

QUEENSLAND BUILDING SERVICES AUTHORITY AND OTHER LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

SHORT TITLE

Queensland Building Services Authority and Other Legislation
Amendment Bill 2002

GENERAL OUTLINE

Objective of the Legislation

The objective of the legislation is to amend the *Queensland Building Services Authority Act 1991* and to make a number of administrative amendments to provide for the ongoing maintenance of proper standards in the building industry.

This will be achieved through a number of mechanisms to increase accountability, provide greater consumer protection and improve compliance. Strong measures are included to rid the industry of those who carry out grossly defective building work that adversely affects the structural performance of buildings or endangers human life, those who exhibit a pattern of behaviour of non-compliance with contractual and payment obligations and those who demonstrate their irresponsibility through repeated financial failures. These measures include:

- Individuals entering into bankruptcy or being a director, secretary or influential person in a company failure for a second time will be banned from the industry for life;
- Individuals found guilty of asset stripping under the *Corporations Act 2001 (Cwlth)* will be banned from the industry for life;
- Individuals who carry out grossly defective building work defined as tier 1 defective work, or who are directors, secretaries,

nominees or influential persons for companies that carry out tier 1 defective work will be banned from the industry for three years or, for a second instance within 10 years, banned for life;

- The Building Services Authority's (the Authority) auditing powers will be expanded to include contractual terms and conditions under both the *Queensland Building Services Authority Act 1991* and the *Domestic Building Contracts Act 2000*;
- A demerit system will be introduced to reflect breaches of contractual obligations and unsatisfied judgment debts, with three year bans for individuals who accumulate 30 demerit points over three years and life bans if they again accumulate 30 demerit points within ten years of the first ban.
- An offence will be created for a licensed contractor to knowingly engage or contract to an unlicensed person, when that person is required to be licensed under the Act;
- Subcontractors who do not contract directly to builders or the public but who subcontract to licensed trade contractors to carry out work approved under the licensed trade contractor's licence class will not be required to be licensed;
- Retrospective validating provisions will remedy instances of invalid delegation of powers and an improper administrative action in relation to Queensland Building Services Board (the Board) policies; and
- Site entry and inspection powers for Authority inspectors will be expanded.

The Bill also makes a minor amendment to the *State Housing Act 1945* to alter the mechanism for calculating the rent on commercial leases under section 22B of the Act and to validate the past calculation and collection of rent by the Queensland Housing Commission for these leases.

Reasons for the Bill

The Better Building Industry reforms, which commenced operation on 1 October 1999, aimed to redress the power imbalance against subcontractors within the industry by outlawing unfair contractual provisions, establishing default payment terms and banning for five years, persons involved in financial failures.

These reforms also instituted rigorous financial requirements for licensees so as to improve the business practices and financial viability of the industry.

These reforms were bolstered by the *Queensland Building Tribunal Act 2000* and the *Domestic Building Contracts Act 2000*.

Since the Better Building Industry legislative reform package was introduced, the *Queensland Building Services Authority Act 1991* has been the subject of significant review processes. The objective of these reviews has been to determine the ongoing nature of the licensing system and the administrative arrangements by which the Authority operates as the industry regulator.

The Bill incorporates the recommendations from these various reviews, together with new accountability measures and additional administrative amendments to ensure the ongoing maintenance of proper standards within the industry.

ACHIEVEMENT OF POLICY OBJECTIVES

The Bill is intended to provide for the ongoing maintenance of proper standards within the industry by banning from the industry those persons who have demonstrated an inability to meet the most basic standards of workmanship, financial management or honesty. The bans in relation to financial dealings are non-discretionary and provide for persons to be banned from the industry for life for a second or subsequent financial failure or for a conviction in relation to asset stripping.

The Bill contains strong measures which ensure that licensees responsible for grossly defective work, defined as “tier 1 defective work”, are banned from the industry for three years, then life for a second instance within ten years of a notice for the first ban. The bans for tier 1 defective work do not detract from the Authority’s ability to take disciplinary action in the Queensland Building Tribunal against licensees for negligence and incompetence. The Bill doubles the penalties that may be imposed where proper grounds are found for disciplinary action to be taken.

The Bill provides for bans for persons who fail to comply with contractual and payment obligations. Two demerit points will be allocated for offences against particular contractual provisions of the *Queensland Building Services Authority Act 1991* or the *Domestic Building Contracts Act 2000*. To give offenders an opportunity to change their behaviour, a maximum of six demerit points will be allocated for any single audit or

investigation. Ten demerit points will be allocated for unsatisfied judgment debts. If an individual acquires 30 or more points over a three-year period, they will be banned for three years. If they again acquire 30 points within ten years of the first ban, they may be banned for life.

Retrospective validating provisions are proposed to remedy five matters: licence classes formerly under Part 25 of the regulation; the insurance policy terms and conditions; the financial requirements for licensing from 1 July 1992 until 1 October 1999, all created via Queensland Building Services Board (the Board) policy; the required course for owner-builder permits and the issuing of non-trading licences.

The first four of these matters relate to an invalid delegation of authority from the regulation to the Board for the making of such policies. The matter of non-trading licences was an invalid administrative action on the part of the Board in issuing licences of a type it had no power to issue.

The Bill establishes a head of power for the introduction of a fee for lodgement of a dispute notification, with an amendment to the *Queensland Building Services Authority Regulation 1992* (the Regulation) to set the fee at \$20.

The Bill also establishes the basis for the ongoing maintenance of the licensing system and provides that all licence classes and other non-technical or commercial policies will be contained within the regulation.

The Bill includes a number of measures in respect of gatekeeping issues, which address the initial findings of the National Competition Policy Review Committee. The Bill provides that in future, to have effect, a policy of the Board must be approved by regulation and published in the gazette.

ASSESSMENT OF ADMINISTRATIVE COST TO GOVERNMENT

The Bill provides for the ongoing maintenance of proper standards in the industry, makes a number of administrative amendments to the *Queensland Building Services Authority Act 1991* and does not add to the administrative costs to Government. The Queensland Building Services Authority is a statutory authority funded by industry, primarily through licence fees.

One financial consideration for the Authority is the removal of the requirement for licensing for those persons who contract only to trade contractors and not directly with builders or the public. The deregulation of these practitioners will lead to a reduction in income to the Authority.

The major financial consideration arising from the Bill is the cost of expanded compliance activity in relation to contractual and payment requirements. Resources required to fund this increased activity will flow from the building industry. However it is anticipated the cost to industry will be outweighed by benefits from improved compliance. These benefits include increased security of payment, improved consumer protection and a reduction in disputes.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The Bill infringes fundamental legislative principles as outlined in the *Legislative Standards Act 1992* in a number of areas.

The amendments at Clause 38 of the Bill allow inspectors rights of access to sites without the consent of an owner or authorised by a warrant issued by a judge or other judicial officer while building work is being carried out. While this is a prima facie breach of fundamental legislative principles as set out at subsection 4(3)(e) of the *Legislative Standards Act 1992*, this breach of the principles is warranted on the basis that access without permission or warrant is necessary for the Authority to effectively pursue compliance activity.

The Bill does not confer on inspectors the right of access to a private dwelling, other than access to the land around the dwelling for the purposes of requesting permission to enter.

Other amendments proposed in the Bill create offences for licensees to knowingly engage unlicensed contractors. The ability to refuse an inspector access to a building site would significantly advantage those licensees not meeting their obligations under the Act.

Other Queensland jurisdictions have similar right of entry powers, particularly in relation to premises at which a business is being conducted. The Bill mirrors the powers and protections of those jurisdictions.

The Bill contains provisions that are of a retrospective effect. However, the retrospectivity does not adversely affect the rights and liberties of individuals as it merely legitimises what was thought to be the correct legal position. In essence the retrospective provisions are required to remedy a breach of fundamental legislative principles in relation to the delegation of power from the Act to a statutory instrument. The retrospective effect of the provisions will not be to the disadvantage of any persons. As such their use is considered to be justified.

The retrospective provisions in relation to non-trading licences, contained at Clause 43 of the Bill, do not adversely affect the rights and liberties of individuals. Without the making of the retrospective provisions the persons issued with these licences would be adversely affected by the invalid actions of the Authority and their licences would continue to be invalid.

As the individuals in question were the subject of an invalid administrative action, purportedly for their benefit, it is considered that the breach of fundamental legislative principles is justified in returning to them the rights previously conferred under their licences.

