



Queensland

Queensland Building Services Authority and Other Legislation Amendment Act 2007

Act No. 47 of 2007



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Queensland Building Services Authority and Other Legislation Amendment Act 2007

Act No. 47 of 2007

An Act to amend the *Queensland Building Services Authority Act 1991* and other Acts

[Assented to 25 October 2007]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Building Services Authority and Other Legislation Amendment Act 2007*.

2 Commencement

This Act, other than part 4, commences on a day to be fixed by proclamation.

Part 2 Amendment of Queensland Building Services Authority Act 1991

3 Act amended in pt 2

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

4 Omission of s 4AA (Note in text)

Section 4AA—
omit.

5 Amendment of s 30 (Classes of licences)

- (1) Section 30, heading, after ‘of’—
insert—
‘contractors’’.

(2) Section 30(1)—

omit, insert—

‘(1) A licence (a ***contractor’s licence***) may be issued authorising the licensee—

(a) to carry out all classes of building work; or

(b) to carry out building work of 1 or more classes specified in the licence.’.

(3) Section 30(2), ‘Licences’—

omit, insert—

‘Contractors’ licences’.

(4) Section 30(3), ‘or supervisor’s licence’—

omit.

6 Insertion of new ss 30A–30C

Part 3, division 1, after section 30—

insert—

‘30A Nominee supervisor’s licence

‘(1) A licence (a ***nominee supervisor’s licence***) may be issued authorising an individual—

(a) if the individual is the nominee for a licensed contractor that is a company, to—

(i) provide supervisory services for building work carried out under the company’s licence; and

(ii) perform the functions required of a nominee under this Act; or

(b) if the individual is an officer or employee of a company, other than the company’s nominee—to personally supervise building work carried out under the company’s licence.

‘(2) An individual who holds a nominee supervisor’s licence and who is the employee of a licensed contractor that is an

individual may personally supervise building work carried out under the contractor's licence.

- '(3) Nominee supervisors' licences are to be divided into classes by regulation—
 - (a) according to whether the licence relates to all classes of building work or is limited to a specified class or specified classes of building work; and
 - (b) if the licence is limited to a specified class, or specified classes, of building work—according to the class or classes of building work to which it relates.
- '(4) A nominee supervisor's licence may be issued for any class of licence.

'30B Site supervisor's licence

- '(1) A licence (a *site supervisor's licence*) may be issued authorising an individual, while the individual is an officer or employee of a licensed contractor that is a company, to personally supervise building work carried out under the company's licence.
- '(2) A licence (also a *site supervisor's licence*) may be issued authorising an individual, while the individual is an employee of a licensed contractor that is an individual, to personally supervise building work carried out under the contractor's licence.
- '(3) Site supervisors' licences are to be divided into classes by regulation—
 - (a) according to whether the licence relates to all classes of building work or is limited to a specified class or specified classes of building work; and
 - (b) if the licence is limited to a specified class, or specified classes, of building work—according to the class or classes of building work to which it relates.
- '(4) A site supervisor's licence may be issued for any class of licence.

‘30C Fire protection occupational licence

- ‘(1) A licence (a *fire protection occupational licence*) may be issued authorising an individual, while the individual is an officer or employee of a licensed contractor that is a company, to personally carry out and personally supervise fire protection work carried out under the company’s licence.
- ‘(2) A licence (also a *fire protection occupational licence*) may be issued authorising an individual, while the individual is an employee of a licensed contractor that is an individual, to personally carry out and personally supervise fire protection work carried out under the contractor’s licence.
- ‘(3) Fire protection occupational licences are to be divided into classes by regulation—
 - (a) according to whether the licence relates to all classes of fire protection work or is limited to a specified class or specified classes of fire protection work; and
 - (b) if the licence is limited to a specified class, or specified classes, of fire protection work—according to the class or classes of fire protection work to which it relates.
- ‘(4) A fire protection occupational licence may be issued for any class of licence.’.

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

- (1) Section 31(1), after paragraph (c)—

insert—

 - ‘(d) the applicant can lawfully work in Queensland; and
 - (e) the applicant is not an excluded individual for a relevant event or a permanently excluded individual; and
 - (f) the applicant is not a disqualified individual; and
 - (g) the applicant is not a banned individual; and
 - (h) the applicant does not have an unpaid judgement debt for an amount the authority may recover under section 71.’.
- (2) Section 31(2)(a)—

omit, insert—

‘(a) the directors, secretary and influential persons for the company are fit and proper persons to exercise control or influence over a company that holds a contractor’s licence; and’.

(3) Section 31(2), after paragraph (c)—

insert—

‘(d) the company is not an excluded company; and

(e) the company is not a company for which a banned or disqualified individual is a director, secretary, influential person or nominee; and

(f) neither the company, nor a director, secretary, influential person or nominee of the company has an unpaid judgement debt for an amount the authority may recover under section 71.’.

(4) After section 31(3)(c)—

insert—

‘(ca) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act or the *Domestic Building Contracts Act 2000*—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order; and’.

(5) After section 31(3)—

insert—

‘(4) However, the authority may not have regard to the matter mentioned in subsection (3)(ca) if—

(a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or

(b) 28 days have not elapsed since the date of the enforcement order.’.

8 Replacement of s 32 (Entitlement to supervisor's licence)

Section 32—

omit, insert—

'32 Entitlement to a nominee supervisor's licence

- '(1) An individual is entitled to a nominee supervisor's licence if the authority is, on application by the individual, satisfied that—
- (a) the applicant has the qualifications and experience required by regulation for a licence of the relevant class; and
 - (b) the applicant can lawfully work in Queensland; and
 - (c) the applicant is not an excluded individual for a relevant event or a permanently excluded individual; and
 - (d) the applicant is not a banned individual; and
 - (e) the applicant is not a disqualified individual; and
 - (f) the applicant does not have an unpaid judgement debt for an amount the authority may recover under section 71; and
 - (g) the applicant is a fit and proper person to hold the licence.
- '(2) In deciding whether an applicant is a fit and proper person to hold the licence, the authority may have regard to—
- (a) commercial and other dealings in which the applicant has been involved and the standard of honesty and integrity demonstrated in those dealings; and
 - (b) any failure by the applicant to carry out commercial or statutory obligations and the reasons for the failure; and
 - (c) tier 1 defective work carried out by the applicant, whether or not the applicant received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and
 - (d) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act or the *Domestic Building Contracts Act*

2000—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order; and

- (e) any other relevant factor.
- ‘(3) However, the authority may not have regard to the matter mentioned in subsection (2)(d) if—
- (a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.

‘32AA Entitlement to a site supervisor’s licence

- ‘(1) An individual is entitled to a site supervisor’s licence if the authority is, on application by the individual, satisfied that—
- (a) the applicant has the qualifications required by regulation for a licence of the relevant class; and
 - (b) the applicant can lawfully work in Queensland; and
 - (c) the applicant is not a banned individual; and
 - (d) the applicant is a fit and proper person to hold the licence.
- ‘(2) In deciding whether an applicant is a fit and proper person to hold the licence, the authority may have regard only to—
- (a) tier 1 defective work carried out by the applicant, whether or not the applicant received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and
 - (b) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act or the *Domestic Building Contracts Act 2000*—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.

- ‘(3) However, the authority may not have regard to the matter mentioned in subsection (2)(b) if—
- (a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.

‘32AB Entitlement to a fire protection occupational licence

- ‘(1) An individual is entitled to a fire protection occupational licence if the authority is, on application by the individual, satisfied that—
- (a) the applicant has the qualifications required by regulation for a licence of the relevant class; and
 - (b) the applicant can lawfully work in Queensland; and
 - (c) the applicant is not a banned individual; and
 - (d) the applicant is a fit and proper person to hold a licence.
- ‘(2) In deciding whether an applicant is a fit and proper person, the authority may have regard only to—
- (a) tier 1 defective work carried out by the applicant, whether or not the applicant received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and
 - (b) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act or the *Domestic Building Contracts Act 2000*—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.
- ‘(3) However, the authority may not have regard to the matter mentioned in subsection (2)(b) if—
- (a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or

- (b) 28 days have not elapsed since the date of the enforcement order.’.

9 Amendment of s 33 (Application for licence)

Section 33(1)(b)—

omit, insert—

‘(b) must be accompanied by—

- (i) if the applicant is an individual, 2 recent passport-size photographs of the applicant suitable for inclusion in a licence and certified in the way prescribed by regulation; and
- (ii) the appropriate application fee fixed by regulation.’.

10 Amendment of s 34 (Grant of licence)

Section 34(2)—

omit, insert—

‘(2) A licence is to be in the form of a card and must—

- (a) state the licensee’s name and licence number; and
- (b) state the type of licence; and
- (c) state the class of building work the licensee is licensed to carry out; and
- (d) if the licensee is an individual, contain a recent photograph of the licensee; and
- (e) state when the licence is due for renewal.’.

11 Replacement of pt 3, div 5, heading and s 37

Part 3, division 5, heading, and section 37—

omit, insert—

‘Division 5 Renewal of licences

‘37 When licences to be renewed

- ‘(1) A contractor’s licence and a nominee supervisor’s licence must be renewed 1 year after their issue or their previous renewal day.
- ‘(2) A site supervisor’s licence and a fire protection occupational licence must be renewed for either of the following periods after their issue or their previous renewal day—
 - (a) 1 year;
 - (b) a longer period prescribed under a regulation.
- ‘(3) For subsection (2), a licensee may choose whether to renew the licensee’s licence for 1 year or the longer period prescribed under a regulation.

