

Building and Other Legislation Amendment Bill 2006

Explanatory Notes

Introduction

A review of Queensland's building legislation was triggered in 2003 when the *Standard Building Regulation 1993* (SBR) was due to expire. The Office of the Parliamentary Counsel advised that the SBR could not be re-written without major reformatting of Queensland's disjointed building legislation.

Building legislation is currently scattered between the *Integrated Planning Act 1997* (IPA), the *Building Act 1975* (BA), the *Standard Building Regulation 1993* (SBR) and the *Building Regulation 2002* (BR). Many provisions have changed since the major piece of legislation (the BA) was written in 1975. Many provisions have been added and some have become redundant, leading to poorly integrated legislation.

A major re-write of the principal and subordinate legislation has now been completed. The provisions for regulation of building work in the BA and IPA have been re-organised, clarified and moved between Acts and regulations. The subordinate legislation (BR and SBR) has been consolidated into one new document — the proposed *Building Regulation 2006*. The effect is substantially the same.

The Bill also contains a limited number of significant changes, including:

- Councils to be recognised as concurrence agencies for building assessment work;
- Public access to building approval and inspection documents to be increased;
- The requirement for councils to keep certain building records to be extended;
- Building work inspections to be more tightly controlled;
- Procedures to be introduced to help owners when building approvals lapse; and
- Rationalising penalty offences and penalty levels.

In order to be able to properly read and interpret the Bill it is necessary to read the Bill together with the current reprint version of the *Building Act 1975*, and the *Integrated Planning Act 1997*.

General Outline

The Bill consists of:

- Amendments to the *Building Act 1975* that rationalise the building certification legislation currently provided for between the BA, IPA, SBR and BR;
- Other technical and clarifying amendments to the *Building Act 1975*;
- Amendments to the *Brisbane Markets Act 2002*;
- Amendments to the *Fire and Rescue Service Act 1990*;
- Amendments to the *Local Government Act 1993*;
- Amendments to the *Plumbing and Drainage Act 2002*;
- Amendments to the *Private Health Facilities Act 1999*;
- Amendments to the *Public Health (Infection Control for Personal Appearance Services) Act 2003*;
- Amendments to the *Queensland Building Services Act 1991*; and
- Amendments to the *Southern Moreton Bay Islands Development Entitlements Protection Act 2004*.

Short Title

The short title of the Bill is the *Building and Other Legislation Amendment Bill 2006*.

Policy Objectives of the Legislation

The intent of the Bill is to:

- Remove disparities in the building assessment and certification legislation and to rationalise the format so that after ten years of amendments the legislation fits together better and is easier to understand; and
- Provide for certain other aims including:
 - Recognise the role of councils as concurrence agencies for building assessment work;

- Increase public access to building approval and inspection documents;
- Standardise the archiving period for which building information is kept by local governments for all classes of buildings;
- Prepare inspection guidelines for building certifiers inspecting commercial buildings;
- Provide owners with reminders that building approvals are about to lapse and provide owners with current inspection documents if the approval does lapse;
- Impose the same standards on all persons who prepare supporting documents for building development applications;
- Rationalise penalties applying to offences under the building legislation.

Reasons for the Bill

The development of the Bill was triggered by the review of the *Standard Building Regulation 1993* (SBR) which was due to expire on 1 September 2003 under the *Statutory Instruments Act 1992*. Work started in 2002 on remaking the SBR, but it was soon apparent that remaking the SBR would require a comprehensive reorganisation of Queensland's legal framework for building work and an extended deadline for the expiry of the SBR.

Achieving the Objectives

The Bill aims to improve the clarity, readability and ease of interpretation of the building legislation. This will assist builders, building certifiers and local governments and will support the building industry that is so important to Queensland. It will also help the community who will have better access to development information and simpler rules affecting them when they build or buy their homes or are involved with commercial buildings.

The Bill rationalises the regulatory framework for building that is currently provided for in four pieces of legislation – the *Building Act 1975* (BA), *Integrated Planning Act 1997* (IPA), the SBR and the *Building Regulation 2003* (BR). Provisions have been moved between the IPA and the BA, and some matters best dealt with in primary legislation have been moved out of regulations into the Acts.

For example, the provisions for private certification have moved from the IPA to the BA. The Building Act will have six new chapters forming a legislative framework that sensibly follows the process for making, assessing and deciding a building application through to the certification of building work. Also there are a number of minor consequential amendments to other Acts.