The amendments creating new parts 3B, 3C, 3D and 3E establish the circumstances where administrative actions can result in individuals being banned from holding licences or positions of authority within licensed entities for periods of three years or life. These measures are necessary to rid the industry of persons who have demonstrated that they are not fit and proper to hold a licence.

In parts 3B and 3C the circumstances by which an individual may be subject to such a ban are clearly defined to events - bankruptcy, company administration or liquidation, or conviction under section 596 (b) or (c) of the *Corporations Act 2001* (Cwlth).

In each instance the Bill establishes the events, provides for the information notifying the individuals of the effects of the potential ban and specifying the defences available to the individuals in order to avoid the ban.

Under both parts, the administrative processes and decisions of the Authority are reviewable in the Queensland Building Tribunal (the Tribunal). However, the term of the relevant ban is not reviewable by the Tribunal.

The new part 3D creates the processes for an administrative ban for the carrying out of grossly defective building work defined as tier 1 building work. Work the subject of the ban is rigidly defined and relates to defects that are completely unacceptable within the building and construction industry. The definition also contains examples of the types of work that may be defined as tier 1.

The Bill establishes the events (the carrying out of the tier 1 defective work), clearly defines tier 1 defective work, provides for the information notifying the individuals of the effects of the potential ban and specifies the defences available to the individuals in order to avoid the ban.

The appropriate length of a ban is mandatory, dependent on any ban imposed under the part within the previous 10 years. Review of the Authority's decision and administrative processes is through the Tribunal. The term of the relevant ban is not reviewable except for instances where the Tribunal is satisfied that the ban has been incorrectly calculated.

New part 3E creates the process (a demerit point system) to establish a pattern of non-compliant behaviour in relation to contractual and payment obligations. Definitions of "conviction" and "judgment debt" are provided for the part. A judgment debt is not unsatisfied until the period for appeal of the judgment has elapsed.

The Authority is required to issue a notice to an individual who has acquired the maximum number of demerit points permitted, advising them that they face disqualification. The individual then has the opportunity to make representations to the Authority as to why they should not be disqualified. Should the Authority continue to consider them unfit to hold a licence, they may review the Authority's decision to disqualify them in the Tribunal.

The Bill expands the current approved audit program to include compliance with Part 4A of the Act and the *Domestic Building Contract Act 2000* and production of documents licensees would reasonably be required to have in their possession.

Part 4A of the Act establishes the criteria for contractual and payments terms and conditions within the industry. Many of these terms and conditions are mandatory. For example, all contracts must be in writing; all subcontractors must be paid progress payments on 35-day terms unless specifically contracted out.

By inclusion of Part 4A compliance within the approved audit program the Authority may require a licensee to produce documents, which are not required to be kept under the Act. Although these documents are not required to be kept, a licensee must generate them in order to legally carry out business within the industry. The approved audit program targets these documents.

Extending these audit provisions to include the *Domestic Building Contract Act 2000* ensures that contractors who operate in the domestic and residential sector are subject to requirements similar to those in the commercial sector.

Licensees must comply with the written notice of the audit within 21 days, unless the licensee has a reasonable excuse. It is not a reasonable

excuse to fail to produce the documents on the grounds that the documents might tend to incriminate the person.

Clause 15 amends S39 of the *Queensland Building Services Authority Act 1991* to provide for information about a licensee's exclusion for five years for financial failure, three years for an event of tier 1 defective work or three years for non-compliance with contractual and payment obligations, to be listed on the Authority's Register and for this information to be held on the register for public access for ten years. The ten-year period for the information to remain on the register corresponds with the period for which the first notice issued for tier 1 defective work or non-compliance with contractual obligations can be considered for the purpose of issuing a second notice imposing a life ban.

The availability of this information on a public register may have a detrimental effect on the licensee when returning from exclusion, but it was considered that this was counterbalanced by the necessity to provide consumers and persons wishing to contract with or to the licensee, accurate information about the licensee's industry record.

These are prima facie breaches of fundamental legislative principles.

The Authority considers that the breaches are justified on the grounds that the Authority has an obligation to ensure that licensees comply with Part 4A of the Act as well as the *Domestic Building Contracts Act, 2000*.

The retrospective validating nature of the amendments to the *State Housing Act 1945* may infringe on the fundamental legislative principles in relation to adversely affecting rights and liberties, or imposing obligations, retrospectively. Prior to amendment of the *State Housing Act 1945* in 1998 the prescribed percentage of the unimproved value of commercial leases by the Queensland Housing Commission under section 22B of the Act had been set by order in council at 10 percent. In 1998, the Act was amended by the *State Housing Amendment Act 1998* wherein the requirement for the prescribed percentage to be set by order in council was removed. The amendments to the Act came into force on 1 July 1998 and provided for the prescribed percentage to be set by regulation. The applicable regulation is the *State Housing Regulation 1998* which also came into force on 1 July 1998 but under which no prescribed percentage has been set. This regulation also repealed all orders in council, which previously set the prescribed percentage.

The Queensland Housing Commission has continued to charge annual rental on commercial leases at 10 percent of the unimproved value of the

land. However, it has been identified that there was no legislative basis to charge the annual rental at this rate. Under section 22B(4) of the *State Housing Act 1945* where a prescribed percentage is not set the annual rental is \$30.00 per property. If \$30.00 was to be accepted as the applicable rent amount during the period from 1 July 1998 to the end of the current rental period (30 June 2003) this would have the undesirable consequence, particularly where lessees have entered into subleases, of giving some lessees a substantial windfall. Accordingly, it is considered that the retrospective provision setting the annual rental for the period 1 July 1998 to 30 June 2003 at the rate previously set by order in council is justified.

It is concluded that while the Bill infringes on fundamental legislative principles as outlined in the *Legislative Standards Act 1992*, the Bill does have sufficient safeguards in place for the infringement to be limited, while still allowing the Government's policies to be implemented.

EXTENT OF CONSULTATION

Representatives from the Department of the Premier and Cabinet, Department of Justice and the Attorney-General, Department of Public Works, Department of Housing, Department of Tourism, Sport and Fair Trading, Department of Industrial Relations and Queensland Treasury have been consulted in the preparation of the Bill.

NOTES ON PROVISIONS

Clause 1 sets out the short title as the *Queensland Building Services Authority and Other Legislation Amendment Act 2002*.

Clause 2 provides that *Clauses 3, 41 and 43* and *Part 5* commence on assent and that the commencement day for the *Queensland Building Services Authority and Other Legislation Amendment Act 2002*, except for *Clauses 3, 41 and 43* and *Part 5* is to be fixed by proclamation.

Clause 3 sets out the Act to be amended.

Clause 4 inserts a section to provide that a note in the text of the Act is part of the Act. New section 51B, which provides that a licensed

contractor must not contract with an unlicensed person, applies to building work for which a person must hold a contractor's licence. A note has been inserted to clarify that a person mentioned in section 42(5) to (8) is not required to hold a contractor's licence in the circumstances stated in those subsections.

Clause 5 includes those contractors who carry out contract administration for building work of their design in the contractors to whom Parts 5 (the Statutory Insurance Scheme) and 6 (Rectification of building work) of the Act do not apply. Contract administration is not insurable building work and cannot be rectified.

Clause 6 amends section 9A to remove references specific to the creation by the Board of "supervision policies" which were declared to be subordinate legislation.

This section removes the declaration that the policies are statutory instruments. It also omits the distinctions between supervision policies and general policies and replaces them with the requirements for "policies". Board policies are required to be published in the gazette, approved by regulation and do not have effect until the approving regulation takes effect.

Subsection (2) provides that the general manager must keep a record of the Board's policies available for public inspection.

Clause 7 omits section 25(3) which provided that the amounts to be paid by the General Statutory Fund included the costs of administering the *Tribunal Act* and inserts new subsections (3), (4) and (4A). New section 25(3) provides that the amounts to be paid from the General Statutory Fund are the costs of administering the Act, apart from the costs of administering the statutory insurance scheme, and amounts mentioned in subsection (4A).

New subsection 25(4) creates a head of power for a regulation to state an amount to be transferred from the General Statutory Fund to the Insurance Fund. This regulation will provide for repayment to the Insurance Fund of an amount transferred to the General Statutory Fund in excess of the sum collected through a surcharge on insurance premiums.

New subsection (4A) provides that amounts may be transferred from the General Statutory Fund to the Insurance Fund at times decided by the Authority until the total amount stated in the regulation is transferred.

Clause 8 subsection (1) allows for amounts transferred from the General Statutory Fund to be included within the funds that make up the Insurance Fund.