‘37A Authority to advise licensee before licence due for renewal

- ‘(1) The authority must give notice in writing to a licensee at least 28 days before the renewal day for the licensee’s licence.
- ‘(2) The notice must state the following—
 - (a) the renewal day for the licensee’s licence;
 - (b) if the licensee is an individual, whether or not the authority requires 2 recent passport-size photographs of the licensee suitable for inclusion in a licence and certified in the way prescribed by regulation;
 - (c) the renewal fee for the licence and that it must be paid on or before the renewal day;
 - (d) the amount, if any, to be added to the renewal fee under section 37C;
 - (e) for a contractor’s licence, when the documentary evidence required by the financial requirements stated in the board’s policies must be given to the authority.

‘37B Applications for renewal of licence

- ‘(1) A licensee may apply to the authority for the renewal of the licensee’s licence before the renewal day for the licence.
- ‘(2) The application must—
 - (a) be made in the way prescribed under a regulation; and
 - (b) be accompanied by the appropriate fee prescribed by regulation for the renewal plus any amount by which the renewal fee is increased under section 37C; and
 - (c) if the authority has advised that it requires 2 recent passport-size photographs of the licensee suitable for inclusion in a licence and certified in the way prescribed by regulation—be accompanied by the photographs.
- ‘(3) If requested by the authority by written notice, the licensee must, within the reasonable time stated in the notice, give the authority the further information or evidence the authority requires to decide whether the applicant continues to be entitled to hold a licence.

‘37C Renewal fee increased if directions given

- ‘(1) This section applies if a licensee—
 - (a) applies for renewal of the licensee’s licence; and
 - (b) has been given a direction or directions under section 72—
 - (i) for a licence that has been previously renewed, since the previous renewal day; or
 - (ii) for a licence that has not previously been renewed, since the issue of the licence.
- ‘(2) The amount of the renewal fee payable by the licensee is increased by an amount equivalent to the value of a penalty unit for each direction given to the licensee.
- ‘(3) However, the maximum amount by which the renewal fee may be increased at a renewal day is an amount equivalent to the value of 10 penalty units.

- ‘(4) Subsection (2) does not apply if the licensee has started a proceeding in the tribunal for review of the authority’s direction under section 72(15) and either—
- (a) the licensee has not withdrawn the proceeding and the proceeding or any appeal from the proceeding has not been decided; or
 - (b) the tribunal has decided that none of the items listed in the direction needed rectification.
- ‘(5) Subsection (6) applies if—
- (a) a licensee is given a direction or directions before the renewal day for the licensee’s licence; and
 - (b) the licensee starts a proceeding for review of the authority’s direction under section 72(15); and
 - (c) either—
 - (i) the licensee withdraws the proceeding after the renewal day for the licensee’s licence; or
 - (ii) the proceeding is decided after the renewal day for the licensee’s licence and the decision is that 1 or more of the items listed on the direction needed rectification.
- ‘(6) The amount of the next renewal fee payable by the licensee is increased by an amount equivalent to the value of a penalty unit for each direction given to the licensee.
- ‘(7) Subsection (8) applies if—
- (a) a direction to rectify building work is given to a licensee before the renewal day for the licensee’s licence; and
 - (b) the period for rectification stated in the direction expires after the renewal day for the licensee’s licence; and
 - (c) the licensee has not rectified the work before the renewal day for the licensee’s licence.
- ‘(8) For the purposes of this section, the direction is taken to have been given after the renewal day for the licensee’s licence.’.

12 Amendment of s 38 (Suspension for non-payment of fee)

After section 38(3)—

insert—

‘(4) In this section—

licence fee includes any amount by which the renewal fee is increased under section 37C.’.

13 Omission of pt 3, div 6 (The register)

Part 3, division 6—

omit.

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

(1) Section 42(2)—

omit.

(2) After section 42(5)—

insert—

‘*Note for subsection (5)—*

An individual must not personally carry out fire protection work unless the individual is authorised to carry out the work under this or another Act—see section 42C.’.

(3) After section 42(5A)—

insert—

‘*Note for subsection (5A)—*

An individual must not personally carry out fire protection work unless the individual is authorised to carry out the work under this or another Act—see section 42C.’.

(4) After section 42(7)—

insert—

‘*Note for subsection (7)—*

An individual must not personally carry out fire protection work unless the individual is authorised to carry out the work under this or another Act—see section 42C.’.

Also, section 56 states that a licensed contractor may carry on business under the contractor's licence in partnership with an unlicensed person subject to the conditions stated in the section.'

(5) After section 42(8)—

insert—

'(8A) A consumer who engages 1 or more licensed contractors to carry out building work for the consumer does not contravene this section if the consumer does not provide building work services for the work.

Examples of a consumer who does not provide building work services—

- a consumer who engages a licensed builder to build, and carry out all building work services for, a new residence
- a consumer who, as a principal, enters into construction management trade contracts for building work and engages a construction manager for building work services for the work

'(8B) A person who holds any of the following licences does not contravene this section only by doing something permitted under the licence—

- (a) a nominee supervisor's licence;
- (b) a site supervisor's licence;
- (c) a fire protection occupational licence.'

(6) Section 42(9), penalty—

omit, insert—

'Maximum penalty—250 penalty units.'

(7) Section 42(12)—

omit, insert—

'(12) In this section—

licensed trade contractor means a licensed contractor other than the following—

- (a) a licensed builder;
- (b) a licensed contractor who holds a contractor's licence authorising the licensee to carry out completed building inspections.'

15 Insertion of new ss 42B–42D

After section 42A—

insert—

‘42B Carrying out building work without a nominee

- ‘(1) A licensee that is a company must not carry out, or undertake to carry out, building work unless the licensee has a nominee who holds a contractor’s licence or a nominee supervisor’s licence for the building work carried out, or undertaken to be carried out, under the company’s class of licence.

Maximum penalty—250 penalty units.

- ‘(2) However, a licensee does not commit an offence against subsection (1) if the period the licensee has not had a nominee is less than 28 days.

‘42C Unlawful carrying out of fire protection work

- ‘(1) An individual must not personally carry out, or personally supervise, fire protection work unless the individual—

- (a) holds a fire protection occupational licence; or
- (b) holds a licence, registration or authorisation under this or another Act that allows the person to personally carry out or personally supervise the work.

Maximum penalty—250 penalty units.

- ‘(2) Subsection (1) does not apply to an individual who personally carries out fire protection work if—

- (a) the fire protection work is a type prescribed under a regulation; and
- (b) the individual has the technical qualifications prescribed under a regulation for the type of fire protection work; and
- (c) the individual carries out the fire protection work for a licensed contractor who holds a licence of the relevant class for the work.

- ‘(3) Also, subsection (1) does not apply to—
- (a) an apprentice who personally carries out fire protection work in a calling that requires the apprentice to carry out the work; or
 - (b) a trainee who personally carries out fire protection work in a calling that requires the trainee to carry out the work; or
 - (c) a student who personally carries out fire protection work as part of training under the supervision of teaching staff at—
 - (i) a university; or
 - (ii) a college, school or similar institution conducted, approved or accredited by the State or the Commonwealth.

‘42D Licensed contractor must not engage or direct unauthorised person for fire protection work

‘A licensed contractor must not engage or direct an employee to carry out fire protection work unless the employee is authorised to carry out the work under this or another Act.

Maximum penalty—250 penalty units.’

16 Replacement of s 43 (Supervision of building work)

Section 43—

omit, insert—

‘43 Licensed contractor must ensure building work is personally supervised

- ‘(1) For a licensed contractor that is a company, the company and the company’s nominee must each ensure that building work carried out by the contractor is personally supervised by—
- (a) the company’s nominee; or
 - (b) an officer or employee of the contractor who holds 1 of the following licences of the relevant class authorising supervision of the building work—

- (i) a nominee supervisor's licence;
- (ii) a site supervisor's licence;
- (iii) a fire protection occupational licence;
- (iv) an occupational licence; or
- (c) an individual who holds a contractor's licence of the relevant class.

Maximum penalty—

- (a) for an individual—200 penalty units; or
 - (b) for a company—1000 penalty units.
- '(2) For a licensed contractor that is an individual, the contractor must ensure that building work carried out by the contractor is personally supervised by—
- (a) the contractor; or
 - (b) an employee of the contractor who holds 1 of the following licences of the relevant class authorising supervision of the building work—
 - (i) a nominee supervisor's licence;
 - (ii) a site supervisor's licence;
 - (iii) a fire protection occupational licence;
 - (iv) an occupational licence; or
 - (c) an individual who holds a contractor's licence of the relevant class.

Maximum penalty—200 penalty units.

- '(3) In this section—
- licensed contractor* does not include a licensed contractor that is a construction manager.

'43A Licensed contractor must ensure building work is adequately supervised

- '(1) For a licensed contractor that is a company, the company and the company's nominee must each ensure that building work carried out by the contractor is adequately supervised.

Maximum penalty—

- (a) for an individual—200 penalty units; or
- (b) for a company—1000 penalty units.

‘(2) For a licensed contractor that is an individual, the contractor must ensure that building work carried out by the contractor is adequately supervised.

Maximum penalty—200 penalty units.

‘(3) In deciding whether building work is adequately supervised, regard must be had to the following—

- (a) whether the licensed contractor has a system for the supervision of the work and, if so, how the system has been implemented;
- (b) whether the building work is in accordance with the plans and specifications set out in the contract for the work;
- (c) whether the work is of a standard expected of a competent holder of a contractor’s licence of the relevant class;
- (d) whether, having regard to the size and complexity of the building work, the following are sufficient—
 - (i) the level of control, oversight and direction exercised by a person authorised to supervise the work;
 - (ii) the number, timing and quality of inspections carried out by a person authorised to supervise the work;
- (e) whether the building work is checked on its completion and before final payment by a person authorised to supervise the work.

‘(4) In this section—

licensed contractor does not include a licensed contractor that is a construction manager.

