



Queensland

# Building and Other Legislation Amendment Act 2022

**Act No. 11 of 2022**

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**An Act to amend the Architects Act 2002, the Building Act 1975, the Building Industry Fairness (Security of Payment) Act 2017, the Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020, the Building Industry Fairness (Security of Payment) Regulation 2018, the Planning Act 2016, the Plumbing and Drainage Act 2018, the Professional Engineers Act 2002 and the Queensland Building and Construction Commission Act 1991 for particular purposes**

**[Assented to 10 June 2022]**





Queensland

# Building and Other Legislation Amendment Act 2022

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	5
<b>Part 2</b>	<b>Amendment of Architects Act 2002</b>	
2	Act amended . . . . .	5
3	Amendment of s 16 (Meaning of continuing registration requirements) . . . . .	5
4	Amendment of s 37 (Complaints about conduct) . . . . .	5
5	Amendment of s 87 (Vacation of office) . . . . .	6
6	Amendment of s 96 (Minutes) . . . . .	6
7	Amendment of s 103 (Inspection of register) . . . . .	6
8	Omission of s 105 (Board's common seal) . . . . .	6
9	Amendment of s 110 (Inspection of code) . . . . .	6
10	Amendment of s 125 (Information about review) . . . . .	7
11	Amendment of s 141 (Protection from liability) . . . . .	7
12	Amendment of s 141A (Notice and record for businesses) . . . . .	7
<b>Part 3</b>	<b>Amendment of Building Act 1975</b>	
13	Act amended . . . . .	7
14	Amendment of s 245O (Decision on application) . . . . .	8
15	Amendment of s 245Q (Cancellation or amendment) . . . . .	8
16	Omission of ch 8, pt 2, div 6, sdiv 4 (Appeals) . . . . .	8
17	Amendment of s 246O (Prohibitions or requirements that have no force or effect) . . . . .	8
18	Amendment of s 246Q (Restrictions that have no force or effect—other restrictions) . . . . .	9
19	Amendment of s 246R (When requirement to obtain consent for particular activities can not be withheld—roof colours and windows) . . . . .	10
20	Amendment of s 246S (When requirement to obtain consent for particular activities can not be withheld—other matters) . . . . .	10

Contents

---

21	Amendment of s 256 (Prosecution of offences) . . . . .	11
22	Insertion of new ch 11, pt 22 . . . . .	12
	Part 22 Transitional provisions for Building and Other Legislation Amendment Act 2022	
354	Definitions for part . . . . .	12
355	Existing appeals under former s 245S . . . . .	12
356	Effect of particular relevant instruments made in affected period—former ss 246O and 246Q . . . . .	13
357	Effect of particular relevant instruments made in affected period—former s 246S . . . . .	14
23	Amendment of sch 2 (Dictionary) . . . . .	14
<b>Part 4</b>	<b>Amendment of Building Industry Fairness (Security of Payment) Act 2017</b>	
24	Act amended . . . . .	15
25	Amendment of s 32 (When retention trust required) . . . . .	15
26	Amendment of s 41 (Training before withholding retention amount)	15
27	Amendment of s 50 (Definitions for part) . . . . .	16
28	Amendment of s 54A (Grounds for excluding persons from undertaking trust account reviews and preparing account review reports) . . .	16
29	Amendment of s 57 (Engaging auditor for review of trust account)	16
30	Amendment of s 57A (Account review report) . . . . .	17
31	Replacement of s 57C (Reporting serious breaches) . . . . .	17
	57C Reporting serious breaches . . . . .	17
32	Insertion of new ch 8B . . . . .	18
	Chapter 8B Transitional provisions for Building and Other Legislation Amendment Act 2022	
212	Definitions for chapter . . . . .	19
213	Existing trust account reviews . . . . .	19
214	Existing obligations to report serious breaches . . . . .	19
33	Amendment of sch 2 (Dictionary) . . . . .	20
<b>Part 5</b>	<b>Amendment of Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020</b>	
34	Act amended . . . . .	20
35	Omission of ss 46–48 . . . . .	21
36	Omission of s 125A (Amendment of sch 1A (Exemptions from requirement to hold contractor’s licence)) . . . . .	21
<b>Part 6</b>	<b>Amendment of Planning Act 2016</b>	
37	Act amended . . . . .	21