Subsection (2) omits provisions that related to the collection of the insurance surcharge that no longer apply.

Clause 9 omits section 30(2)(a).

Subsection 2 rennumbers sections 30(2)(b) and 30(2)(c) as 30(2)(a) and 32(2)(b).

Subsection 3 amends Section 30 so that all licence classes may be issued as either a contractor's licence or as a supervisor's licence.

Subsection (4) allows a regulation to specify a class of licence that is no longer available to applicants. Existing licensees within the specified class/es of licence will continue to be able to hold and renew their licences.

Clause 10 changes the term of "nominated supervisor" to "nominee" within section 31 and provides that when considering whether a particular person is a fit and proper person to hold a contractor's licence or exercise control over a company that holds a contractor's licence, the authority may also have regard to tier 1 defective work carried out by the person, whether or not the person received a notice under part 3B banning the person for the work.

Clause 11 creates a new provision that prevents a licence being granted to a person who carries on, or intends to carry on, a business in partnership with another person who is one of a category of individuals or companies, which are excluded or banned from the industry.

Clause 12 provides a new section 32A to confirm that a person does not have an entitlement to a licence if the licence is a class to which Section 30(4) applies – that being a class of licence, specified under regulation that is no longer issued.

Clause 13 rennumbers Section 35(2) so a new Section 35(2) may be included.

Subsection (2) provides that when a Building Services Authority licence is granted on the basis that the licensee holds an occupational licence issued by another authority, the licensee, as a condition of their Building Services Authority licence, must retain the occupational licence or registration issued by the other authority. A Building Services Authority licensee who fails to retain the licence or registration may have their Building Services Authority licence suspended or cancelled. For example, a licence issued by the Plumbers' and Drainers' Licensing and Examination Board is a licence issued by another authority.

Clause 14 amends Section 36 to allow the Authority, after serving appropriate notices, to impose a condition on a licensee that requires the licensee to provide specified documents to the Authority relating to the licensee's compliance with Part 4A of the Act which relates to building contracts other than domestic building contracts and with the *Domestic Building Contracts Act 2000*. None of the specific conditions mentioned in subsections (3), (3A) and (3B) limit the power to impose a condition under subsection (2).

Clause 15 amends Section 39 of the Act, which creates the Authority's register of licensees. Subsection (1) changes the term of "nominated supervisor" to "nominee" within Section 39.

Subsection (2) amends Section 39(3) by adding parts (e), (f), (g) and (h) which expand the categories of information kept on the Register to include details of previous exclusion for tier 1 defective work, previous exclusion for financial failure, details of demerit points matters and previous licence cancellation for demerit point matters.

Subsection (3) amends Section 39(7) to provide that details of exclusion for financial failure, exclusion for tier 1 defective work and exclusion for demerit point matters are retained on the Register for 10 years. Demerit point matters are to be removed after three years. All other notes are to be removed 5 years after they are made.

Section 39(7A) provides for the removal of demerit points when, in relation to the demerit point offences, the points do not take effect and when, in relation to unsatisfied judgment debts, the Authority is satisfied that the debt has been paid in full.

Clause 16 amends Section 42 to remove from the offence of carrying out building work without an appropriate licence, those persons who carry out building work as a subcontractor to a licensed trade contractor, where the work performed is within the scope of work allowed to be carried out by the trade contractor. These unlicensed persons will not be permitted to contract directly with builders or the public.

Subsection (2) provides an exclusive definition of "licensed trade contractor" for the purpose of removing trade contractors from the offence under Section 42(5A). "Licensed trade contractor" is defined to include all licence classes other than those specified classes of licence within the Act and other classes, which may be specified by regulation.

Clause 17(1) amends Section 43 by including specific reference to the company's nominee when the licensed contractor is a company. This is to

emphasise the importance of the nominee's role when a licensed contractor is a company.

Subsection (2) amends Section 43(2) to provide that a licensed contractor is obliged to ensure adequate supervision of all building work carried out under the licence and accordingly, with particular reference to company nominees, "the systems in place for supervision" as well as the number of licensed supervisors engaged in supervision must be adequate.

Subsection (3) provides the matters, which must be considered when determining whether a licensed contractor has ensured adequate supervision.

Subsection (4) clarifies the role of a company nominee by providing that when a licensed contractor that is a company commits an offence in failing to ensure building work is supervised as required, the nominee also commits an offence. This is to ensure that like individual contractors, company nominees are held accountable for inadequate supervision.

Clause 18 amends section 44 by inserting new subsection 3A to provide that if the applicant for an owner builder permit is a company, a director of the company must have completed a specified course of instruction.

Subsection 2 moves the definition of "owner" to the dictionary at schedule 2.

Clause 19 changes the term of "nominated supervisor" to "nominee" within section 48.

Subsection (2) allows the Authority to suspend or cancel a licence on the grounds that an individual, who is a director or other influential person for a licensed company, becomes an individual who is not fit and proper to hold such a position within a licensed company.

Clause 20 replaces the heading for Part 3, Division 9A so as to include the compliance with Part 4A of the Act and the *Domestic Building Contracts Act*.

Clause 21 expands the approved audit program to include compliance with Part 4A and the *Domestic Building Contracts Act*.

Subsection (2) amends Section 50A(3) to provide that a licensee may not be subject to an approved audit program for the purpose specified in the audit, within the preceding 2 years. A licensee may be subject to a second approved audit within the preceding 2 years if the audit is for a different purpose to the preceding audit. For example the first approved audit may

be related to the financial requirements, while the second may relate to the requirements under Part 4A of the Act.

Subsection (3) amends section 50A(3) for the same purpose as subsection (2).

Clause 22 amends the section heading to incorporate the documents other than financial records that may be requested under the approved audit program or for another reason.

Subsection (2) expands the grounds on which the section applies to include compliance with Part 4A.

Subsection (3) sets out the information to be contained in the Authority's written notice to the licensee and the documents that may reasonably be requested of the licensee.

Subsection (4) provides that self-incrimination will not be accepted as a reasonable excuse for failing to supply documents as required.

Clause 23 establishes that the section applies only to building work for which a person must hold a licence. A note is provided to emphasise that this section would not apply if the unlicensed contractor was not required to hold a licence under Section 42(5) to (8).

Subsection (2) establishes that a licensed contractor commits an offence if the licensed contractor contracts with an unlicensed person to carry out building work. The provision operates for both a subcontractor contracting to an unlicensed head contractor and a licensed head contractor contracting to an unlicensed subcontractor. Penalties are established.

Subsection (3) establishes that a contractor has a defence if they took all reasonable action to ensure compliance with the section.

Subsection (4) confirms that subsection (3) does not limit the application of the Criminal Code.

Subsection (5) applies the Section 42(2) definition of when a person is taken to have carried out building work.

Clause 24 changes the term of "nominated supervisor" to "nominee" in the heading and subsection.

Clause 25 includes a further condition under which a partnership must be carried on. The condition precludes partnership with a person who is an excluded individual; a permanently excluded individual; a convicted company officer; a banned individual; a disqualified individual; an excluded company; a company for which a permanently excluded

individual is director, secretary or influential person; a company for which a convicted company officer is director, secretary or influential person; a company for which a banned individual is director, secretary or influential person; or a company for which a disqualified individual is director, secretary or influential person. This is to prevent excluded persons from becoming influential persons in business partnerships with licensees.

Clause 26 omits the definitions for Part 3A. These definitions will appear in Schedule 2 as amended.

Clause 27 amends the reference to the *Queensland Building Tribunal Act 2000* under which a review may be undertaken.

Clause 28 removes the Authority's discretion in relation to the granting of any licence to a person who is an excluded individual. Previously the discretion had only been removed in relation to the granting of a contractor's licence, thereby allowing a supervisor's licence to be granted to excluded individuals. The provision removes this discretion.

Clause 29 amends section 56AF(2)(c) so as to more appropriately reflect the information, which should be contained in a written notice to a licensed individual. The information to be contained in the notice will include that mentioned at subsection (3) and must be provided to ensure the licensee is aware that their licence must be cancelled if the matters in subsection (3) are not satisfied.

Clause 30 amends section 56AG(2)(d) so as to more appropriately reflect the information, which should be contained in a written notice to a licensed individual. The information to be contained in the notice will include that mentioned at subsections (3), (4) and (5) and must be provided to ensure the licensee is aware that their licence must be cancelled if the matters in subsections (3), (4) and (5) are not satisfied.