‘43B Construction manager must ensure building work is personally supervised

- ‘(1) This section applies if a construction manager provides building work services for a principal under a construction management contract for the carrying out of building work.
- ‘(2) For a construction manager that is a company, the company and the company’s nominee must each ensure that building work carried out by licensed contractors under construction management trade contracts for the principal is personally supervised by—
- (a) the company’s nominee; or
 - (b) an officer or employee of the company who holds 1 of the following licences of the relevant class authorising supervision of the building work—
 - (i) a nominee supervisor’s licence;
 - (ii) a site supervisor’s licence;
 - (iii) a fire protection occupational licence;
 - (iv) an occupational licence; or
 - (c) an individual who holds a contractor’s licence of the relevant class.

Maximum penalty—

- (a) for an individual—200 penalty units; or
 - (b) for a company—1000 penalty units.
- ‘(3) For a construction manager that is an individual, the construction manager must ensure that building work carried out by licensed contractors under construction management trade contracts for the principal is personally supervised by—
- (a) the construction manager; or
 - (b) an employee of the construction manager who holds 1 of the following licences of the relevant class authorising supervision of the building work—
 - (i) a nominee supervisor’s licence;
 - (ii) a site supervisor’s licence;

- (iii) a fire protection occupational licence;
- (iv) an occupational licence; or
- (c) an individual who holds a contractor's licence of the relevant class.

Maximum penalty—200 penalty units.

'43C Construction manager must ensure building work is adequately supervised

- '(1) This section applies if a construction manager provides building work services for a principal under a construction management contract for the carrying out of building work.
- '(2) For a construction manager that is a company, the company and the company's nominee must each ensure that the building work carried out by licensed contractors under construction management trade contracts for the principal is adequately supervised.

Maximum penalty—

- (a) for an individual—200 penalty units; or
- (b) for a company—1000 penalty units.
- '(3) For a construction manager that is an individual, the construction manager must ensure that the building work carried out by licensed contractors under construction management trade contracts for the principal is adequately supervised.

Maximum penalty—200 penalty units.

- '(4) In deciding whether building work is adequately supervised, regard must be had to the following—
 - (a) whether the construction manager has a system for the supervision of the work and, if so, how the system has been implemented;
 - (b) whether the building work is in accordance with the plans and specifications set out in the contract for the work;

- (c) whether the work is of a standard expected of a competent holder of a contractor's licence of the relevant class;
- (d) whether, having regard to the size and complexity of the building work, the following are sufficient—
 - (i) the level of control, oversight and direction exercised by a person authorised to supervise the work;
 - (ii) the number, timing and quality of inspections carried out by a person authorised to supervise the work;
- (e) whether the building work is checked on its completion and before final payment by a person authorised to supervise the work.'.

17 Insertion of new ss 43D and 43E

In part 3, division 8, before section 44—

insert—

'43D Definitions for div 8

'In this division—

carry out, in relation to owner-builder work, means—

- (a) carry out the work personally; or
- (b) do both of the following—
 - (i) engage 1 or more licensed contractors to carry out building work;
 - (ii) provide building work services that would usually be carried out by a licensed contractor in the course of the contractor's business; or
- (c) do a combination of (a) and (b).

Examples of an owner providing building work services—

- directing licensed contractors how to perform building work
- coordinating the scheduling of building work by licensed contractors

- arranging for payment of subcontractors

multiple dwelling means a building comprising 2 or more residential units.

owner includes a person—

- (a) who—
 - (i) holds an estate or interest in land that entitles the person to become an owner (as defined in schedule 2) of the land; or
 - (ii) is the occupier of land under a lease, licence or other authority from the owner (as defined in schedule 2) of the land; and
- (b) who produces, with an application for an owner-builder permit, the written agreement of the owner (as defined in schedule 2) of the land for an owner-builder permit to be issued to the person.

owner-builder course means a course prescribed by regulation.

owner-builder work means building work for a building that is to be used for residential purposes carried out on the owner's land other than the following—

- (a) building work for a multiple dwelling;
- (b) fire protection work, unless the work is carried out by a person who holds a licence to carry out the work;
- (c) building work for which an occupational licence is required (the **occupational work**), unless the work is carried out by a person who holds a licence to carry out the work.

'43E When owner-builder permit is required

'An owner requires a permit (an **owner-builder permit**) to carry out owner-builder work on the owner's land.'

18 Replacement of s 44 (Permits for owner-builders)

Section 44—

omit, insert—

‘44 Application for owner-builder permit

- ‘(1) The owner of land may apply to the authority for an owner-builder permit.
- ‘(2) The application must be—
- (a) in writing; and
 - (b) in the form decided by the authority; and
 - (c) signed by—
 - (i) for an owner that is not a company, the owner, or if there is more than 1 owner, by all the owners; or
 - (ii) for a company, by all the directors of the company; and
 - (d) be accompanied by the fee prescribed by regulation.
- ‘(3) The application must—
- (a) state the name of the owner; and
 - (b) if the owner is a company, state the names of the directors and the company’s ACN number; and
 - (c) state the location of the land; and
 - (d) include a description of the work to be carried out; and
 - (e) include other information the authority reasonably requires to decide an application.
- ‘(4) The application must be accompanied by—
- (a) proof of the applicant’s identity; and
 - (b) if the applicant is a company, a copy of the company’s current or historical extract; and
 - (c) proof that the applicant is the owner of the land; and
 - (d) proof that an owner-builder course has been successfully completed by an individual who is—

- (i) an applicant; or
- (ii) a director of a company that is an applicant.

‘44A Consideration of application for permit

- ‘(1) The authority must consider the application and either grant, or refuse to grant, the application.
- ‘(2) However, before deciding the application, the authority may, by written notice given to the applicant, require the applicant to give the authority, within a reasonable period of at least 14 days stated in the notice, further information or a document the authority reasonably considers is needed to decide the application.
- ‘(3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- ‘(4) The authority may extend the stated period at the request of the applicant.

‘44B Criteria for granting application for permit

- ‘(1) The authority may grant the application only if the authority is satisfied—
 - (a) that the applicant, or each applicant, is the owner of the land; and
 - (b) that an applicant, or a director of a company that is an applicant, has successfully completed an owner-builder course; and
 - (c) if the applicant, or any of the applicants, is an individual, that none of the following has been issued with a permit in the 6 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) a company for which an applicant who is an individual is or was a director; and

- (d) if the applicant, or any of the applicants, is a company, that none of the following has been issued with a permit in the 6 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) an individual who is or was a director of the company; and
 - (e) if the applicant, or any of the applicants, is an individual, that none of the following has had an owner-builder permit cancelled in the 3 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) a company for which an applicant who is an individual is or was a director; and
 - (f) if the applicant, or any of the applicants, is a company, that none of the following has had an owner-builder permit cancelled in the 3 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) an individual who is or was a director of the company; and
 - (g) none of the applicants is a banned individual; and
 - (h) if an applicant is a company, that none of the directors of the company is a banned individual; and
 - (i) each applicant is a fit and proper person to hold a permit.
- (2) In deciding whether an applicant is a fit and proper person, the authority may have regard only to—
- (a) tier 1 defective work carried out by the following persons, whether or not the person received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work—
 - (i) the applicant;
 - (ii) if the applicant is a company, a director of the applicant; and

- (b) if the applicant, or a director of the applicant, is an enforcement debtor under an enforcement order for an infringement notice offence for this Act or the *Domestic Building Contracts Act 2000*—whether the applicant or director has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.
- ‘(3) However, the authority may not have regard to the matter mentioned in subsection (2)(b) if—
- (a) the applicant or director has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.
- ‘(4) Despite subsection (1)(c) and (d), the authority may grant an application if—
- (a) a regulation prescribes exceptional circumstances in which the authority may grant an application even though a previous permit has been issued in the 6 years preceding the application; and
 - (b) the authority considers the applicant is able to show the exceptional circumstances.

‘44C When permit becomes effective

‘A permit has effect on the day stated in the permit.

‘44D Term of permit

‘A permit ends 6 years after its issue or on the earlier date stated in the permit.

‘44E Conditions of permit

‘A permit is subject to the following conditions—

- (a) the permittee must comply with this Act;

- (b) the permittee may only carry out the building work as stated in the permit;
- (c) if the permittee engages persons to carry out building work, the persons must be licensed contractors for the work;
- (d) the permittee must not personally carry out building work for which an occupational licence is required;
- (e) the permittee must not personally carry out fire protection work if the value of the work is more than the amount prescribed by regulation, or if no amount is prescribed, more than \$1100;
- (f) other reasonable conditions—
 - (i) the authority considers appropriate to give effect to this Act; and
 - (ii) stated in the permit.

‘44F Form of permit

‘A permit is to be in the form decided by the authority and must state the following particulars—

- (a) the permittee’s name;
- (b) the location of the land on which the owner-builder work is to be carried out;
- (c) the real property description of the land;
- (d) a description of the owner-builder work to be carried out on the land;
- (e) the date of issue of the permit;
- (f) the term of the permit;
- (g) the permit number;
- (h) the conditions of the permit.

‘44G Cancellation or suspension of permit

‘The authority may suspend or cancel a permit if—

- (a) the permit was obtained on the basis of incorrect information supplied to the authority, whether or not fraud was intended; or
- (b) the permit was obtained by fraud or other improper means; or
- (c) the permittee carries out tier 1 defective work on the land the subject of the permit; or
- (d) the permittee contravenes a condition to which the permit is subject; or
- (e) the authority becomes aware of the existence of facts that would have allowed the authority to refuse to issue the permit originally.

‘44H Procedure for cancellation or suspension

- ‘(1) The authority must, before cancelling or suspending a permit, give the permittee notice of its reasons for the proposed cancellation or suspension and allow the permittee 21 days from service of the notice to make written representations on the matter.
- ‘(2) The authority must consider any written representations made within the time allowed under subsection (1) before imposing the cancellation or suspension.
- ‘(3) A cancellation or suspension is imposed by written notice to the permittee.
- ‘(4) The notice of cancellation or suspension must inform the permittee or former permittee of the right to apply to the tribunal for a review of the authority’s decision.