38	Amendment of s 229 (Appeals to tribunal or P&E Court) . . . . .	21
39	Amendment of s 253 (Conduct of appeals) . . . . .	22
40	Amendment of s 254 (Deciding appeals to tribunal) . . . . .	22
41	Amendment of sch 1 (Appeals) . . . . .	22
<b>Part 7</b>	<b>Amendment of Plumbing and Drainage Act 2018</b>	
42	Act amended . . . . .	24
43	Amendment of s 65 (Installing things as part of plumbing or drainage work) . . . . .	24
44	Amendment of s 74 (Discharging toilet waste and water) . . . . .	24
45	Amendment of s 78 (Discharging kitchen greywater) . . . . .	25
46	Amendment of s 79 (Discharging and using greywater, other than kitchen greywater) . . . . .	25
47	Amendment of sch 1 (Dictionary) . . . . .	26
<b>Part 8</b>	<b>Amendment of Professional Engineers Act 2002</b>	
48	Act amended . . . . .	27
49	Amendment of s 16 (Meaning of continuing registration requirements) . . . . .	27
50	Amendment of s 37 (Complaints about conduct) . . . . .	27
51	Amendment of s 87 (Vacation of office) . . . . .	28
52	Amendment of s 96 (Minutes) . . . . .	28
53	Amendment of s 103 (Inspection of register) . . . . .	28
54	Omission of s 105 (Board's common seal) . . . . .	28
55	Amendment of s 110 (Inspection of code) . . . . .	28
56	Amendment of s 112V (Record of assessment entities) . . . . .	29
57	Amendment of s 126 (Information about review) . . . . .	29
58	Amendment of s 142 (Protection from liability) . . . . .	29
<b>Part 9</b>	<b>Amendment of Queensland Building and Construction Commission Act 1991</b>	
59	Act amended . . . . .	30
60	Amendment of s 28B (Exchange of information between commission and relevant agencies) . . . . .	30
61	Amendment of s 49A (Immediate suspension of licence) . . . . .	30
62	Amendment of s 67WA (Definitions for pt 5) . . . . .	30
63	Amendment of s 74B (Proper grounds for taking disciplinary action against a licensee and former licensees) . . . . .	31
64	Amendment of s 86 (Reviewable decisions) . . . . .	31
65	Insertion of new s 106V . . . . .	32

Contents

---

	106V	Information to complainant on completion of investigation	32
66		Amendment of s 110 (Confidentiality of information) . . . . .	32
67		Amendment of sch 1A (Exemptions from requirement to hold contractor's licence) . . . . .	33
<b>Part 10</b>		<b>Other amendments</b>	
68		Legislation amended . . . . .	33
<b>Schedule 1</b>		<b>Other amendments</b> . . . . .	34
		Building Industry Fairness (Security of Payment) Regulation 2018	34
		Queensland Building and Construction Commission Act 1991 . .	34

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The Parliament of Queensland enacts—

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Building and Other Legislation Amendment Act 2022*.

## Part 2 Amendment of Architects Act 2002

### 2 Act amended

This part amends the *Architects Act 2002*.

### 3 Amendment of s 16 (Meaning of *continuing registration requirements*)

Section 16(4)(b), ‘during normal business hours at the board’s office’—

*omit, insert—*

at the board’s office when the office is open to the public

### 4 Amendment of s 37 (Complaints about conduct)

Section 37—

*insert—*

- (4) The board must publish on the board’s website the information mentioned in subsection (3).

[s 5]

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**5 Amendment of s 87 (Vacation of office)**

Section 87—

*insert—*

- (3) If a member resigns, the resignation takes effect on the day the notice is given or, if a later day is stated in the notice, on the later day.

**6 Amendment of s 96 (Minutes)**

Section 96(2)(c)—

*omit.*

**7 Amendment of s 103 (Inspection of register)**

- (1) Section 103(1)(a), ‘during ordinary office hours’—

*omit, insert—*

when the office is open to the public

- (2) Section 103(2), ‘may’—

*omit, insert—*

must

**8 Omission of s 105 (Board’s common seal)**

Section 105—

*omit.*

**9 Amendment of s 110 (Inspection of code)**

- (1) Section 110(1)(a), ‘during ordinary office hours’—

*omit, insert—*

when the office is open to the public

- (2) Section 110(2), ‘may’—

*omit, insert—*



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must

**10 Amendment of s 125 (Information about review)**

Section 125—

*insert—*

- (2) The board must publish on the board’s website the information mentioned in subsection (1).