Clause 31 inserts a new Part 3B – “Permanently excluded individuals”.

Section 57 provides that the part has effect despite anything in Part 3 (Licensing).

Section 58(1) establishes that a “permanently excluded individual” is an individual who has been given notices for two events established under Part 3A and either did not apply to be categorised as a permitted individual within the time stated or applied to be categorised as a permitted individual within the time stated but had the application refused.

Section 58(2) provides that a notice must be given while the individual is excluded for the relevant event that is, during the five years for which the

individual is excluded. If the notice is the second or subsequent notice, it must state the effect of the individual becoming a permanently excluded individual. Subsection (2)(b)(ii) establishes that the second notice may be given at any time after an earlier notice was given.

Section 58(3) establishes that the section applies if the individual has been given a notice under Section 56AF, which took effect from 1 October 1999, and a second or subsequent notice includes the required information under subsection (2)(b)(i).

Section 58(4) provides that a second or subsequent notice need not be given in the chronological order of the relevant events occurring.

However Section 58(5) provides that at least one of the relevant events must have occurred after the commencement of the new section.

Section 58(6) provides for a replacement second notice to be issued if the second notice does not include the required information.

Section 58(7) makes declaration regarding the circumstances under which it is to be decided whether two relevant events must be counted for the purpose of issuing a second notice for permanent exclusion and takes into account circumstances where licensees may have failed to declare a relevant event prior to becoming licensed.

Section 59 provides that the Authority must not grant a licence to a person if the person is a permanently excluded individual or a company for which a permanently excluded individual is a director, secretary or influential person.

Section 60 provides that a permanently excluded individual is also taken not to be a fit and proper person in respect of the entitlement to a licence. A licence may be refused or cancelled on the grounds that a permanently excluded individual is not fit and proper.

Section 61 establishes the circumstances in which an individual is no longer a permanently excluded individual. The individual is no longer a permanently excluded individual if, on at least 1 of the 2 occasions for which notices have been given under the part, the Tribunal has reversed the Authority's decision in respect of the categorisation as a permitted individual or as an excluded individual.

Clause 32 inserts a new part 3C – “Convicted company officers”.

Section 62 provides that the part has effect despite anything in Part 3 (Licensing).

Section 63 provides that the Authority must not grant a licence to a person if the person is a convicted company officer or a company for which a convicted company officer is a director, secretary or influential person.

Section 64 establishes the procedure, which must be followed if the Authority considers that an individual is a convicted company officer. The provision applies irrespective of whether the individual is a licensee or not.

Subsection (2) provides the Authority must give the individual a written notice, detailing the conviction, which it considers makes the individual a convicted company officer, stating the effect of becoming a convicted company officer and giving the period of time in which they may make representations on the matter.

Subsection (3) provides the stated period in which representations may be made must be at least 28 days after the written notice is given to the individual.

Subsection (4) provides that the Authority must consider submissions made by the individual.

Section 65 provides for the procedure if after considering an individual's submissions the Authority is satisfied the individual is not a convicted company officer.

Subsection (2) provides the Authority must advise the individual in writing as soon as possible, that no further action will be taken in relation to the written notice issued under Section 64(2).

Section 66 establishes that subsection (3) applies if a licensed individual does not satisfy the Authority that they should not be considered a convicted company officer.

Subsection (2) provides that subsection (3) also applies if there are no submissions from the individual to the Authority, addressing the written notice issued by the Authority under section 64(2).

Subsection (3) provides that the Authority must issue a written notice to the individual advising them that they are a convicted individual, their licence is cancelled, that they are taken not to be a fit and proper person for licensing, and advising of their right to apply to the Tribunal for a review of the decision.

Subsection (4) provides that Section 49 does not apply to a cancellation under subsection (3).

Subsection (5) provides that the procedure for cancellation at section 49 does not apply to a cancellation under subsection (3).

Section 67 establishes that subsection (3) applies if an unlicensed individual does not satisfy the Authority that they should not be considered a convicted company officer.

Subsection (2) provides that subsection (3) also applies if there are no submissions from the unlicensed individual to the Authority, addressing the written notice issued by the Authority under Section 64(2).

Subsection (3) provides that the Authority must issue a written notice to the individual advising them that they are a convicted company officer, that they are taken not to be a fit and proper person for licensing, and advising of their right to apply to the Tribunal for a review of the decision.

Subsection (4) confirms that an individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 in accordance with the notice.

Section 67AA establishes that subsection (2) applies if a licensed company has a director, secretary or influential person who is a convicted company officer.

Subsection (2) provides that the Authority must issue a written notice to the company identifying the relevant individual, advising the company that the relevant individual must cease holding their position within the company within 28 and that the company's licence will be cancelled if the relevant individual is not removed from their position.

Subsection (3) establishes that the company's licence must be cancelled if the relevant individual does not cease holding their position within the company with 28 days.

Subsection (4) clarifies that the cancellation procedures under section 49 do not apply to a cancellation under subsection (3).

Clause 33 inserts a new Part 3D – “Banned Individuals”.

Section 67AB defines “tier 1 defective work”. The definition distinguishes tier 1 defective work as building work, which is worse than merely defective or substandard. Tier 1 defective work not only falls below the standard reasonably expected of a contractor licensed for the type of work but also is either so grossly defective that the building work or a part of the building work must be demolished or substantially reconstructed or alternatively the defective work places human life at risk.

Subsection (2) defines “Carry out tier 1 defective work” for the purposes of the section. This definition is consistent with the definition relied upon in Part 4A of the Act and for disciplinary proceedings under the *Queensland Building Tribunal Act*.

Section 67AC establishes for the part the definition of a banned individual, as an individual who has been given notice under the part that they are not a fit and proper person for licensing.

Subsection (2) provides that the individual is to continue to be a banned individual for the term calculated under the part, which will either be a three-year ban or a ban for life.

Section 67AD provides that the part has effect despite anything in Part 3 (Licensing).

Section 67AE provides that the Authority must not grant a licence to a person if the person is a banned individual or a company for which a banned individual is director, secretary or influential person.

Section 67AF provides the procedure whereby the Authority notifies an individual that the Authority considers that the individual has carried out tier 1 defective work after the commencement of the section.

Subsection (2) provides the Authority with discretion as to whether a written notice is issued to an individual. If a written notice is issued it must contain details of the defective work, state the effect of the individual becoming a banned individual and invite the individual to make written submissions within a stated period in which to establish that at least one of the three matters listed did not occur.

The individual has three grounds on which to make representations: that they did not carry out the work; the work was not tier 1 defective work; or that the individual exercised reasonable diligence to ensure that the work carried out was not defective. The use, in subsection (2)(c)(iii), of the term “defective work” instead of the term “tier 1 defective work” is deliberate. It is not a defence for an individual that they were allowing defects to occur in the building work but that they exercised reasonable diligence to ensure those defects were not tier 1 defective work.

Subsection (3) provides that the period for submissions must be at least 28 days after the written notice is given to the individual.

Subsection (4) provides the Authority must consider any submissions made by the individual.

Section 67AG provides for an ending procedure if after considering the submissions, the authority is satisfied that the individual either did not carry out the work, the work carried out was not tier 1 defective work or the individual exercised due diligence to ensure that the work carried out was not defective.

Subsection (2) provides that the Authority, must advise the individual in writing as soon as practicable, that no further action will be taken in relation to the matter.

Section 67AH provides the procedure for cancellation of an individual licensee's licence. The licence is to be cancelled if the individual fails to satisfy the Authority that they have a defence.

Subsection (2) provides that subsection (3) also applies if there are no submissions made by the individual in relation to the notice issued under Section 67AF(2).

Subsection (3) provides that a written notice must be given to the individual informing them that they are taken not to be a fit and proper person for the term calculated under Section 67AO, that they have a right to review the decision in the Tribunal and that their licence is cancelled.

Subsection (4) confirms that an individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 in accordance with the notice.

Subsection (5) clarifies that the cancellation procedures under Section 49 do not apply to a cancellation under subsection (3).

Section 67AI provides the procedure for informing an unlicensed individual that they are taken not to be fit and proper, if that individual fails to satisfy the Authority that they have a defence.

Subsection (2) provides that subsection (3) also applies if there are no submissions made by the individual in relation to the notice issued under Section 67AF(2).

Subsection (3) provides that a written notice must be given to the individual informing them that they are taken not to be a fit and proper person for the calculated term and that they have a right to review the decision in the Tribunal.

Subsection (4) confirms that a person given a notice under subsection (3) is taken not to be a fit and proper person to hold a licence.