‘44I Permit issued to more than 1 person

‘If a permit is issued jointly to more than 1 person, a reference in this part to the permittee is a reference to each of the persons.

‘44J Surrender of permit

- ‘(1) A permittee may surrender the permit by written notice given to the authority.
- ‘(2) The permit must accompany the notice.
- ‘(3) The surrender takes effect on the later of the following—
 - (a) the day the notice is given;
 - (b) the day specified in the notice.

‘45 Replacement of permits

- ‘(1) A permittee may apply to the authority for the replacement of a permit if it has been lost, stolen, destroyed or damaged.
- ‘(2) The authority must consider the application and either grant, or refuse to grant, the application.
- ‘(3) The authority must grant the application if the authority is satisfied the permit has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- ‘(4) If the authority grants the application, the authority must, on payment of the reasonable cost of replacing the permit, issue another permit to the applicant to replace the lost, stolen, destroyed or damaged permit.’.

19 Amendment of s 46 (Notification on certificate of title)

- (1) Section 46(2), ‘section 44’—
omit, insert—
‘this division’.
- (2) Section 46(5)—
omit.
- (3) Section 46(6)—
renumber as subsection (5).

20 Amendment of s 48 (Cancellation or suspension of licence)

(1) Section 48, after paragraph (i)—

insert—

‘(ia) the licensee fails to comply with a written request by the authority under this Act; or’.

(2) Section 48(j), after ‘or (2)(a)’—

insert—

‘, or 32(1)(g), or 32AA(1)(d), or 32AB(1)(d)’.

21 Amendment of s 49B (Suspension or cancellation for failure to comply with tribunal’s orders and directions (s 86 QBTA))

Section 49B, heading, ‘(s 86 QBTA)’—

omit.

22 Amendment of s 50A (Approved audit program)

Section 50A(1)(b), after ‘part 4A’—

insert—

‘or part 5’.

23 Amendment of s 50C (Supply of financial records and other documents under approved audit program or for other reason)

(1) Section 50C(1)(b)(ii)(A), after ‘part 4A’—

insert—

‘or part 5’.

(2) Section 50C(2)(b)(i), after ‘part 4A’—

insert—

‘or part 5’.

- (3) Section 50C(3)(b)(i), after ‘part 4A’—
insert—
‘or part 5’.

24 Replacement of s 51 (Improper use of licence card, certificate, number or PIN)

Section 51—
omit, insert—

‘50D Person must not pretend to be a licensee

- ‘(1) A person must not pretend to be a licensee.
Maximum penalty—250 penalty units.
- ‘(2) Subsection (1) does not apply if the person makes use of another licensee’s licence to pretend to be a licensee.

‘51 Improper use of licence card, certificate, number or PIN

- ‘(1) A licensee must not allow another person to make use of the licensee’s licence if the licensee knows, or ought reasonably to know, that the other person intends to make use of the licence—
- (a) if the other person is not also a licensee—to pretend to be a licensee; or
 - (b) if the other person is also a licensee—to pretend to be the holder of a licence authorising the doing of something the other person is not authorised to do.
- Maximum penalty—250 penalty units.
- ‘(2) A person who is not a licensee must not make use of a licensee’s licence to pretend to be a licensee.
Maximum penalty—250 penalty units.
- ‘(3) A licensee (the *first licensee*) must not make use of another licensee’s licence to pretend to be the holder of a licence authorising the doing of something the first licensee is not authorised to do.

Maximum penalty—250 penalty units.

‘(4) In this section—

make use of, a licensee’s licence, means make use of the number of the licensee’s licence or the licensee’s licence card, licence certificate or PIN.’.

25 Amendment of s 51A (Other offences relating to unlawful carrying out of building work)

(1) Section 51A(1), penalty—

omit, insert—

‘Maximum penalty—250 penalty units.’.

(2) Section 51A(2), penalty—

omit, insert—

‘Maximum penalty—250 penalty units.’.

(3) Section 51A(3)—

omit.

26 Amendment of s 51B (Licensed contractor must not contract with unlicensed person)

Section 51B(5)—

omit.

27 Amendment of s 53B (False or misleading documents about financial requirements)

(1) Section 53B(1), after ‘document’ where first appearing—

insert—

‘or information’.

(2) Section 53B(1)(a)—

omit, insert—

‘(a) the person knows—

- (i) the document contains information that is false or misleading; or
- (ii) the information is false or misleading; or’.
- (3) Section 53B(1)(b), after ‘is false or misleading’—
insert—
‘or the information is false or misleading’.
- (4) Section 53B(3), after ‘document’—
insert—
‘or information’.

28 Insertion of new s 53C

After section 53B—

insert—

‘53C Advertising by unlicensed person

- ‘(1) A person who does not hold a contractor’s licence must not publish an advertisement that the person is available to carry out building work unless the advertisement complies with this section.
- ‘(2) The advertisement must state the value of the work the person is entitled to carry out without a licence.
Maximum penalty—100 penalty units.
- ‘(3) A regulation may prescribe the following for an advertisement under this section—
 - (a) the way the advertisement is to be presented;
 - (b) the words to be included in the advertisement.
- ‘(4) In this section—

building work includes building work of any value, despite any regulation excluding building work of a stated value from the definition *building work* for this Act.’.

29 Amendment of s 56 (Partnerships)

Section 56(2), penalty—

omit, insert—

‘Maximum penalty—

- (a) for subsection (1)(a) to (c)—80 penalty units; or
- (b) for subsection (1)(d)—200 penalty units.’.

30 Insertion of new s 56A

In part 3, division 10, after section 56—

insert—

‘56A Authority may request photographs for licence

- ‘(1) Subsection (2) applies to a licensee who is an individual.
- ‘(2) The authority may, at any time by written notice, request the licensee to give the authority 2 passport-size photographs of the applicant that are—
 - (a) recent photographs of the licensee; and
 - (b) certified in the way prescribed by regulation; and
 - (c) suitable for inclusion in the licensee’s licence.
- ‘(3) The licensee must provide the photographs within 28 days of receiving the request.’.

31 Amendment of s 56AB (Operation of pt 3A)

Section 56AB, ‘part 3.’—

omit, insert—

‘part 3, but does not apply to—

- (a) a site supervisor’s licence; or
- (b) a fire protection occupational licence.’.

32 Amendment of s 56AD (Becoming a permitted individual)

- (1) Section 56AD(1), after ‘apply to the authority’—

insert—

‘, in the form approved by the Board.’.

(2) After section 56AD(8)—

insert—

‘(8A) In deciding whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event, the authority must have regard to action taken by the individual in relation to the following—

- (a) keeping proper books of account and financial records;
- (b) seeking appropriate financial or legal advice before entering into financial or business arrangements or conducting business;
- (c) reporting fraud or theft to the police;
- (d) ensuring guarantees provided were covered by sufficient assets to cover the liability under the guarantees;
- (e) putting in place appropriate credit management for amounts owing and taking reasonable steps for recovery of the amounts;
- (f) making appropriate provision for Commonwealth and State taxation debts.

‘(8B) Nothing in subsection (8A) prevents the authority from having regard to other matters for deciding whether an individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of a relevant event.’.

33 Amendment of s 57 (Operation of pt 3B)

Section 57, ‘part 3.’—

omit, insert—

‘part 3, but does not apply to—

- (a) a site supervisor’s licence; or
- (b) a fire protection occupational licence.’.

34 Amendment of s 62 (Operation of pt 3C)

Section 62, 'part 3.'—

omit, insert—

'part 3, but does not apply to—

- (a) a site supervisor's licence; or
- (b) a fire protection occupational licence.'

35 Amendment of s 67AQ (Definitions for pt 3E)

Section 67AQ, definition *conviction*, 'section 67AR(b)'—

omit, insert—

'section 67AR(1)(b) or (2)(b)'.

36 Amendment of s 67AR (Meaning of *demerit offence*)

(1) Section 67AR, paragraphs (a) and (b), 'of this section'—

omit, insert—

'of this subsection'.

(2) Section 67AR—

insert—

'(2) Also, a *demerit offence* is—

(a) an offence, committed after the commencement of this subsection, against—

- (i) section 42B, 68(1) or 72(10); or
- (ii) the *Domestic Building Contracts Act 2000*, section 26; or
- (iii) the *Domestic Building Contracts Act 2000*, section 27 to the extent it relates to noncompliance with the formal requirement mentioned in section 27(2)(f); or

(b) a contravention, after the commencement of this subsection, by a licensee, of a requirement imposed under a provision mentioned in paragraph (a).'

37 Amendment of s 67AV (Operation of pt 3E)

Section 67AV, ‘part 3.’—

omit, insert—

‘part 3, but does not apply to—

- (a) a site supervisor’s licence; or
- (b) a fire protection occupational licence.’.

38 Amendment of s 67AX (When demerit points allocated for demerit offences)

Section 67AX(2)(f), ‘section 67AR(b)’—

omit, insert—

‘section 67AR(1)(b) or (2)(b)’.

39 Replacement of s 67B (Meaning of *construction management trade contract* in pt 4A)

Section 67B—

omit, insert—

‘67B Meaning of *construction management trade contract*

‘(1) A building contract is a *construction management trade contract* if—

- (a) the contracting party for the building contract is a principal; and
- (b) the contracted party for the building contract is the holder of a contractor’s licence; and
- (c) the building work the subject of the building contract is part of a wider project of building work (the *project*) involving the principal in entering into 1 or more other building contracts, also as a principal, for the carrying out of other building work that is also part of the project; and
- (d) the contracted party is not the construction manager for the project.

- ‘(2) For deciding whether a principal has entered into a building contract, it does not matter if the building contract was entered into on behalf of the principal, including by a construction manager.’.