**11 Amendment of s 141 (Protection from liability)**

- (1) Section 141(1)—

*insert—*

(e) an employee of the board.

- (2) Section 141(4), ‘or (d)’—

*omit, insert—*

, (d) or (e)

**12 Amendment of s 141A (Notice and record for businesses)**

Section 141A(8)(b), ‘during ordinary office hours’—

*omit, insert—*

when the office is open to the public

**Part 3 Amendment of Building Act 1975**

**13 Act amended**

This part amends the *Building Act 1975*.

[s 14]

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**14 Amendment of s 245O (Decision on application)**

Section 245O(4)—

*insert—*

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

**15 Amendment of s 245Q (Cancellation or amendment)**

Section 245Q(6)—

*insert—*

*Note—*

For reviews of a decision under subsection (5) or (6), see the QBCC Act, part 7, division 3.

**16 Omission of ch 8, pt 2, div 6, sdiv 4 (Appeals)**

Chapter 8, part 2, division 6, subdivision 4—

*omit.*

**17 Amendment of s 246O (Prohibitions or requirements that have no force or effect)**

(1) Section 246O, heading, after ‘that have’—

*insert—*

**limited or**

(2) Section 246O(3) and example—

*omit, insert—*

(3) For a prohibition mentioned in subsection (1)(d), the relevant instrument has force or effect only to the extent—

(a) the prohibition applies to the roof or other external surface that is common property of the prescribed building; and

- 
- (b) the prohibition—
- (i) is necessary to preserve the building’s structural integrity; or
  - (ii) if there is insufficient space on the roof or other external surface for a solar hot water system or photovoltaic cells to be installed by the owner of each lot in the building—prohibits an owner of a lot in the building from installing a solar hot water system or photovoltaic cells on the roof or other external surface; or
  - (iii) if the prohibition relates to a solar hot water system—is necessary to prevent noise from piping associated with the system causing unreasonable interference with a person’s use or enjoyment of the building.

**18 Amendment of s 246Q (Restrictions that have no force or effect—other restrictions)**

- (1) Section 246Q, heading, after ‘that have’—

*insert—*

**limited or**

- (2) Section 246Q(2) and example—

*omit, insert—*

- (2) The relevant instrument has force or effect only to the extent—
- (a) the restriction mentioned in subsection (1) applies to the roof or other external surface that is common property of the prescribed building; and
  - (b) the restriction mentioned in subsection (1)—

[s 19]

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- (i) is necessary to preserve the building's structural integrity; or
- (ii) if there is insufficient space on the roof or other external surface for a solar hot water system or photovoltaic cells to be installed by the owner of each lot in the building—prohibits an owner of a lot in the building from installing a solar hot water system or photovoltaic cells on the roof or other external surface; or
- (iii) if the restriction relates to a solar hot water system—is necessary to prevent noise from piping associated with the system causing unreasonable interference with a person's use or enjoyment of the building.

**19 Amendment of s 246R (When requirement to obtain consent for particular activities can not be withheld—roof colours and windows)**

Section 246R, heading, 'requirement to obtain'—  
*omit.*

**20 Amendment of s 246S (When requirement to obtain consent for particular activities can not be withheld—other matters)**

- (1) Section 246S, heading, 'requirement to obtain'—  
*omit.*
- (2) Section 246S(2)—  
*omit, insert—*

- (2) The entity can not withhold the consent for an activity mentioned in subsection (1) unless the consent is withheld—

- 
- (a) in relation to the roof or other external surface that is common property of the prescribed building; and
  - (b) only—
    - (i) to the extent necessary to preserve the building’s structural integrity; or
    - (ii) if there is insufficient space on the roof or other external surface for a solar hot water system or photovoltaic cells to be installed by the owner of each lot in the building—to prohibit an owner of a lot in the building from installing a solar hot water system or photovoltaic cells on the roof or other external surface; or
    - (iii) if the consent relates to a solar hot water system—to the extent necessary to prevent noise from piping associated with the system causing unreasonable interference with a person’s use or enjoyment of the building.

## 21 Amendment of s 256 (Prosecution of offences)

(1) Section 256(2)—

*insert—*

- (ja) for an offence against a provision of the expired *Building Regulation 2006*, part 4A—the QBCC commissioner, a local government or a person authorised by a local government; or

*Note—*

The expired *Building Regulation 2006*, part 4A continues in force, see the *Building Regulation 2021*, section 95.