Section 67AJ establishes the procedure if the Authority considers that a company has carried out tier 1 defective work after the commencement of the section.

Subsection (2) provides discretion as to whether the Authority issues written notices to the individuals who held the position of the company's directors, secretary, nominee or any influential persons associated with the company at the time the defective work was carried out. If notices are issued they must contain details of the defective work, the effect of the individual becoming a banned individual and advise the individual that they have a stated period in which to satisfy the Authority that they have a defence. The defences are that the company did not carry out the work, the work was not tier 1 defective work, that the individual exercised reasonable diligence to ensure the work was not defective or that the individual was not in a position to influence the company's affairs in relation to the defective work.

The use, in subsection (2)(c)(iii), of the term "defective work" instead of the term "tier 1 defective work" is deliberate. It is not a defence for an individual that they were in a position to influence the work and allowed defects to occur in the building work but that they exercised reasonable diligence to ensure those defects were not tier 1 defective work.

Subsection (3) provides that stated period for submissions must be at least 28 days.

Subsection (4) provides any submissions made by the director, secretary, influential person or nominee must be considered by the Authority.

Section 67AK establishes the procedure when, after considering submissions made, the Authority is satisfied in respect of the defences provided.

Subsection (2) provides that the Authority must advise the director, secretary, influential person or nominee in writing that no further action will be taken in relation to the notice issued under Section 67AJ(2).

Section 67AL establishes the procedure for dealing with a licensed individual who is a director, secretary, nominee or influential person for a company and who the Authority considers has carried out tier 1 defective work. If the individual has not satisfied the Authority that they are subject to the defences then a notice must be issued under subsection (3).

Subsection (2) provides that subsection (3) also applies if there are no submissions made.

Subsection (3) provides that an individual must be given a written notice informing them that they are taken not to be a fit and proper person for licensing for the calculated term, that they have a right to review the decision in the Tribunal and that their licence is cancelled.

Subsection (4) confirms that a person given a notice under subsection (3) is taken not to be a fit and proper person to hold a licence.

Subsection (5) clarifies that the cancellation procedures under Section 49 do not apply to a cancellation under subsection (3).

Section 67AM establishes the procedure for dealing with an individual who is a director, secretary, nominee or influential person for a company and who is not a licensee. If the individual has not satisfied the Authority that they are subject to the defences then a notice must be issued under subsection (3). A “nominee” is deliberately included within this section on the grounds that the nominee at the time the work was carried out would have held a licence. This nominee may no longer hold a licence at the time the written notices are given under this part.

Subsection (2) provides that subsection (3) also applies if no submissions are made regarding the notice issued under Section 67AJ(2)

Subsection (3) provides that an individual must be given a written notice informing them that they are taken not to be a fit and proper person for licensing for the calculated term and that they have a right to review the decision in the Tribunal.

Subsection (4) confirms that a person given notice under subsection (3) is taken not to be a fit and proper person to hold a licence.

Section 67AN provides the procedure for dealing with a licensed company which the Authority considers has as a director, secretary or influential person an individual who is a banned individual.

Subsection (2) provides that the licensed company must be given a notice identifying the banned individual, advising the company that the individual must cease holding their position within the company and that if the individual does not cease then the company’s licence must be cancelled.

Subsection (3) provides that the Authority must cancel the company’s licence by written notice if the banned individual does not cease holding their position within the company within the 28 days mentioned in subsection (2)(b).

Subsection (4) clarifies that the cancellation procedures under Section 49 do not apply to a cancellation under subsection (3).

Section 67AO establishes the calculation method for the term an individual is taken not to be a fit and proper person for notices issued under the part.

Subsection (2) provides that only tier 1 defective work that is carried out after the commencement of the section may be taken into account in calculating a ban and that it does not apply to work carried out before that date.

Subsection (3) provides that the term of ban for an individual who is given a notice for tier 1 defective work for a first time is 3 years.

Subsection (4) provides that the term of ban for an individual who carries out tier 1 defective work for a second or subsequent time is the life of the individual.

Subsection (5) provides that a notice for tier 1 defective work must only be counted as a second notice if a notice has been given to an individual for a first time, stating a ban of 3 years and the second or subsequent notice relates to tier 1 defective work carried out after the first notice is given.

Subsection (6) establishes that in deciding whether a notice is issued to an individual for a second or subsequent time, a notice for tier 1 defective work stating a ban of 3 years must be counted whether or not the individual has served the term of the ban.

Subsection (7) provides that in deciding whether a notice for tier 1 defective work is given a second or subsequent time, the second notice must be given within 10 years of an earlier notice and that a previous notice must not be counted if the Authority's decision in relation to the earlier notice was overturned upon review by the Tribunal.

Subsection (8) refers to the sections under which individuals and companies may be given notices in relation to tier 1 defective work.

Section 67AP establishes the relationship between the part and any disciplinary action for negligence and incompetence commenced by the Authority in the Tribunal under Section 108 in relation to building work when the Tribunal has decided the matter.

Subsection (2) prevents the Authority from giving notice under sections 67AF or 67AJ in relation to the same building work in relation to which the Tribunal has made its decision.

Subsection (3) establishes that the Authority may withdraw from disciplinary action in the Tribunal before the matter has been decided and issue notices under section 67AF or 67AJ.

Subsection (4) establishes that if the Authority has given notices to an individual under Sections 67AF or 67AJ then subsection (5) applies.

Subsection (5) establishes the circumstances in which the Authority may apply to the Tribunal when the Authority has given notices under Sections 67AF or 67AJ in relation to tier 1 defective work. Disciplinary action may only be commenced if notices of licence cancellation under Sections 67AH, 67AI, 67AL or 67AM have not been issued.

Subsection (6) establishes the circumstances in which subsection (7) applies as being when the Tribunal reverses or annuls the Authority's decision to cancel a licence upon review.

Subsection (7) applies if an individual issued with a notice under Section 67AH, 67AI, 67AL or 67AM applies to the Tribunal to review the Authority's decision to cancel their licence and the Tribunal annuls or reverses the Authority's decision. In the same proceeding, the Tribunal must decide whether proper grounds exist for taking disciplinary action against the individual or company for the negligent or incompetent carrying out of the work.

Subsection (8) establishes that for subsection (7) the Authority is taken to have applied under the Tribunal Act to determine whether proper grounds exist for taking disciplinary action, so that the action may be decided in the same proceeding as mentioned in subsection (7).

Clause 34 inserts a new Part 3E – “Disqualified Individuals”.

Section 67AQ provides necessary definitions for the part.

“Accumulate” is defined for the purpose of showing that demerit points will be allocated to a person and counted from the time they take effect.

“Administering authority” is a signpost definition to the *State Penalties Enforcement Act 1999*, schedule 2.

“Conviction” of a person includes the person paying a penalty under the *State Penalties Enforcement Act 1999* and when the Queensland Building Tribunal finds that proper grounds exist for taking disciplinary action against the person for a specific section mentioned in the definitions as a “demerit offence” as well as a court finding the person guilty or accepting the person's plea of guilty, whether or not a conviction is recorded.

“Default certificate” provides a signpost definition to the *State Penalties Enforcement Act 1999*, schedule 2.

“Demerit matter” can be either a demerit offence which is specified in section Section 67AR or an unsatisfied judgment debt defined in Section 67AT.

“Demerit offence” is defined in section 67AR.

“Demerit points” are allocated for demerit matters and are the basis of a system to demonstrate a pattern of non-compliance in relation to contractual and payment obligations.

“Disqualified individual” provides a signpost definition to section 67AU.

“Infringement notice” provides a signpost definition to the *State Penalties Enforcement Act 1999*, schedule 2.

“Judgment debt” is defined in section 67AS.

“Period of three years” is defined to mean a period of up to 3 years.

“Registrar” provides a signpost definition to the *State Penalties Enforcement Act 1999*, schedule 2.

“SPER” provides a signpost definition to the *State Penalties Enforcement Act 1999*, schedule 2.

“Unsatisfied” provides a signpost definition to section 67AT.

Section 67AR lists the specific sections of the Act and the *Domestic Building Contracts Act 2000* against which an offence must be committed after the commencement of the section to be considered a demerit offence. A demerit offence may also be a contravention of a requirement imposed under those sections.

Section 67AS defines “judgment debt” to include a decision entered in a court of competent jurisdiction that a debt is owed by a building contractor in relation to a building contract or domestic building contract, or for goods or services supplied for building work, or for monies owing to the Authority which has been paid by the Authority in relation to a claim under the statutory insurance scheme.