40 Amendment of s 67G (Building contracts to be in writing)

- (1) Section 67G(1), penalty—
omit, insert—
‘Maximum penalty—80 penalty units.’.
- (2) Section 67G(2), penalty—
omit, insert—
‘Maximum penalty—80 penalty units.’.
- (3) Section 67G(3), penalty—
omit, insert—
‘Maximum penalty—80 penalty units.’.

41 Amendment of s 67I (Directions given under building contracts)

- Section 67I(4), penalty—
omit, insert—
‘Maximum penalty—80 penalty units.’.

42 Amendment of s 67V (Offence of not warning that contract is construction management trade contract)

- Section 67V(1), penalty—
omit, insert—
‘Maximum penalty—80 penalty units.’.

43 Insertion of new ss 67X and 67Y

- In part 5, before section 68—
insert—

**‘67X Statutory insurance scheme may be called
Queensland Home Warranty Scheme**

‘The statutory insurance scheme may operate under the name, and be referred to as—

- (a) the *Queensland Home Warranty Scheme*; or
- (b) if another name is prescribed by regulation, that other name.

**‘67Y Protection of expressions associated with statutory
insurance scheme**

‘(1) A person must not use a declared expression in connection with selling the right to participate in any warranty or insurance scheme unless—

- (a) the scheme is that to which this Act relates; and
- (b) that person does so on behalf of the authority.

‘(2) A person must not—

- (a) use any variation of a declared expression; or
- (b) use any word (either alone or in conjunction with any other word) similar in sight or sound to a declared expression;

in connection with selling the right to participate in any insurance or warranty scheme, being, in either case, a use likely to afford reasonable grounds for believing the scheme is or is associated with the scheme to which this Act relates, unless—

- (c) the scheme in question is one to which this Act relates; and
- (d) that person does so on behalf of the authority.

‘(3) A person who contravenes subsection (1) or (2) commits an offence against this Act.

Maximum penalty—100 penalty units.

‘(4) In this section—

declared expression means—

- (a) the *Queensland Home Warranty Scheme*; or
- (b) if another name is prescribed by regulation under section 67X, that other name.’.

44 Amendment of s 68 (Payment of insurance premium)

- (1) Section 68, heading—

omit, insert—

‘68 Payment of insurance premium for residential construction work’

- (2) Section 68(1)—

omit, insert—

- ‘(1) The appropriate insurance premium payable under section 68D for residential construction work must be paid to the authority by the following—

- (a) if section 68B applies, the licensed contractor;
- (b) if section 68C applies, the construction manager who holds a contractor’s licence of the relevant class.

Maximum penalty—100 penalty units.

- ‘(1A) The premium must be paid—

- (a) if section 68B(a) applies, as soon as practicable after the contract is entered into with the consumer; or
- (b) if section 68C applies, as soon as practicable after the construction management contract is entered into with the principal; or
- (c) if section 68B(b) applies, before residential construction work is started.’.

45 Insertion of new ss 68A–68D

After section 68—

insert—

‘68A Multiple contracts for the same residential construction work

- ‘(1) This section applies if a licensed contractor and a consumer enter into 2 or more separate contracts that—
- (a) could be the subject of a single contract to carry out residential construction work; and
 - (b) if they were the subject of a single contract, would be a contract to carry out residential construction work.
- ‘(2) For this part, the separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.

Example of separate contracts—

A licensed contractor that manufactures and installs kitchens enters into one contract with a building owner for the manufacture of a kitchen and a second contract for its installation.

‘68B When insurance premium is payable by licensed contractor

‘A licensed contractor who is to carry out residential construction work must pay the insurance premium for the work if—

- (a) the work is carried out under a contract with a consumer and the work is not the subject of a construction management contract; or
- (b) the work is speculative residential construction work.

‘68C When insurance premium is payable by construction manager

‘A construction manager who holds a contractor’s licence of the relevant class must pay the insurance premium for residential construction work if a principal engages a construction manager under a construction management contract for the carrying out of the work.

‘68D Setting of insurance premiums for residential construction work

- ‘(1) For residential construction work, the authority must state the insurance premium payable, or the way it is calculated, in the gazette.
- ‘(2) Before stating the premium, or the way it is calculated, the authority must—
 - (a) have regard to the authority’s obligation under section 26A; and
 - (b) ensure insurance premiums are sufficient to meet the costs mentioned in section 26(3); and
 - (c) have regard to any regulation made under section 26(4); and
 - (d) obtain the Minister’s approval.
- ‘(3) The authority must review premiums payable at least once every 12 months.
- ‘(4) A regulation may prescribe the way the value of residential construction work is calculated for stating the insurance premium payable.
- ‘(5) Subsection (6) applies if a principal engages a construction manager under a construction management contract for the carrying out of residential construction work.
- ‘(6) For calculating the insurance premium payable by the construction manager, the amount paid by the principal to the construction manager under the contract must be added to the value of the residential construction work.’.

46 Amendment of s 69 (Insurance of building work)

- (1) Section 69, heading, ‘building’—
omit, insert—
‘residential construction’.
- (2) Section 69(2)—
omit, insert—

- ‘(2) A policy of insurance comes into force in the terms stated in the board’s policies for the purpose—
- (a) if a consumer enters into a contract for the performance of residential construction work, and—
 - (i) the contract bears the licence number of a licensed contractor and, under the licensed contractor’s licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
 - (ii) the contract is with a licensed contractor and, under the licensed contractor’s licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
 - (iii) the contract is with a person fraudulently claiming to hold a licence under which the person may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
 - (b) if the work is speculative residential construction work carried out by a licensed contractor and, under the contractor’s licence the contractor may carry out residential construction work covered by the statutory insurance scheme.’.

47 Insertion of new s 69A

After section 69—

insert—

‘69A Commencement of insurance cover

- ‘(1) Subsection (2) applies to residential construction work carried out under a contract with a consumer where the work is not managed under a construction management contract.
- ‘(2) A policy of insurance for the work, in the terms stated in the board’s policies, comes into force on the earliest of the following to happen—

- (a) when a licensed contractor pays the appropriate insurance premium for the work under section 68;
 - (b) on the date a contract between a building contractor and a consumer is entered into for the work;
 - (c) when a building contractor commences the work.
- ‘(3) Subsection (4) applies to speculative residential construction work.
- ‘(4) A policy of insurance for the work, in the terms stated in the board’s policies, comes into force on the earlier of the following to happen—
- (a) when the licensed contractor who is to carry out the work pays the appropriate insurance premium for the work under section 68;
 - (b) when the contractor commences the work.
- ‘(5) Subsection (6) applies to residential construction work if the work is managed by a construction manager under a construction management contract.
- ‘(6) A policy of insurance for the work, in the terms stated in the board’s policies, comes into force on the earlier of the following to happen—
- (a) when the construction manager pays the appropriate insurance premium for the work under section 68;
 - (b) when a building contractor commences the work.’.

48 Amendment of s 70 (Insurance claims)

Section 70(2) and (3)—

omit, insert—

- ‘(2) If the regulations do not state the way the notice of claim is to be given, a person who has applied to the authority under section 71A is taken to have given notice under this section.’.

49 Insertion of new s 70A

After section 70—

insert—

‘70A Persons not entitled to indemnity under insurance scheme

- ‘(1) A building contractor who carries out speculative residential construction work is not entitled to indemnity under the statutory insurance scheme for the work.
- ‘(2) Where a person has entered into 1 or more building contracts, in force at the same time, to construct 3 or more living units, the person is not entitled to indemnity under the statutory insurance scheme for the work.
- ‘(3) For subsection (2)—
 - (a) a single detached dwelling is taken to be 1 living unit; and
 - (b) a residential unit is taken to be 1 living unit; and
 - (c) a duplex is taken to be 2 living units.
- ‘(4) A policy of insurance for residential construction work, in the terms stated in the board’s policies, may include other circumstances in which a person is not entitled to indemnity under the statutory insurance scheme.
- ‘(5) Nothing in this section affects the right of a subsequent owner of residential construction work mentioned in this section to claim indemnity under the statutory insurance scheme.’.

50 Insertion of new s 71AA

In part 5, after section 71—

insert—

‘71AA Cancellation of policy of insurance

- ‘(1) A policy of insurance for residential construction work taken out by a licensed contractor may be cancelled by the contractor if—
 - (a) the contractor asks the authority in writing to cancel the policy; and

- (b) the contract between the contractor and the consumer has ended; and
 - (c) the deposit under the contract has been refunded, less any amounts that may be lawfully deducted from the deposit; and
 - (d) the work insured under the policy has not started; and
 - (e) not more than 1 year has elapsed from the day the contract was entered into.
- ‘(2) A policy of insurance for residential construction work taken out by a construction manager may be cancelled by the construction manager if—
- (a) the construction manager asks the authority in writing to cancel the policy; and
 - (b) the relevant construction management contract and all the construction management trade contracts for the work have ended; and
 - (c) deposits paid under the relevant construction management contract and all the construction management trade contracts have been refunded, less any amounts that may be lawfully deducted from the deposits; and
 - (d) the work insured under the policy has not started; and
 - (e) not more than 1 year has elapsed from the day the first construction management trade contract for the work was entered into.
- ‘(3) On cancellation of the policy, the authority must refund the insurance premium paid for the work to the licensed contractor or construction manager or to a person nominated in writing by the contractor or manager.
- ‘(4) To remove doubt it is declared that, despite section 68(3), a person may not claim to be entitled to indemnity under a policy of insurance cancelled under this section.’

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

(1) Section 72(5)—

insert—

- ‘(f) a construction manager engaged under a construction management contract to provide building work services for the building work; and
- (g) a principal who was the contracting party for a building contract for building work for a building, or part of a building, intended for sale if—
 - (i) the building, or part of a building, is not, and has never been, the principal place of residence of the principal; and
 - (ii) the principal engages a building contractor or a construction manager to carry out the building work in a way, or using materials, likely to result in the work being defective or incomplete; and
 - (iii) the principal knew, or ought to have known, that the way the work was to be carried out, or the materials to be used, was likely to result in the work being defective or incomplete; and

Example where principal knew that work or materials were likely to result in defective or incomplete building work—

A principal may know materials are likely to result in work being defective because of advice received from a building contractor or construction manager.