(2) Section 256(2)(ja) and (k)—

*renumber* as section 256(2)(k) and (l).

[s 22]

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## 22 Insertion of new ch 11, pt 22

Chapter 11—

*insert—*

### **Part 22 Transitional provisions for Building and Other Legislation Amendment Act 2022**

#### **354 Definitions for part**

In this part—

*affected period* means the period starting on 1 January 2010 and ending on the commencement.

*former*, for a provision of this Act, means the provision as in force from time to time before the commencement.

*new*, for a provision of this Act, means the provision as in force from the commencement.

*order* means an order made by a court or tribunal.

*prescribed building* see section 246M.

*relevant instrument* see section 246M.

*solar hot water system* see section 246M.

#### **355 Existing appeals under former s 245S**

- (1) This section applies if a person was given an information notice about a decision under former section 245O or 245Q and immediately before the commencement—
  - (a) the person could have, but had not, appealed the decision to a development tribunal under former section 245S and the period

mentioned in former section 245S(2) had not ended; or

- (b) the person had started an appeal against the decision under former section 245S but the appeal had not been decided by a development tribunal.
- (2) If subsection (1)(a) applies, the person may, within the period mentioned in former section 245S(2), appeal the decision, and a development tribunal may hear and decide the appeal under former section 245S as if the *Building and Other Legislation Amendment Act 2022* had not been enacted.
- (3) If subsection (1)(b) applies, the development tribunal may continue to hear, and decide, the appeal under former section 245S as if the *Building and Other Legislation Amendment Act 2022* had not been enacted.

### **356 Effect of particular relevant instruments made in affected period—former ss 246O and 246Q**

- (1) This section applies if, during the affected period, because of a prohibition or restriction under a relevant instrument given effect, or purportedly given effect, under former section 246O or 246Q, a person was prevented or restricted from installing a solar hot water system or photovoltaic cells—
- (a) on the roof or other external surface of a prescribed building; or
  - (b) at the person's preferred location on the roof or other external surface of a prescribed building.
- (2) New section 246O or 246Q applies to the relevant instrument as if the relevant instrument had been made after the affected period ended.

[s 23]

---

- (3) Any agreement, proceeding, order or other action enforcing the prohibition or restriction has effect only to the extent the prohibition or restriction has effect under new section 246O or 246Q.

### **357 Effect of particular relevant instruments made in affected period—former s 246S**

- (1) This section applies if, during the affected period, because an entity withheld consent, or purportedly withheld consent, under a relevant instrument under former section 246S, a person was prevented or restricted from installing a solar hot water system or photovoltaic cells—
  - (a) on the roof or other external surface of a prescribed building; or
  - (b) at the person’s preferred location on the roof or other external surface of a prescribed building.
- (2) New section 246S applies to the relevant instrument as if the relevant instrument had been made after the affected period ended.
- (3) Any agreement, proceeding, order or other action enforcing the prohibition or restriction has effect only to the extent the prohibition or restriction has effect under new section 246S.
- (4) The entity that withheld the consent must, if asked, reconsider giving consent for the installation of a solar hot water system or photovoltaic cells under new section 246S.

## **23 Amendment of sch 2 (Dictionary)**

Schedule 2, definition *information notice*, paragraph (b), after ‘204,’—

*insert—*



245O, 245Q,

## **Part 4**                      **Amendment of Building Industry Fairness (Security of Payment) Act 2017**

### **24 Act amended**

This part amends the *Building Industry Fairness (Security of Payment) Act 2017*.

### **25 Amendment of s 32 (When retention trust required)**

(1) Section 32(1)(a)(ii), ‘and’—

*omit, insert—*

or

(2) Section 32(1)(a)—

*insert—*

(iii) another type of contract or subcontract prescribed by regulation; and

### **26 Amendment of s 41 (Training before withholding retention amount)**

(1) Section 41, heading—

*omit, insert—*

#### **41 Retention trust training**

(2) Section 41(7)—

*omit, insert—*

(7) A regulation may—

(a) prescribe a fee for retention trust training; or

(b) provide for—

[s 27]

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- (i) an extension of time for a trustee or nominee to complete retention trust training; or
- (ii) an exemption of a trustee from complying with subsection (5) or (6).