Section 67AT provides the circumstances in which a judgment debt is considered to be “unsatisfied”, that is 28 days after judgment or a longer period if a longer period is allowed by the court.

Subsection (2) provides that a judgment debt is not unsatisfied if an amount has been paid and accepted in full and final settlement by the creditor.

Section 67AU defines a “disqualified person” as a person given notice under the part that the individual is taken not to be a fit and proper person for licensing because of an accumulation of demerit points.

Subsection (2) provides that the individual continues to be a disqualified individual for the term calculated under the part and stated in the notice.

Section 67AV provides that the part has effect despite anything in Part 3 (Licensing).

Section 67AW provides that a person must be allocated demerit points if they have been convicted of a demerit offence or if they are a judgment debtor for an unsatisfied judgment debt.

Subsection 2 provides that the authority must allocate two demerit points for a conviction for a demerit offence and ten points for an unsatisfied judgment debt. The greater number of demerit points for an unsatisfied judgment debt is to emphasise the importance placed upon licensed contractors making payments when ordered to do so by a court.

Subsection 3 provides that this requirement is subject to section 67AZB which provides for a maximum limit of six demerit points from a single audit or investigation.

Section 67AX provides that demerit points must be allocated as soon as practicable after the points take effect.

Subsection 2 provides that the demerit point take effect when the a court accepts a plea of guilty or make a finding of guilt, when the person pays a penalty issued under the *State Penalties Enforcement Act 1999* or when they make the first instalment on a payment or when the tribunal decides proper grounds exist for taking disciplinary action against the person. But the demerit points do not take effect until after the period during which the person has the opportunity to appeal a decision of a court or tribunal, or dispute an infringement notice.

Subsection 3 provides that the demerit points do not take effect during any appeal.

Subsection 4 provides that demerit points stop having effect when following an appeal, a conviction for a demerit point offence is overturned.

Section 67AY provides that demerit points for an unsatisfied judgment debt must be allocated as soon as practicable after the points take effect.

Subsection (2) provides that demerit points are to be allocated when a judgment debt is unsatisfied.

Subsection 3 provides that demerit points must not be allocated, if the judgment is appealed or there is an application to have it set aside, until the matter is dealt with or the appeal withdrawn.

Subsection (4) provides if following an appeal or application, there is no unsatisfied judgment debt, that is the appeal overturns the original judgment or the judgment is set aside, demerit points stop having effect.

Section 67AZ provides that a judgment debtor must notify the authority of the details of an unsatisfied judgment debt.

Subsection 2 provides that the authority must be notified within 14 days of the debt becoming an unsatisfied judgment debt, that is if the debt is not paid within the time allowed by the court.

Section 67AZA provides that the authority must notify a person about demerit points.

Subsection (2) provides the details of such notification.

Section 67AZB provides for a limit on the number of demerit points which may be allocated from a single audit or investigation.

Subsection (2) stipulates the maximum number of demerit points as six.

Subsection (3) provides that nothing prevents another six demerit points being allocated as a result of a further investigation or audit.

Subsection (4) provides that the authority must not allocate a further six points for a later notice if the later notice relates to the same audit or information from the same source received previously by the authority for which an earlier notice was issued. The subsection also provides that demerit points must not be allocated for offences committed prior to the allocation of points for another matter.

Section 67AZC provides that the authority must not grant a disqualified individual a licence or grant a licence to a company that has a disqualified individual as a director, secretary, influential person or nominee. This means that once a disqualified person has had their licence cancelled, they will not be granted a licence if they re-apply during the term of their ban.

Section 67AZD provides the procedure whereby the Authority notifies an individual that the Authority considers that the individual has accumulated 30 demerit points in a period of three years.

Subsection (2) provides the Authority must give a written notice to the individual providing full details of the demerit points, the effect of becoming a disqualified individual and invite the individual to make written submissions within a stated period to satisfy the authority that the individual has not accumulated 30 demerit points within a three-year period.

Subsection (3) provides that the stated period must be at least 28 days after the written notice.

Subsection (4) provides the Authority must consider any submissions.

Subsection (5) provides that if an unsatisfied judgment debt is paid before the end of the 28 days, demerit points allocated for that judgment debt must not be counted. This means that an individual may avoid a disqualification by paying a previously unsatisfied judgment debt. The demerit points will be removed from the register when the Authority is satisfied that the judgment debt has been paid.

Section 67AZE provides for an ending procedure if after considering the submission made by the individual, the Authority is satisfied that the individual has not accumulated 30 demerit points in a three-year period.

Subsection (2) provides that the Authority, must advise the individual in writing as soon as practicable, that no further action will be taken in relation to the matter.

Section 67AZF provides the procedure for cancellation of an individual licensee's licence. The licence is to be cancelled if the individual fails to satisfy the Authority that they have not accumulated 30 demerit points in a three-year period.

Subsection (2) provides that subsection (3) also applies if the individual has not made any submissions.

Subsection (3) provides that a written notice must be given to the individual informing them that they are still considered to be a disqualified person and that their licence is cancelled. They must also be informed that they are taken not to be a fit and proper person for the term calculated under Section 67AZM but that they have a right to review the decision in the Tribunal.

Subsection (4) confirms that an individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 in accordance with the notice.

Subsection (5) clarifies that the cancellation procedures under Section 49 do not apply to a cancellation under subsection (3).

Section 67AZG provides the procedure for informing an unlicensed individual that they are taken not to be fit and proper, if that individual fails to satisfy the Authority that they have not accumulated 30 demerit points in a period of three years.

Subsection (2) provides that subsection (3) also applies if there are no submissions made by the individual in relation to the notice issued under Section 67AZD(2).

Subsection (3) provides that a written notice must be given to the individual informing them that they are taken not to be a fit and proper person for the calculated term and that they have a right to review the decision in the Tribunal.

Subsection (4) confirms that a person given a notice under subsection (3) is taken not to be a fit and proper person to hold a licence.

Section 67AZH establishes the procedure if the Authority considers that a company has accumulated 30 demerit points in a three-year period.

Subsection (2) provides discretion as to whether the Authority issues written notices to the individuals who held the position of the company's directors, secretary, nominee or any influential persons associated with the company at the time 30 demerit points were accumulated. If notices are issued they must contain details of the demerit points, the effect of the individual becoming a disqualified individual and advise the individual that they have a stated period in which to satisfy the Authority that the company did accumulate 30 demerit points in three years, that the individual exercised reasonable diligence to ensure that some or all of the demerit points were not allocated; or that the individual was not in a position to influence the company's affairs in relation to the demerit points allocated.

Subsection (3) provides that stated period for submissions must be at least 28 days.

Subsection (4) provides any submissions made by the director, secretary, influential person or nominee must be considered by the Authority.

Subsection (5) provides that demerit points allocated for an unsatisfied judgment debt must not be counted for the purpose of determining if the

individual has accumulated 30 demerit points if the debt is paid before the end of the stated period for submissions.

Section 67AZI establishes the procedure when, after considering submissions made, the Authority is satisfied on the grounds provided that the individual should not be disqualified.

Subsection (2) provides that the Authority must advise the director, secretary, influential person or nominee in writing that no further action will be taken in relation to the notice issued under Section 67AZH(2).

Subsection (3) provides for cases where although the individual may have satisfied the Authority that they exercised reasonable diligence to ensure some demerit matters did not occur or that they were not in a position to influence the company in relation to some matters, nevertheless 30 demerit points remain for which the individual should be held responsible.

Section 67AZJ establishes the procedure for dealing with a licensed individual who is a director, secretary, nominee or influential person for a company when, after considering submissions made, the Authority still considers they are responsible for the accumulation of 30 demerit points within a three-year period.

Subsection (2) provides that subsection (3) also applies if there are no submissions made.

Subsection (3) provides that the director, secretary, influential person or nominee concerned must be given a written notice informing them that they are taken not to be a fit and proper person for licensing for the calculated term, that they have a right to review the decision in the Tribunal and that their licence is cancelled.

Subsection (4) confirms that a person given a notice under subsection (3) is taken not to be a fit and proper person to hold a licence for the term stated in the notice.

Subsection (5) clarifies that the cancellation procedures under Section 49 do not apply to a cancellation under subsection (3).

Section 67AZK establishes the procedure for dealing with an individual who is a director, secretary, nominee or influential person for a company and who is not a licensee when after considering submissions received, the Authority still considers they have been responsible for the accumulation of 30 demerit points within a 3-year period.