- (h) a person who was the nominee for a licensed contractor that is a company, for work carried out by the company while the person was the company’s nominee.’.

(2) After section 72(5)—

insert—

- ‘(5AA) A direction to rectify may be given to more than 1 person for the same building work.’.

- (3) Section 72(10), penalty—
omit, insert—
'Maximum penalty—250 penalty units.'

52 Amendment of s 75 (Tribunal work defined (ss 7 & 8 QBTA))

- (1) Section 75, heading, '(ss 7 & 8 QBTA)'—
omit.
- (2) Section 75(1), after paragraph (f)—
insert—
'(fa) fire protection work;'

53 Amendment of s 76 (What is not *tribunal work* (s 7 QBTA))

- Section 76, heading, '(s 7 QBTA)'—
omit.

54 Amendment of s 77 (Tribunal may decide building dispute (s 93 QBTA))

- Section 77, heading, '(s 93 QBTA)'—
omit.

55 Amendment of s 78 (When major commercial building dispute may be heard by tribunal (s 94 QBTA))

- Section 78, heading, '(s 94 QBTA)'—
omit.

56 Amendment of s 79 (Procedure to decide whether all parties consent (s 95 QBTA))

- Section 79, heading, '(s 95 QBTA)'—
omit.

- 57 Amendment of s 80 (Procedure if another party discovered (s 96 QBTA))**
Section 80, heading, '(s 96 QBTA)'—
omit.
- 58 Amendment of s 81 (Consent may not be withdrawn (s 97 QBTA))**
Section 81, heading, '(s 97 QBTA)'—
omit.
- 59 Amendment of s 82 (Tribunal may make interim order (s 98 QBTA))**
Section 82, heading, '(s 98 QBTA)'—
omit.
- 60 Amendment of s 83 (Proceeding in tribunal stops action by authority (s 99 QBTA))**
Section 83, heading, '(s 99 QBTA)'—
omit.
- 61 Amendment of s 84 (Tribunal to decide about rectification or completion work (s 101 QBTA))**
Section 84, heading, '(s 101 QBTA)'—
omit.
- 62 Amendment of s 85 (Tribunal may hear dispute while contract still in operation (s 102 QBTA))**
Section 85, heading, '(s 102 QBTA)'—
omit.

63 Amendment of s 86 (Reviewable decisions (s 104 QBTA))

- (1) Section 86, heading, '(s 104 QBTA)'—
omit.
- (2) Section 86(1), after paragraph (a)—
insert—
'(aa) a decision to refuse an application for renewal of a licence;'.
omit.
- (3) Section 86(1)(c), after 'licence'—
insert—
'or permit'.
omit.
- (4) Section 86(2), 'However, the tribunal may not review'—
omit, insert—
'The tribunal must not review'.
omit.
- (5) Section 86(2)(b)(ii)—
insert—
'(C) started a prosecution, or served an infringement notice, for an offence against section 72(10);'.
omit.

64 Amendment of s 87 (Application for review (s 105 QBTA))

Section 87, heading, '(s 105 QBTA)'—
omit.

65 Amendment of s 88 (Tribunal has jurisdiction to conduct disciplinary proceeding (s 108 QBTA))

Section 88, heading, '(s 108 QBTA)'—
omit.

- 66 Amendment of s 89 (Proper grounds for disciplinary action against a licensee (s 109 QBTA))**
Section 89, heading, '(s 109 QBTA)'—
omit.
- 67 Amendment of s 90 (Proper grounds for disciplinary action against person not a licensee (s 110 QBTA))**
Section 90, heading, '(s 110 QBTA)'—
omit.
- 68 Amendment of s 91 (Orders for disciplinary action (s 111 QBTA))**
Section 91, heading, '(s 111 QBTA)'—
omit.
- 69 Amendment of s 92 (Tribunal may conduct public examination (s 112 QBTA))**
- (1) Section 92, heading, '(s 112 QBTA)'—
omit.
 - (2) Section 92(b)(iii), 'nominated supervisor'—
omit, insert—
'nominee'.
 - (3) Section 92(b)(iii), 'a licence'—
omit, insert—
'a licence—'.
- 70 Amendment of s 93 (Decisions about debts arising from statutory insurance scheme (s 116 QBTA))**
Section 93, heading, '(s 116 QBTA)'—
omit.

- 71 Amendment of s 94 (Transfer of proceedings between tribunal and the courts (s 117 QBTA))**
Section 94, heading, '(s 117 QBTA)'—
omit.
- 72 Amendment of s 95 (Expedited hearing of domestic building disputes (s 128 QBTA))**
Section 95, heading, '(s 128 QBTA)'—
omit.
- 73 Amendment of s 96 (Certain minor commercial building disputes may be expedited (s 129 QBTA))**
Section 96, heading, '(s 129 QBTA)'—
omit.
- 74 Amendment of s 97 (Judicial Review excluded for minor domestic building disputes (s 170 QBTA))**
Section 97, heading, '(s 170 QBTA)'—
omit.
- 75 Insertion of new pt 8**
After section 97—
insert—

'Part 8 Registers

- '98 Definitions for pt 8**
'In this part—
developer register see section 103B.
licensee register see section 99.
owner-builder register see section 103.

'99 Licensee register

- '(1) A register of licensees (the *licensee register*) must be kept by the authority.
- '(2) The register must include the following particulars in relation to each licensee—
- (a) the licensee's full name, business address and licence number;
 - (b) if the licensee is a company—the full name and business address of the nominee and each director;
 - (c) the class of licence held by the licensee and any conditions to which the licence is, or has been, subject;
 - (d) any particulars required by regulation.
- '(3) The register must also contain against the name of each licensee a note of—
- (a) each direction of the authority requiring the licensee to rectify building work; and
 - (b) each order made against the licensee by the tribunal under section 107¹ of the Tribunal Act; and
 - (c) any decision of the tribunal under section 84² that it would have been appropriate for the authority to issue a direction requiring the licensee to rectify or complete building work; and
 - (d) each time the licensee is convicted of an offence against this Act or the *Domestic Building Contracts Act 2000* and the provision of the Act that was contravened; and
 - (e) each offence for which the licensee has for this Act or the *Domestic Building Contracts Act 2000* been served with an infringement notice and—
 - (i) the licensee has paid the fine in full or in part; or
 - (ii) a default certificate has been registered for the infringement notice; and

1 Tribunal Act, section 107 (Orders for disciplinary action)

2 Section 84 (Tribunal to decide about rectification or completion work)

- (f) any demerit points allocated to the licensee, the demerit matters for which they were allocated and the dates the points took effect; and
 - (g) any cancellation or suspension of the licensee's licence including the circumstances that led to the cancellation or suspension; and
 - (h) if the licensee has been a permanently excluded individual, an excluded individual, a banned individual or a disqualified individual—the details of the circumstances that led to the exclusion, ban or disqualification; and
 - (i) if the licensee is a company that has a director, secretary, influential person or nominee that became a permanently excluded individual, an excluded individual, a banned individual or a disqualified individual in the last 10 years—the details of the circumstances that led to the exclusion, ban or disqualification.
- ‘(4) A reference in subsection (3) to something happening in relation to a person who is a licensee includes something happening—
- (a) in relation to the person before the person became a licensee; and
 - (b) before the commencement of this section.
- ‘(5) In this section—
- licensee* includes a person who was previously a licensee.

‘100 When information may be included in the licensee register

- ‘(1) No information may be included in the register under section 99(3)(a) until—
- (a) all periods for seeking a review of the direction, and for making any appeal arising out of review of the direction, have ended; and

- (b) any review or appeal about the direction is finally decided or is not proceeded with.
- ‘(2) No information may be included in the register under section 99(3)(b) or (c) until—
- (a) all periods for making an appeal arising out of the tribunal’s order or decision have ended; and
 - (b) any appeal about the order or decision is finally decided or is not proceeded with.
- ‘(3) No information may be included in the register under section 99(3)(d) until—
- (a) all periods for making an appeal arising out of the conviction have ended; and
 - (b) any appeal about the conviction is finally decided or is not proceeded with.
- ‘(4) No information may be included in the register under section 99(3)(e)(ii) if a licensee has applied for cancellation of the enforcement order and the application for cancellation has not been finally decided.

‘101 Licensees must advise change of circumstances

- ‘(1) If circumstances change so that the particulars recorded in the licensee register in relation to a particular licensee no longer reflect the current position, the licensee must, within 14 days after the date of the change, give the authority particulars of the change.
- ‘(2) Particulars may be given under subsection (1)—
- (a) by written notice; or
 - (b) in another way approved by the authority, and advised generally to licensees, as a suitable way for advising particulars to the authority.

‘102 When notes must be removed from the licensee register

- ‘(1) A note made in the register under section 99(3) must be taken off—
- (a) for information mentioned in section 99(3)(g) and (h), 10 years after it is made; or
 - (b) for information mentioned in section 99(3)(f), 3 years after it is made; or
 - (c) for information mentioned in section 99(3)(i), the earlier of—
 - (i) when the director, secretary, influential person or nominee is no longer a director, secretary, influential person or nominee for the company; or
 - (ii) 10 years from the time the director, secretary, influential person or nominee became a permanently excluded individual, excluded individual, banned individual or a disqualified individual; or
 - (d) otherwise, 5 years after it is made.
- ‘(2) However, details of demerit points and the demerit matters for which points were allocated must be removed from the register—
- (a) if the points stop having effect; or
 - (b) if the points relate to an unsatisfied judgment debt, when the authority is satisfied the judgment debt has been paid.
- ‘(3) Also, for section 99(3)(e), details of an offence must be removed from the register if—
- (a) the infringement notice for the offence is withdrawn by the authority; or
 - (b) the enforcement order stops having effect, other than because the amount owing under the enforcement order has been paid or the order has been otherwise discharged.