To complement the Bill, it is proposed to consolidate the SBR and BR into a single regulation, the new *Building Regulation 2006*

There is also a minor amendment to the *Plumbing and Drainage Act 2002* correcting a definition that inadvertently had the Director General of the Department of Local Government, Planning, Sport and Recreation responsible for approving designs for chemical, composting and incinerating toilets that are controlled under the *Environmental Protection (Waste Management) Regulation 2000* administered by the Environmental Protection Agency (EPA). The Bill will redress this mistake and clarify that only the EPA design rules apply.

Administrative Costs

Costs to local government and industry

Additional costs and resources for local governments and industry will relate to:

- Storing building documents for houses and pool fences for longer periods;
- Providing for increased public access to building documents; and
- Administrative costs associated with revised forms under the reorganised legislation.

The impact on local governments will depend on their existing administrative procedures, as some local governments already allow broad public access to building documents and archive documents for all classes of building for extended periods. Local governments may impose fees to recover the real costs of providing a service which may be imposed on a certifier when documents are lodged for archiving and on anyone who seeks to access them.

Costs to State agencies

There are no financial implications for the State Government arising from the introduction of the legislation.

Net costs/Benefits

Overall the Bill aims to improve the clarity, readability and ease of interpretation of the building and planning legislation. The community will benefit from the building certification system operating to the highest possible standards, and the public interests being properly protected.

Additional costs on industry are likely to be small in comparison to the public health and safety benefits. These changes resulted from extensive consultation with the public, representatives of industry, local governments and interested parties.

Fundamental Legislation Principles

The Bill calls up two external documents, the *Building Code of Australia* (BCA) and the *Queensland Development Code* (QDC). While this might be thought to be a breach of fundamental legislative principles, this has for many years allowed for the consolidation in a national code and a state code of the frequently changed technical standards against which building work is assessed in Queensland. This is both more user friendly for the building industry which knows where to find the standards and more cost effective than amending primary legislation many times every year as technical standards are updated and developed to meet new problems and new technologies.

Building Code of Australia

The Building Code of Australia is an existing document which is the national source of technical building standards and the key element in maintaining uniform building standards across Australia. It is highly technical, detailed and extensive. It is maintained and annually amended by the Australian Building Codes Board (the Board), on which Queensland is represented.

At present the SBR states that the Building Code of Australia applies in Queensland. Referencing the Code in the regulation has allowed for detailed technical standards to be applied in Queensland while providing for regular updates. This system has been operating successfully for many years. Similar arrangements apply in the building regulations of all the States and territories.

The Bill enhances the authority of Parliament by moving provisions applying the Code from the SBR to the BA. The most appropriate way to provide for these technical provisions is to call up the Code given its technical nature, development and process for amendment.

Queensland Development Code

The Queensland Development Code (QDC) is an existing technical code containing Queensland specific building standards, that was previously authorised under the SBR. Currently, the QDC is made and amended by the chief executive of the Department of Local Government, Planning, Sport and Recreation (DLGPSR), and each mandatory part of the QDC is called up when individually notified in the SBR. Listing each part of the QDC in the regulation as it is made, has ensured that the QDC remains subject to Parliamentary scrutiny and potential disallowance. This system has been operating successfully for some years, providing for cost effective standards that are easy to access for industry users without reducing the control of the Parliament over the QDC's content.

The Bill further enhances the control of Parliament, by moving the authorising provisions from the SBR to the BA. The BA will contain a schedule listing all the current parts of the QDC with mandatory effect. The Bill also provides that the QDC may be amended or added to, with any such changes listed in the proposed *Building Regulation 2006* that will replace the SBR. It is necessary to provide a more rapid means than Act amendments to create new technical standards to address building problems that arise without notice, particularly when Parliament may not be sitting. An example of this was in early 2004 when it was necessary to develop and introduce technical standards for tents and temporary buildings by creating Part 28 of the QDC in a little over a month.

The QDC covers building standards that are outside the scope of and in addition to matters dealt with in BCA, where a Queensland specific technical standard is needed. The intent is to make the QDC the one place for industry and government to find Queensland specific building standards, in one easily accessed and well recognised document, instead of scattered across Queensland's legislative framework. The QDC is available on the DLGPSR website.