Subsection (2) provides that subsection (3) also applies if no submissions are made regarding the notice issued under Section 67AZH(2).

Subsection (3) provides that an individual must be given a written notice informing them that they are taken not to be a fit and proper person for licensing for the calculated term and that they have a right to review the decision in the Tribunal.

Subsection (4) confirms that a person given notice under subsection (3) is taken not to be a fit and proper person to hold a licence.

Section 67AZL provides the procedure for dealing with a licensed company which the Authority considers has as a director, secretary or influential person an individual who is a disqualified individual.

Subsection (2) provides that the licensed company must be given a notice identifying the disqualified individual, advising the company that the individual must cease holding their position within the company and that if the individual does not cease then the company's licence must be cancelled.

Subsection (3) provides that the Authority must cancel the company's licence by written notice if the disqualified individual does not cease holding their position within the company within the 28 days mentioned in subsection (2)(b).

Subsection (4) clarifies that the cancellation procedures under Section 49 do not apply to a cancellation under subsection (3).

Section 67AZM establishes the calculation method for the term an individual is taken not to be a fit and proper person for notices issued under the part.

Subsection (2) provides that only demerit points accumulated after the commencement of the section may be taken into account in calculating the term of a disqualification.

Subsection (3) provides that the term of disqualification for an individual who is given a notice for 30 demerit points for a first time is three years.

Subsection (4) provides that the term of ban for an individual who carries out tier 1 defective work for a second or subsequent time is the life of the individual.

Subsection (5) provides that a notice for tier 1 defective work must only be counted as a second notice if a notice has been given to an individual for

a first time, stating a ban of 3 years and the second or subsequent notice relates to 30 demerit points accumulated in a three-year period after the first notice is given.

Subsection (6) establishes that in deciding whether a notice is issued to an individual for a second or subsequent time, a notice relating to a three-year disqualification for accumulating 30 demerit points in a three-year period must be counted whether or not the individual has served the term of the disqualification. This covers a situation where a person, while serving the term of disqualification, accumulates a further 30 demerit points while operating unlicensed.

Subsection (7) provides that in deciding whether a notice for 30 demerit points is given a second or subsequent time, the second notice must be given within 10 years of an earlier notice and that a previous notice must not be counted if the Authority's decision in relation to the earlier notice was overturned upon review by the Tribunal.

Subsection (8) refers to the sections under which individuals and companies may be given notices in relation to accumulating 30 demerit points within a 3-year period.

Clause 35 amends Section 67V so that the warning notice must be in a form prescribed by regulation rather than as approved by the Queensland Building Services Board.

Clause 36 provides that the insurance policy terms and conditions may be stated in the Board's policies, rather than prescribed by regulation. The provisions in relation to Board policies are amended at *Clause 6* to provide that they do not take effect until a regulation approving them is made.

Clause 37 inserts a new Section 71A providing a head of power for the Authority's dispute resolution procedures. Subsection (1) establishes that the section applies to a consumer who wants the Authority to consider issuing a direction to rectify building work under Section 72.

Subsection (2) provides that the consumer must meet certain minimum information standards in order for the Authority to investigate the dispute.

Subsection (3) provides that a fee prescribed by regulation must accompany the application.

Subsection (4) establishes that before the Authority intervenes to resolve the dispute it may require the consumer to undertake a process to resolve the dispute themselves.

Subsection (5) establishes that the person taken to carry out the work is the person mentioned in Section 72(5).

Clause 38 inserts new Sections 106A to 106C which provide document production and certification requirements. Section 106A establishes a requirement that an inspector may require a person who has obligations under the Act and the *Domestic Building Contract Act* to produce a document for the inspector.

Subsection (2) allows the inspector to keep and copy the document.

Subsection (3) allows the inspector to require the person responsible for keeping the document to certify that a copy of a document or entry in a document is a true copy or entry.

Subsection (4) requires the inspector to return the document to the person as soon as practicable after copying.

Subsection (5) allows an inspector to keep a document until a person has complied with a certification requirement under subsection (3).

Subsection (6) establishes that a requirement under subsection (1) is a “document production requirement”.

Section 106B creates an offence for a person who fails to comply with a document production requirement without a reasonable excuse.

Subsection (2) excludes from the defence of “reasonable excuse” the fact that a document supplied as part of a document production requirement might tend to incriminate the person.

Section 106C creates an offence for a person who fails to comply with a document certification requirement without a reasonable excuse.

Subsection (2) excludes from the defence of “reasonable excuse” the fact that a document supplied as part of a document certification requirement may tend to incriminate the person.

Clause 39 renumbers the subsections of Section 107 (Power to enter and inspect building site).

Subsection (2) includes a provision to allow inspections to a building site to be undertaken when building work is being carried out on the site without consent of the person in charge of the site or a warrant.

Subsection (3) inserts a provision under section 107(2A) that allows an inspector to enter a site without a person’s consent or a warrant if the entry to the site is for the purpose of asking the person in control of the site for

their permission to enter and the extent of entry is reasonable to contact the person.

Subsection (3) also inserts a provision under section 107(2B) establishes that entry under (2)(b) or (2A) does not authorise a person to enter a place where a person resides.

Clause 40 amends a reference to local authority to “local government”.

Clause 41 extends protection for the State, general manager of the Authority and officers or employees of the Authority in respect of civil liability for honest acts or omissions in the performance or purported performance of their functions in relation to the *Building Act 1975*.

Clause 42 establishes that a regulation may set fees payable under the Act, provide for refunds of these fees, and imposes a penalty of not more than 20 penalty units for an offence under the regulation.

Clause 43 inserts a new part 5 to schedule 1 providing validating and transitional provisions for the Act.

Section 17 defines “regulation” for the part as being the *Queensland Building Services Authority Regulation 1992*.

Section 18 establishes that the section applies only to the financial requirements purportedly in force under section 7 of the regulation prior to 1 October 1999 and under Section 7A of the regulation prior to 19 November 1993. These are the periods in which the financial requirements were invalid.

Subsection (2) validates the sections for the purpose of making the financial requirements under Section 31 of the Act as in force at the time.

Subsection (3) confirms that the Authority and Board had the power to make the determinations and policies mentioned in Sections 7 and 7A of the Regulation. The determinations would have included the making of the financial requirements and the deciding of licence applications on the grounds of compliance with the financial requirements.

Section 19 establishes that the section applies only to Section 24 of the Regulation purporting to be in force before the commencement of the section.

Subsection (2) validates Section 24 for the purpose of prescribing the terms of a policy of insurance under Section 69(2) of the Act.

Subsection (3) confirms that the Authority and Board had the power to make the determinations and policies mentioned in Section 24 of the

Regulation. The determinations would have included the making of the insurance policy terms and the deciding of claims based on those policies.

Section 20 provides that the policies of insurance, created under Section 24 of the regulation for the purpose of Section 69(2) of the Act, which are in force immediately before commencement of this Act continue to be in force after commencement of the Act. The provision specifically refers to “policies” as there are a number of versions of the insurance policy, which continue in force despite creation of further versions. The policies relate to building work carried out under the policies and apply to that work, regardless of any further versions being created.

Subsection (2) provides that despite subsection (1) the Board may amend or repeal the policies.

Section 21 defines the provisions to be validated as those purportedly created under Schedule 2, Part 25 of the Regulation before the commencement of the *Queensland Building Services Authority Amendment Regulation (No. 2) 2002*.

Subsection (2) validates the part for the purposes of specifying classes of building work under Section 30(2) of the Act. The specified classes also had stated the qualifications and experience required by regulation under Section 31(1)(b) or 32(b) of the Act.

Subsection (3) provides that, without limiting subsection (2) the Authority had the power to give the directions in respect of the specified licence classes and to make decisions for deciding the qualifications and experience requirements for the part.

Subsection (4) establishes that a Board policy containing a decision about any aspect of the specified licence classes is taken to have been and to be a direction or decision of the Authority for the part.

Section 22 provides that the regulation may deal with saving and transitional matters so that a person who held a licence under Schedule 2 part 25 immediately before the commencement of the amending regulation is taken to hold a corresponding licence immediately after the commencement of the amending regulation. The regulation also provides that the person’s corresponding licence is otherwise unaffected.

Section 23 defines “non-trading licence” for the division. Non-trading licence was an invalid condition or expression purportedly placed on contractors’ licences preventing them from carrying out building work. The period for which the non-trading licences require validation is set as 19 November 1999 to 27 August 2001.