- ‘(4) Also, a note that states that an individual is prevented, for the life of the individual, from obtaining a licence under this Act must not be removed from the register.

‘103 Register of holders of owner-builder permits

- ‘(1) A register of persons holding owner-builder permits (the *owner-builder register*) must be kept by the authority.
- ‘(2) The register must include the following particulars in relation to each permittee—
- (a) the permittee’s full name, or if the permittee is a company the full name and business address of each of the directors of the company;
 - (b) the location of the land on which the owner-builder work is to be carried out;
 - (c) the real property description of the land;
 - (d) a description of the owner-builder work to be carried out on the land;
 - (e) the date of issue of the permit;
 - (f) the term of the permit;
 - (g) the permit number;
 - (h) the conditions of the permit;
 - (i) any particulars required by regulation.
- ‘(3) If circumstances change so that the particulars recorded in the register in relation to a particular permittee no longer reflect the current position, the permittee must, within 14 days after the date of the change, give the authority particulars of the change.
- ‘(4) Particulars under subsection (3) may be given—
- (a) by written notice; or
 - (b) in another way approved by the authority.

‘103A When particulars must be removed from owner-builder register

‘Particulars relating to a permittee must be removed from the owner-builder register when the term of the permittee’s permit ends.

‘103B Developer register

- ‘(1) A register (the *developer register*) containing details about each principal (the *relevant developer*) mentioned in section 72(5)(g) given a direction under section 72(1) must be kept by the authority.
- ‘(2) The register must contain against the name of a relevant developer a note of—
- (a) each direction of the authority requiring the relevant developer to rectify building work; and
 - (b) each time the relevant developer is convicted of an offence against section 72(10).
- ‘(3) However, no information may be included in the register under subsection (2)(a) until—
- (a) all periods for seeking a review of the direction, and for making any appeal arising out of a review of the direction, have ended; and
 - (b) any review or appeal about the direction is finally decided or is not proceeded with.
- ‘(4) Also, no information may be included in the register under subsection (2)(b) until—
- (a) all periods for making an appeal arising out of the conviction have ended; and
 - (b) any appeal about the conviction is finally decided or is not proceeded with.
- ‘(5) Subsection (6) applies if—
- (a) the register contains the name of a relevant developer that is a company because the company has been convicted of an offence against section 72(10); and

- (b) an executive officer of the company is convicted of an offence under section 111B in relation to the offence under section 72(10); and
 - (c) all periods for making an appeal arising out of the conviction of the executive officer have ended; and
 - (d) any appeal about the conviction by the executive officer is finally decided or is not proceeded with.
- ‘(6) A note of the conviction of the executive officer must be included in the register.

‘103C When notes must be removed from developer register

‘A note made in the developer register must be taken off the register 5 years after it is made.

‘103D Inspection of registers

‘A person may, on payment of the fee, and subject to the conditions, prescribed by regulation, inspect a register at the authority’s offices at any time the offices are open to the public.

‘103E Publication of registers

‘The authority may publish a register on the authority’s internet site.

Editor’s note—

The authority internet site is <www.bsa.qld.gov.au>.

‘103F Certificates

- ‘(1) The authority may, on application by any person and payment of the fee fixed by regulation, issue a certificate certifying any matter contained in a register kept under this Act.
- ‘(2) A certificate under this section is admissible in legal proceedings as evidence of any matter stated in the certificate.’

76 Replacement of s 105 (Inspector to produce identity card)

Section 105—

omit, insert—

‘105 Inspector to produce identity card and provide information

- ‘(1) An inspector must not exercise a power under this Act in relation to a person unless the inspector—
- (a) first produces the inspector’s identity card for inspection by the person or has the identity card displayed so it is clearly visible to the person when exercising the power; and
 - (b) tells the person that the inspector intends to exercise the power; and
 - (c) generally advises the person of the nature of the power to be exercised; and
 - (d) requests the person’s cooperation in relation to the exercise of the power.
- ‘(2) However, if it is not practicable to comply with subsection (1)(a), the authorised officer must produce the identity card for the person’s inspection at the first reasonable opportunity.
- ‘(3) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.’.

77 Insertion of new s 107A

After section 107—

insert—

‘107A Obstructing inspectors

- ‘(1) A person must not obstruct an inspector who is exercising a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- ‘(2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
 - (b) the inspector considers the person's conduct an obstruction.
- ‘(3) Subsection (2) does not apply if the obstruction is an assault.
- ‘(4) In this section—
obstruct includes assault, hinder or resist or attempt or threaten to obstruct.’.

78 Amendment of s 108 (Obligation of assessment manager)

Section 108—

insert—

- ‘(2) In this section—
assessment manager includes a private certifier acting as an assessment manager under the *Integrated Planning Act 1997*.’.

79 Insertion of new ss 108A–108D

In part 10, before section 109—

insert—

‘108A Documents that must be kept for 7 years

- ‘(1) Subsection (2) applies to the following documents—
- (a) a building contract entered into by a building contractor and the plans, specifications and variations relating to the contract;
 - (b) a building contractor's financial records relevant to the financial requirements stated in the board's policies.
- ‘(2) The contractor must keep each document for 7 years from the date it is put into writing.

Maximum penalty—100 penalty units.

‘108B False or misleading statement

‘(1) A person must not state anything to the authority the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

‘(3) This section does not apply to information to which section 53B applies.

‘108C False or misleading document

‘(1) A person must not give the authority a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

(a) tells the authority, to the best of the person’s ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

‘(3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—100 penalty units.

‘(4) In a proceeding for an offence against subsection (1) or (3), it is enough for a charge to state that the information or entry was, without specifying which, ‘false or misleading’.

‘(5) This section does not apply to a document to which section 53B applies.

‘108D Contracting out prohibited

‘A person can not contract out of the provisions of this Act.’

79A **Insertion of new s 115**

After section 114—

insert—

‘115 Authority may provide services to a professional board

- ‘(1) The authority may provide services to a professional board in relation to a disciplinary proceeding being, or that may be, conducted by the tribunal.

Example—

The authority might make a lawyer performing work for it under a work performance arrangement available to represent a professional board at a disciplinary proceeding being conducted by the tribunal.

- ‘(2) The authority may enter into arrangements with a professional board about the fees to be paid to the authority for services provided under subsection (1).

- ‘(3) In this section—

disciplinary proceeding means—

- (a) a disciplinary proceeding under the *Architects Act 2002*;
or
- (b) a disciplinary proceeding under the *Professional Engineers Act 2002*.

professional board means —

- (a) the Board of Architects of Queensland established under the *Architects Act 2002*; or
- (b) the Board of Professional Engineers of Queensland established under the *Professional Engineers Act 2002*.’

80 **Amendment of s 116 (Regulations)**

Section 116(2), before paragraph (a)—

insert—

- ‘(aa) prescribe the procedure for, and other matters relating to, the application for, or renewal of, licences under this Act; and’.

81 Amendment of sch 1 (Transitional and validating provisions)

Schedule 1, after part 7—

insert—

‘Part 8 Transitional provisions for Queensland Building Services Authority and Other Legislation Amendment Act 2007

‘31 Transitional provisions for existing supervisors’ licences

- ‘(1) This section applies to a licensee who at the commencement of this section holds a supervisor’s licence.
- ‘(2) The licensee is taken to hold a nominee supervisor’s licence for the classes of building work to which the supervisor’s licence applies.
- ‘(3) In this section—
supervisor’s licence means a licence authorising the licensee to supervise (but not to carry out) building work.

‘32 Transitional qualifications for site supervisors’ licences

- ‘(1) This section applies if a person who does not have the required qualifications applies for a site supervisor’s licence during the transitional period.
- ‘(2) The authority may grant the application even though the applicant does not have the required qualifications for the licence if —
 - (a) the authority has sighted a declaration by a licensed contractor stating that—
 - (i) the applicant has carried out building work as an officer or employee of the contractor for a period of not less than 12 months; and

- (ii) the contractor has had an opportunity to assess the skills of the applicant during the period; and
- (iii) the contractor is satisfied that the applicant has the skills to carry out the duties of a site supervisor for a licence of the class applied for; and
- (b) the authority is satisfied that the applicant has the skills to be a site supervisor for that class.
- ‘(3) If the licensed contractor is a company, the declaration must be by the company’s nominee.
- ‘(4) Nothing in this section limits the powers the authority may exercise under section 33(2) or (3).
- ‘(5) In this section—

required qualifications means the qualifications required for a site supervisor’s licence under section 32AA.

transitional period means the period of 1 year from the commencement of section 30B.

‘33 Transitional provision for fire protection occupational licences

‘Sections 42C and 42D do not apply to anything happening before 2 years from the commencement of section 30C.

‘34 Transitional provision for certain fire protection work

‘Section 42 does not apply to the following building work until 2 years after the commencement of this section—

- (a) the design of a fire protection system;
- (b) the development, approval or certification of emergency evacuation procedures for a controlled evacuation during a fire emergency;
- (c) the formulation or provision of alternative solutions relating to fire safety;
- (d) the inspection or investigation of, and the provision of advice or a report about compliance with the *Building*

Act 1975 or the Building Code of Australia relating to fire safety.

‘35 Transitional provision for photograph on licence

- ‘(1) Subsection (2) applies to the grant or renewal of a licence that happens before 2 years from the commencement of this section.
- ‘(2) The licence may, or may not, contain a recent photograph of the licensee.

‘36 Transitional provision for continuation of register of licensees

- ‘(1) The register of licensees under section 39, as in force immediately before the commencement of section 99, continues as the licensee register under section 99.
- ‘(2) The authority may continue to exercise its powers under part 8 in relation to the licensee register.’.