**27 Amendment of s 50 (Definitions for part)**

Section 50—

*insert—*

*chapter 2 requirement* means a requirement, applying to a trustee under chapter 2, in relation to the administration of a trust account.

**28 Amendment of s 54A (Grounds for excluding persons from undertaking trust account reviews and preparing account review reports)**

Section 54A(a), ‘trust account with this Act’—

*omit, insert—*

trustee with a chapter 2 requirement

**29 Amendment of s 57 (Engaging auditor for review of trust account)**

(1) Section 57—

*insert—*

(1A) The engagement must be a reasonable assurance engagement.

(2) Section 57—

*insert—*

(8) In this section—

*reasonable assurance engagement* has the meaning given by the document called ‘Standard

on assurance engagements ASAE 3100—compliance engagements’ formulated by the Auditing and Assurance Standards Board under the *Australian Securities and Investments Commission Act 2001* (Cwlth), section 227B(1)(b).

- (3) Section 57(1A) to (8)—  
*renumber* as section 57(2) to (9).

### 30 Amendment of s 57A (Account review report)

- (1) Section 57A(2)—

*omit, insert—*

- (2) An **account review report** for a trust account is a report stating the auditor’s conclusion, based on a review of the administration of the account, about whether the trustee of the account complied with all chapter 2 requirements in relation to the account during the period to which the report relates.

- (2) Section 57A(3)(d)(iii) and (iv)—

*omit, insert—*

- (iii) the trustee has complied with all chapter 2 requirements in relation to the trust account;

### 31 Replacement of s 57C (Reporting serious breaches)

Section 57C—

*omit, insert—*

#### 57C Reporting serious breaches

- (1) This section applies to an auditor who carries out a review of a trust account for a project trust or retention trust if the auditor finds that—
- (a) both of the following apply—

[s 32]

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- (i) the trustee of the trust wilfully contravened a chapter 2 requirement in relation to the trust account;
  - (ii) the contravention caused, or is likely to cause, financial loss to a beneficiary of the trust; or
- (b) the trustee of the trust has repeatedly failed to comply with 1 or more chapter 2 requirements in relation to the trust account; or
- (c) the trustee of the trust has contravened this Act in a way prescribed by regulation.
- (2) The auditor must, using an approved way, notify the commissioner of the auditor's finding within 5 business days after making the finding.
- Maximum penalty—200 penalty units or 1 year's imprisonment.
- (3) In this section—
- wilfully* means intentionally, recklessly or with gross negligence.

## 32 Insertion of new ch 8B

After section 211E—

*insert—*

# **Chapter 8B Transitional provisions for Building and Other Legislation Amendment Act 2022**

## 212 Definitions for chapter

In this chapter—

*amendment Act* means the *Building and Other Legislation Amendment Act 2022*.

*former*, in relation to a provision of the Act, means the provision as in force immediately before its amendment by the amendment Act.

## 213 Existing trust account reviews

- (1) This section applies if—
  - (a) before the commencement, the trustee for a project trust or retention trust engaged an auditor to carry out a review of the trust account for the trust under former section 57; and
  - (b) immediately before the commencement—
    - (i) the review had not been completed; or
    - (ii) the account review report for the trust account required under former section 57A had not been given to the trustee.
- (2) For the purposes of the review and report, former sections 57 and 57A continue to apply as if the amendment Act had not commenced.

## 214 Existing obligations to report serious breaches

- (1) This section applies if—
  - (a) before the commencement, an auditor was required to notify the commissioner of a belief about a circumstance under former 57C; and

- (b) immediately before the commencement, the auditor had not yet notified the commissioner.
- (2) For the purposes of the notification, former section 57C continues to apply as if the amendment Act had not been enacted.
- (3) However, if the review of the trust account in relation to which the notification requirement arose had not been completed immediately before the commencement—
  - (a) subsection (2) does not apply; and
  - (b) section 57C as in force after the commencement applies to the auditor in relation to the review.

### **33 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

*chapter 2 requirement*, for chapter 2, part 4, see section 50.

## **Part 5 Amendment of Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020**

### **34 Act amended**

This part amends the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

**35 Omission of ss 46–48**

Sections 46 to 48—

*omit.*

*Editor’s note—*

Legislation ultimately amended—

- *Building Act 1975*

**36 Omission of s 125A (Amendment of sch 1A (Exemptions from requirement to hold contractor’s licence))**

Section 125A—

*omit.*

*Editor’s note—*

Legislation ultimately amended—

- *Queensland Building and Construction Commission Act 1991*

**Part 6 Amendment of Planning Act 2016**

**37 Act amended**

This part amends the *Planning Act 2016*.