Section 24 establishes that non-trading licences are taken to have been valid contractors' licences subject to a valid condition imposed under Section 35 or Section 36 of the Act. The condition prevented the licensees from carrying out building work, undertaking to carry out building work, or supervising the carrying out of building work.

Subsection (2) provides that if the Authority had removed or does remove the purported condition then the condition is taken to have been validly removed. The licence continues to be valid.

Section 25 applies to section 13(4) and (5) of the regulation as in force before the commencement of the section. Section 44(3) of the Act provides that regulations may require an applicant for an owner builder course to undertake a course of instruction. Section 13(4) and (5) of the regulation describe the course as required by Board policies.

Subsection (2) provides that section 13(4) and (5) are taken to have been and to be valid for the purpose of specifying a course of instruction.

Subsection (3) provides that the Board is taken to have had the power to make the policies relating to the course.

Section 26 provides that the Board's general policies in force under the Act before amendment will continue to be in force after the amendment and may be reviewed by the Board, amended or repealed as if they were made under Section 9A after amendment, that is, they must be in writing, published in the gazette and approved by regulation.

Subsection 2 provides that the Board's supervision policies continue in force only until the commencement of Section 17 of the amendment Act which contains new provisions in respect of supervision.

Subsection 3 defines the terms "Act after amendment", "Act before amendment" and "amendment Act" for the purposes of Section 25.

Clause 44 amends certain definitions from the dictionary at schedule 2.

Subsection (2) inserts a number of definitions into the dictionary:

"administering authority" provides a signpost definition to section 67AQ.

"banned individual" provides a signpost definition to section 67AC.

"Building Code of Australia" is referenced to section 3 of the *Building Act 1975*.

“carry out tier 1 defective work” provides a signpost definition to section 67AB(2).

“completed building inspection” is defined to:

- limit the types of buildings on which a completed building inspection may be carried out to those buildings which are class 1a or class 10 building under the Building Code of Australia. A footnote provides definition of the classes of building; and
- state when a building is complete, for the purpose of carrying out a completed building inspection. This is done by three subsections:
 - (a) provides that there is no current contract between an owner and a building contractor;
 - (b) provides that there was building work being carried out but that the work has ceased and the contract for that work has been terminated; and
 - (c) refers to work, which is carried out under a speculative contract, where a building contractor carries out the work without a contract to a particular consumer.

“contract administration” is defined to include specified activities which may be carried out by a person in relation to building work designed by the person. The functions relate to the coming into existence of the building or building work based on the person’s designs.

“convicted company officer” provides a signpost definition to 596(b) or (c) of the *Corporations Act 2001 (Cwlth)*.

“conviction” provides a signpost definition to section 67AQ.

“default certificate” provides a signpost definition to section 67AQ.

“demerit matter” provides a signpost definition to section 67AQ.

“demerit offence” provides a signpost definition to section 67AR.

“demerit points” provides a signpost definition to section 67AQ.

“disqualified individual” provides a signpost definition to section 67AU.

“document certification requirement” provides a signpost definition to section 106A(5).

“document production requirement” provides a signpost definition to section 106A(6).

“domestic building work” provides a signpost definition to the *Domestic Building Contracts Act 2000* Schedule 2.

“excluded company” provides a signpost definition to section 56AC.

“excluded individual” provides a signpost definition to Section 56AC(3) and (4).

“influential person” is amended from a sectional definition to a universal definition and is defined to include any individual who is not a director or secretary of a company, but who has a position within the company which enables them to control or substantially influence the company’s affairs. The individual may include an individual with a significant shareholding or a financier or senior employee of the company.

“infringement notice” provides a signpost definition to section 67AQ.

“judgment debt” provides a signpost definition to section 67AS.

“nominee” replaces the definition of “nominated supervisor”. The definition remains the same.

“occupational licence” is defined as a licence or registration, which is issued by an entity other than the Authority. An example of this is a licence issued to a plumber and drainer by the Plumbers’ and Drainers’ Examination and Licensing Board in respect of work carried out under the *Sewerage and Water Supply Act 1949*.

“permanently excluded individual” provides a signpost definition to section 58.

“permitted individual” provides a signpost definition to Part 3A and refers to an individual who may have been previously considered an excluded individual in relation to a relevant event such as bankruptcy.

“relevant bankruptcy event” provides a signpost definition to section 56AC(1)(a).

“relevant company event” provides a signpost definition to section 56AC(2)(b).

“relevant event” may be either a relevant bankruptcy event or a relevant company event.

“SPER” provides a signpost definition to section 67AQ.

“term of ban” provides a signpost definition to section 67AO.

“tier 1 defective work” provides a signpost definition to section 67AB(1).

“unsatisfied” in relation to a judgment debt provides a signpost definition to section 67AT.

Subsection (3) amends the definition of “building work” to include contract administration when carried out by a person in relation to construction of a building of their design; and the inspection or investigation of a building and the provision of advice or a report in respect of the termite management systems of the building or termite infestation of the building. Including this work within the definition of “building work” means persons carrying out this work will be required to hold a licence, subject to Section 42. Contract administration relates specifically to the work performed by design drafters in the construction of buildings, the subject of their designs. Inspections and reports, etc in respect of termite management systems allows this work to be carried out by licensed pest control contractors.

Clause 45 establishes that the part amends the *Domestic Building Contracts Act 2000*.

Clause 46 inserts a new Section 17A within the *Domestic Building Contracts Act 2000*. The section is established to prevent a building contractor and an owner entering into multiple contracts for domestic building work where the contracts could be the subject of a single contract and if it was a single contract would be a contract for domestic building work.

Subsection (2) provides that if subsection (1) is satisfied and the contracts may be taken as a single contract, the contract price is the cumulative price of the separate contracts.

An example is provided of a kitchen manufacture that splits their contracts into a supply component and an installation component. The separate contracts could be the subject of a single contract and that single contract would be a contract for domestic building work. The contracts are taken to be a single contract.

Clause 47 establishes that the part amends the *Queensland Building Tribunal Act 2000*.

Clause 48 amends the provisions concerning reviewable decisions under the *Queensland Building Tribunal Act 2000*, providing for a review of

decisions under the new Parts 3B, 3C, 3D and 3E of the *Queensland Building Services Authority Act 1991*.

A new paragraph “(l)” is inserted to allow a review in respect of an individual found to be a convicted company officer.

A new paragraph “(m)” is inserted to allow a review in respect of a company found to have a convicted company officer as a director, secretary or influential person for the company.

A new paragraph “(n)” is inserted to allow for a review in respect of decisions taken for banned individuals.

A new paragraph “(o)” is inserted to allow for a review in respect of a company found to have a banned individual as a director, secretary or influential person for the company.

A new paragraph “(p)” is inserted to allow for a review in respect of an individual found to be a disqualified individual.

A new paragraph “(q)” is inserted to allow for a review in respect of a company found to have a disqualified individual as a director, secretary, influential person or nominee.

Subsection (2) provides that if the Tribunal is satisfied that an individual is a banned or disqualified individual, the Tribunal may not review the extent of any ban or disqualification imposed other than to determine whether the ban has been correctly calculated. The Tribunal is not permitted to amend the term of a ban or disqualification, which has been correctly calculated as three years or life to any other period of time.

Clause 49 increases the penalties that may be imposed when the Tribunal finds that there are proper grounds for taking disciplinary action against a person. The penalties in Section 111 are doubled for an individual and doubled for a company.

Clause 50 provides for Part 5 of the Bill (clauses 50 to 52) to amend the *State Housing Act 1945*.

Clause 51 provides for a new definition of “prescribed percentage” to be inserted in subsection 22B(5) of the *State Housing Act 1945* for the calculation of annual rental under subsection 22B(4) of the Act. The percentage is to be the percentage of the unimproved value of land the subject of the lease as prescribed under a regulation effective at the date of commencement of the relevant rental period, or in any other case 10 percent.

Clause 52 inserts a new section 51 in the *State Housing Act 1945* which provides for the retrospective validation of annual rental charged under section 22B of the Act.

Subsection (2) provides that for a rental period commencing on 1 July 1998 or a later 1 July occurring before commencement of the section, the prescribed percentage for section 22B(4) of the unimproved value of land the subject of a lease always was and is 10 percent.

Subsection (3) provides that, without limiting subsection (2) the annual rental charged and collected for the purpose of section 22B(4) based on 10 percent of the unimproved value of land the subject of a lease at the commencement of the rental period has been validly charged and collected.