82 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *contractor’s licence*, *farm building*, *licensed supervisor*, *owner-builder permit* and *supervisor’s licence*—
omit.
- (2) Schedule 2—
insert—
‘administration services, for building work or tribunal work, includes the following—
 - (a) preparing tender documentation and calling and selecting tenders;
 - (b) arranging and conducting on-site meetings and inspections;
 - (c) arranging payment of subcontractors;

- (d) arranging for certificates, including certificates from a local government, to be issued;
- (e) administration for the work usually carried out by—
 - (i) a construction manager; or
 - (ii) a project manager under a project management agreement;
- (f) other administration for the work usually carried out by a licensed contractor in the course of the contractor's business.

advisory services, for building work or tribunal work, includes the provision of advice or a report about building work other than—

- (a) the carrying out of a completed building inspection; or
- (b) the inspection or investigation of a building, and the provision of advice or a report, for the following—
 - (i) termite management systems for the building;
 - (ii) termite infestation in the building.

alternative solution see *Building Act 1975*, schedule 2.

apprentice means an apprentice under the *Vocational Education, Training and Employment Act 2000*.

building contract means a contract or other arrangement for carrying out building work in Queensland, for the following—

- (a) this Act, other than part 4A;
- (b) the definition *construction management trade contract* where it is used, other than in part 4A.

building work services means 1 or more of the following for building work—

- (a) administration services;
- (b) advisory services;
- (c) management services;
- (d) supervisory services.

calling includes a craft, manufacture, occupation, trade, undertaking or vocation.

carry out, for building work (other than for part 4A) means any of the following—

- (a) carry out the work personally;
- (b) directly or indirectly cause the work to be carried out;
- (c) provide building work services for the work.

construction management contract means a contract under which a principal engages a construction manager to provide building work services for building work carried out for the principal under construction management trade contracts.

construction manager means a person who provides building work services for the carrying out of building work for a principal under a construction management contract.

contractor's licence see section 30(1).

developer register, for part 8, see section 98.

enforcement debtor see the *State Penalties Enforcement Act 1999*, schedule 2.

enforcement order see the *State Penalties Enforcement Act 1999*, schedule 2.

fire protection occupational licence see section 30C(1) and (2).

fire protection work means any of the following for a building or part of a building—

- (a) the installation, restoration, repair or maintenance of a fire protection system;
- (b) the preparation of any certificate, statement or record—
 - (i) relating to the installation, restoration, repair or maintenance of a fire protection system; or
 - (ii) stating whether a fire protection system meets a standard, requirement or specification;
- (c) the design of a fire protection system;

- (d) the development, approval or certification of emergency evacuation procedures for a controlled evacuation during a fire emergency;
- (e) the formulation or provision of alternative solutions relating to fire safety;
- (f) the inspection or investigation of, and the provision of advice or a report about, compliance with the *Building Act 1975* or the Building Code of Australia relating to fire safety.

infringement notice offence see the *State Penalties Enforcement Act 1999*, schedule 2.

licence card means a licence card issued under section 34.

licence certificate means a licence certificate issued under section 34.

licensed supervisor, for building work, means a person who holds a licence under this Act authorising supervision of building work of the relevant class.

licensee register, for part 8, see section 98.

management services, for building work or tribunal work, includes—

- (a) coordinating the scheduling of the work by building contractors including as agent for another person; and
- (b) management for the work usually carried out by—
 - (i) a construction manager; or
 - (ii) a project manager under a project management agreement; and
- (c) other management for the work usually carried out by a licensed contractor in the course of the contractor's business.

nominee supervisor means a person who holds a nominee supervisor's licence.

nominee supervisor's licence see section 30A(1).

owner-builder course, for part 3, division 8, see section 43D.

owner-builder permit see section 43E.

owner-builder register, for part 8, see section 98.

owner-builder work see section 43D.

permittee means the holder of an owner-builder permit under this Act.

personally supervise, in relation to building work, means personally exercise control over the work by overseeing and directing the work to ensure it is—

- (a) in accordance with the plans and specifications set out in the contract for the work; and
- (b) of a standard expected of a competent holder of a contractor's licence of the relevant class.

project management agreement means a contract under which a principal engages a project manager to provide building work services for building work carried out for the principal other than under construction management trade contracts.

project manager means a person who provides building work services for the carrying out of building work for a principal under a project management agreement.

renewal day, for a licence, means the day the licence is due to be renewed.

residential unit means a part of a building designed for separate occupation as a residence.

site supervisor means a person who holds a site supervisor's licence.

site supervisor's licence see section 30B(1) and (2).

speculative residential construction work means residential construction work carried out by a building contractor if—

- (a) the work is not carried out under a contract with a consumer; and
- (b) the work is carried out on land owned by the building contractor; and

- (c) the work is a single detached dwelling or a multiple dwelling of not more than 3 storeys; and
- (d) the dwelling has been sold, or is intended for sale, to another person.

supervisory services, for building work or tribunal work, includes—

- (a) the development, implementation and management of a system for the supervision of the work; and
- (b) the coordination or management of persons undertaking the supervision of the work; and
- (c) the personal supervision of the work; and
- (d) any other supervision of building work under this Act.

trainee means a trainee under the *Vocational Education, Training and Employment Act 2000*.

tribunal work see sections 75 and 76.

undertake to carry out, for building work, means any of the following—

- (a) enter into a contract to carry out the work;
- (b) submit a tender to carry out the work;
- (c) make an offer to carry out the building work.’.

- (3) Schedule 2, definition *building*—

insert—

‘*Examples of a fixed structure*—

- a fence other than a temporary fence
- a water tank connected to the stormwater system for a building
- an inground swimming pool or an aboveground pool fixed to the ground’.

- (4) Schedule 2, definition *building contractor*, ‘an’—

omit, insert—

‘and’.

- (5) Schedule 2, definition *building work*, paragraph (g)—

omit, insert—

‘(g) fire protection work; or’.

- (6) Schedule 2, definition *construction management trade contract*, ‘, for part 4A,’—

omit.

- (7) Schedule 2, definition *contracting party*, ‘, for part 4A,’—

omit.

- (8) Schedule 2, definition *default certificate*, ‘, for part 3E,’—

omit.

- (9) Schedule 2, definition *fire protection system*, paragraph (d)—

omit, insert—

‘(d) a fire or smoke detection system, a heat or smoke alarm or another alarm system or emergency warning and communication system;’.

- (10) Schedule 2, definition *fire protection system*, after paragraph (f)—

insert—

‘(g) emergency lighting.’.

- (11) Schedule 2, definition *infringement notice*, ‘, for part 3E,’—

omit.

- (12) Schedule 2, definition *owner*—

insert—

‘*Note—*

Owner has a different meaning for part 3, division 8.’.

- (13) Schedule 2, definition *principal*, ‘, for part 4A,’—

omit.

- (a) enter into 2 or more separate contracts each for the construction of 1 detached dwelling; and
 - (b) the separate contracts could be the subject of a single contract for the construction of 2 or more detached dwellings.
- ‘(4) The separate contracts are taken to be a contract between a building contractor and a building owner for the construction of 2 or more detached dwellings.’.

85 Amendment of s 9 (Meaning of *regulated contract*)

Section 9(2), ‘contact’—

omit, insert—

‘contract’.

86 Amendment of s 26 (Contracts must be in writing)

Section 26, penalty—

omit, insert—

‘Maximum penalty—80 penalty units.’.

87 Amendment of s 27 (General contents of contracts)

Section 27(8), definition *specification details*—

insert—

‘(d) other details prescribed by regulation.’.

88 Insertion of new s 31

After section 30—

insert—

‘31 Documents that must be kept for 7 years

- ‘(1) Subsection (2) applies to a regulated contract entered into by a building contractor and the plans, specifications and variations relating to the contract.

‘(2) The contractor must keep each document for 7 years from the date it is put into writing.

Maximum penalty—100 penalty units.’.

89 Amendment of s 54 (Mixed-purpose contracts)

Section 54, penalty—

omit, insert—

‘Maximum penalty—100 penalty units.’.

90 Amendment of s 65 (Progress payments for contracts other than designated stages contracts)

Section 65(2)—

omit, insert—

‘(2) The building contractor under a regulated contract must not demand or receive an amount under the contract, other than a deposit, unless the amount is directly related to the progress of the work—

(a) carried out under the contract; or

(b) the carrying out of which has been managed under the contract.

Maximum penalty—50 penalty units.’.

**Part 3A Amendment of Housing Act
2003**

90A Act amended in pt 3A

This part amends the *Housing Act 2003*.

90B Amendment of s 12 (General powers)

Section 12—

insert—

- ‘(3) The chief executive may, on the terms and conditions and subject to the restrictions, exceptions and reservations the chief executive thinks fit, dispose of portfolio property that is surplus to the requirements of the department.’

90C Amendment of s 128 (Land set apart under the repealed Act, s 18)

Section 128—

insert—

- ‘(5) The Governor in Council may, by gazette notice—
- (a) repeal the notification to wholly revoke the setting apart of the land for use for the purposes of this Act; or
 - (b) amend the notification, including to partly revoke the setting apart of the land for use for the purposes of this Act.
- ‘(6) The chief executive may, as agent of the State, apply under the *Land Act 1994* for land to which the notification applies to be—
- (a) granted in fee simple; or
 - (b) leased for a term of years or in perpetuity.
- ‘(7) For dealing with an application mentioned in subsection (6) under the *Land Act 1994*—
- (a) section 16 of that Act does not apply; and
 - (b) a deed of grant or lease may be granted without competition.
- ‘(8) The registration of a deed of grant under the *Land Title Act 1994*, or registration of a lease under the *Land Act 1994*, for land to which the notification applies revokes the notification to the extent it sets apart that land for use for the purposes of this Act.’

