commencement of this section, give rise to the commission of an offence under post-amended section 128M.
- ‘(2) In this section—

post-amended section 128M means section 128M as amended under the *Building and Other Legislation Amendment Act 2006*, section 99A.

pre-amended section 128M means section 128M as in force immediately before the *Building and Other Legislation Amendment Act 2006*, section 99A commences.’.

Part 5

Amendment of other Acts

101 Amendment of other Acts

The schedule amends the Acts it mentions.

Schedule **Consequential and minor amendments of other Acts**

sections 2(b), 96 and 101

Brisbane Markets Act 2002

- 1** **Schedule, definition *building work*, paragraph (b)—**
omit, insert—

‘(b) work regulated under the building assessment provisions under the *Building Act 1975*, other than IDAS; or’.

Fire and Rescue Service Act 1990

- 1** **Section 104A, definition, *fire safety installation*, ‘Standard Building Regulation’—**

omit, insert—

‘*Building Act 1975*’.

- 2** **Section 104FB(1), ‘section 12Q(2)’—**

omit, insert—

‘section 5V’.

- 3** **Schedule, definition, *Building Code of Australia*—**

omit, insert—

‘*Building Code of Australia* see the *Building Act 1975*, section 5G.’.

Schedule (continued)

Local Government Act 1993

- 1 Section 761, definition *building certifying function*, ‘section 3(1)’—**
omit, insert—
‘section 5C’.
- 2 Section 807(2), definition *building certifier*, ‘section 3(1)’—**
omit, insert—
‘section 5C’.
- 3 Section 1071A(1)(e), ‘, the *Integrated Planning Act 1997*, chapter 5, part 3’—**
omit.
- 4 Sections 1096(1)(d) and 1101(2)(a), ‘part 2A’—**
omit, insert—
‘chapter 7⁹²’.

Plumbing and Drainage Act 2002

- 1 Section 62(1), ‘section 57’—**
omit, insert—
‘section 56’.

92 *Building Act 1975*, chapter 7 (Fire safety for budget accommodation buildings)

Schedule (continued)

- 2** **Schedule, definition *chief executive approval*, ‘section 91’—**
omit, insert—
‘section 91(1)’.
- 3** **Schedule, definition *testing approval*, ‘section 91(e)’—**
omit, insert—
‘section 91(1)(e)’.

Private Health Facilities Act 1999

- 1** **Schedule 3, definition *certificate of classification*, ‘Standard Building Regulation 1993, part 9’—**
omit, insert—
‘*Building Act 1975*’.

Public Health (Infection Control for Personal Appearance Services) Act 2003

- 1** **Schedule 2, definition *Queensland Development Code*, ‘Standard Building Regulation 1993, section 6A’—**
omit, insert—
‘*Building Act 1975*, section 5H’.

Schedule (continued)

Queensland Building Services Authority Act 1991**1 Schedule 2, definition *Building Code of Australia*,
'section 3'—**

omit, insert—

'section 5G'.

**Southern Moreton Bay Islands Development
Entitlements Protection Act 2004****1 Sections 4(a) and 7(2), '*Standard Building Regulation
1993*—**

omit, insert—

'*Building Act 1975*'.