**38 Amendment of s 229 (Appeals to tribunal or P&E Court)**

Section 229(3)(f)(iii)—

*omit, insert—*

- (iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or

[s 39]

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- (iv) otherwise—20 business days after the day the notice is given; or

### **39 Amendment of s 253 (Conduct of appeals)**

Section 253—

*insert—*

- (6) In this section—

*enforcement notice* includes an enforcement notice under the *Plumbing and Drainage Act 2018*.

### **40 Amendment of s 254 (Deciding appeals to tribunal)**

Section 254(2)—

*insert—*

- (f) for a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—
  - (i) ordering the entity responsible for deciding the application or matter to decide the application or matter by a stated time and, if the entity does not comply with the order, deciding the application or matter; or
  - (ii) deciding the application or matter.

### **41 Amendment of sch 1 (Appeals)**

- (1) Schedule 1, section 1, table 1—

*insert—*

7. Enforcement notices under the *Plumbing and Drainage Act 2018*  
An appeal may be made against the decision to give an enforcement notice.



Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The local government that gave the enforcement notice	—	—

- (2) Schedule 1, section 1, table 3, item 4, from ‘Local government’ to ‘that Act.’—

*omit, insert—*

Failure to decide an application or other matter under the Building Act

An appeal may be made against a failure to make a decision under the Building Act within the period required under that Act, other than a failure by the Queensland Building and Construction Commission to make a decision, if an information notice about the decision was required to be given under that Act.

- (3) Schedule 1, section 1, table 3, item 4, column 2, ‘The local government to which the application was made’—

*omit, insert—*

The entity that failed to make the decision

- (4) Schedule 1, section 1, table 3, item 5, from ‘Failure to make’ to ‘given under that Act.’—

*omit, insert—*

Failure to decide an application or other matter under the *Plumbing and Drainage Act 2018*

An appeal may be made against a failure to make a decision under the *Plumbing and Drainage Act*



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**45 Amendment of s 78 (Discharging kitchen greywater)**

Section 78(1)(a)—

*omit, insert—*

- (a) for premises in a seweraged area—
  - (i) the sewerage system for the area; or
  - (ii) if the premises have a holding tank for the storage of the greywater installed under a permit and the period stated in the permit has not ended—the holding tank; or

**46 Amendment of s 79 (Discharging and using greywater, other than kitchen greywater)**

(1) Section 79(3)—

*insert—*

- (d) if the premises have a holding tank for the storage of the greywater installed under a permit and the period stated in the permit has not ended—into the holding tank.

(2) Section 79(5)(a) and (b)—

*omit, insert—*

- (a) if the greywater is discharged into a greywater use facility that includes a greywater treatment plant installed on the premises for which a treatment plant approval has been granted—
  - (i) washing a vehicle, path or exterior wall of the premises; or
  - (ii) flushing a toilet; or
  - (iii) supplying cold water to a washing machine; or

[s 47]

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- (iv) supplying a closed loop laundry system; or
- (v) irrigating a garden or lawn; or
- (b) a use prescribed by regulation but only if—
  - (i) the greywater is discharged into a greywater use facility that includes a greywater treatment plant installed on the premises; and
  - (ii) the plant meets the capacity prescribed by regulation; and
  - (iii) the greywater is treated to the standard prescribed by regulation; and
  - (iv) the use, greywater, facility or plant meet other requirements prescribed by regulation; or
- (c) otherwise—irrigating a garden or lawn.

#### 47 Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definition *on-site sewage treatment plant*—  
*omit.*
- (2) Schedule 1—  
*insert—*

***holding tank*** means a tank installed on premises for the storage, and later disposal off the premises by collection from the tank, of—

- (a) waste and water from a toilet or soil fixture on the premises; or
- (b) greywater; or
- (c) sewage.

***on-site sewage treatment plant*** means a sewage treatment plant installed on premises for treating sewage produced on the premises.



[s 51]

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**51 Amendment of s 87 (Vacation of office)**

Section 87—

*insert—*

- (3) If a member resigns, the resignation takes effect on the day the notice is given or, if a later day is stated in the notice, on the later day.

**52 Amendment of s 96 (Minutes)**

Section 96(2)(c)—

*omit.*

**53 Amendment of s 103 (Inspection of register)**

- (1) Section 103(1)(a), ‘during ordinary office hours’—

*omit, insert—*

when the office is open to the public

- (2) Section 103(2), ‘may’—

*omit, insert—*

must

**54 Omission of s 105 (Board’s common seal)**

Section 105—

*omit.*

**55 Amendment of s 110 (Inspection of code)**

- (1) Section 110(1)(a), ‘during ordinary office hours’—

*omit, insert—*

when the office is open to the public

- (2) Section 110(2), ‘may’—

*omit, insert—*

must

**56 Amendment of s 112V (Record of assessment entities)**

Section 112V(2)(b), ‘during normal business hours at the board’s office’—

*omit, insert—*

at the board’s office when the office is open to the public

**57 Amendment of s 126 (Information about review)**

Section 126—

*insert—*

- (2) The board must publish on the board’s website the information mentioned in subsection (1).

**58 Amendment of s 142 (Protection from liability)**

- (1) Section 142(1)—

*insert—*

(e) an employee of the board.

- (2) Section 142(4), ‘or (d)’—

*omit, insert—*

, (d) or (e)





- 
- (a) for residential construction work—
- (i) means a person who contracts with a licensed contractor to carry out the work; and
  - (ii) includes a person who purchases the work, once completed, if the work is primary insurable work; but
- (b) does not include a licensed contractor for whom work mentioned in paragraph (a) is carried out by a subcontractor.

*Note—*

See also section 68H(1)(c) and (5).

**63 Amendment of s 74B (Proper grounds for taking disciplinary action against a licensee and former licensees)**

- (1) Section 74B(1)(a)—

*omit, insert—*

- (a) the licensee contravenes an offence provision of, or a requirement imposed under, this Act, the *Building Act 1975* or the *Building Industry Fairness (Security of Payment) Act 2017*; or

- (2) Section 74B(1)(o)—

*omit.*

- (3) Section 74B(3)—

*insert—*

***offence provision*** means a provision creating an offence or civil penalty.

**64 Amendment of s 86 (Reviewable decisions)**

Section 86(2)(a), after ‘214K,’—

[s 65]

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*insert—*

245O, 245Q,

## **65 Insertion of new s 106V**

Part 9, division 8—

*insert—*

### **106V Information to complainant on completion of investigation**

If an investigator investigates compliance with an Act mentioned in section 104A(a) because of a complaint, the commissioner may inform the complainant, in the way the commissioner considers appropriate, of the result of the investigation.

## **66 Amendment of s 110 (Confidentiality of information)**

(1) Section 110(3)(a)—

*omit, insert—*

(a) with the consent of the person to whom the information relates; or

(2) Section 110(3)(f)—

*omit, insert—*

(f) to the extent the disclosure, access or use is necessary to comply with section 106V.

(3) Section 110—

*insert—*

(4) Also, subsection (2) does not apply to—

(a) the use of information or a document by a Minister; or

(b) the disclosure of information, or the giving of access to a document, to a Minister.

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**67 Amendment of sch 1A (Exemptions from requirement to hold contractor's licence)**

(1) Schedule 1A, authorising provision, '42(2)'—

*omit, insert—*

42(1)

(2) Schedule 1A, section 8—

*insert—*

(4) Also, subsections (1) and (2) do not apply in circumstances prescribed by regulation.

## **Part 10 Other amendments**

**68 Legislation amended**

Schedule 1 amends the legislation it mentions.

## **Schedule 1      Other amendments**

section 68

### **Building Industry Fairness (Security of Payment) Regulation 2018**

**1      Section 10K(1) and (2), ‘section 57(2)’—**

*omit, insert—*

section 57(3)

**2      Section 10K(4) and (6), ‘section 57(3)’—**

*omit, insert—*

section 57(4)

**3      Section 10L(a), ‘requirements for the trust account under the Act’—**

*omit, insert—*

requirements, applying to the trustee under chapter 2 of the Act, in relation to the administration of the trust account

### **Queensland Building and Construction Commission Act 1991**

**1      Section 22(2), ‘general manager’s’—**

*omit, insert—*

commissioner's

**2 Section 67WB(1) and (3), 'assistance scheme'—**

*omit, insert—*

scheme

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