DLGPSR is progressively consolidating into the QDC, all State agency building requirements dealing with such matters as tents and temporary buildings, child care centres, private hospitals, fire safety in budget accommodation buildings and pastoral workers' accommodation.

The QDC primarily contains standards in the form of qualitative statements (or performance criteria) to be met by quantifiable standards (or acceptable solutions) for specific areas of building work, along with explanatory diagrams.

In addition to the parts of the QDC that have mandatory or legislative effect and are called up in the SBR, the QDC contains model or advisory standards that outline best practice on specific building related issues such as erosion and sediment control on building sites. The model standards provide minimum standards that can be adopted by local governments through their planning schemes, but adapted where necessary for the needs and characteristics of their local area.

Local governments making building assessment provisions

The Bill clarifies and transfers from the SBR to the BA, current provisions enabling local governments to make local laws, planning scheme provisions or resolutions about provisions against which building work is assessed. Local governments can only deal with matters where a regulation allows them to do so. This allows local governments to deal with issues requiring urgent or area-specific controls such as building requirements to help control noise in Fortitude Valley, to protect children from drowning through pool fencing standards, or to make special provision for bush fire hazard areas and rain water tank areas. Local governments can also use their planning schemes to relax the QDC requirements for site clearances and boundary setbacks where needed for small lot development, heritage areas or where rain water tanks are installed on urban lots where this was not originally envisaged.

Right of entry to premises other than by warrant

Currently, the *Queensland Building Services Authority Act 1991* (QBSA) empowers the Building Services Authority (BSA) to enter and inspect a building site that is the subject of a complaint made against a licensed builder or auditor, with the consent of the person in control of the building site or authorised by warrant. The Bill will complement this power, by giving the BSA auditors the power to enter and inspect a building construction site to investigate complaints about a building certifier or to conduct an audit. The Bill also complements the QBSA by requiring a BSA auditor to be issued with and carry identification when exercising powers of entry and requires auditors to take reasonable steps to identify themselves to the occupier of the site before exercising these powers.

Private certifier to act in the public interest

The Bill sets a high maximum penalty (1665 penalty units) for private certifiers who do not act in the public interest when performing private certifying functions. This is based on the existing penalty provision in IPA.

Private certifiers perform many regulatory compliance functions in place of local governments, who acted in the public interest in making decisions. A

certifier working for a local government provides advice and the local government itself is responsible for the decision. It is not appropriate to prosecute local governments for exercising their powers, and the Ombudsman's Office deals with improper decision making by local governments. However, private certifiers may be prosecuted for breaching their duty to act in the public interest when deciding building development applications. The level of maximum penalty that was originally in the IPA and transferred to the BA, reflects the importance of this duty. However, the courts will determine appropriate penalties in individual cases based on the seriousness of the consequences of the certifier's breach.

Information notice

Information notices, which include appeal rights, are required to be given by a building certifier for an adverse final inspection decision. For all other inspection decisions, certifiers are required to give written notice. Because of the number, timing and place of decisions made about building inspections, it would be unrealistic to require certifiers to give information notices for every adverse decision. A person may appeal any building certifier decision regardless of whether the decision is given by an information notice or written notice.

Consultation

Targeted consultation – the Building Reference Group

Targeted consultation has been undertaken since early 2004 with local government and industry representatives including: Local Government Association of Queensland (LGAQ), Brisbane City Council, Logan City Council, Maroochy Shire Council, Townsville City Council, the Property Council of Australia, the Urban Institute of Queensland, the Real Estate Institute of Queensland, the Australian Institute of Building Surveyors (AIBS), the Housing Industry Association (HIA), Queensland Master Builders Association (QMBA), the Independent Private Certifiers Association, Engineers Australia, and the Building Designers Association of Queensland (BDAQ).

Broad Public Consultation

Broad public consultation on the draft legislation and eight proposed changes was conducted from 9 November to 30 December 2005. Submissions were received from 14 local governments, the LGAQ, five private certifiers, the AIBS, the Independent Private Certifiers Association, HIA, and an architect.

Government

A broad range of Government agencies have been consulted including the Department of the Premier and Cabinet, Office of Queensland Parliamentary Counsel, Queensland Treasury, Department of State Development, Trade and Innovation (DSDTI), Department of Public Works and Housing, Department of Justice and Attorney-General, Department of Emergency Services, Environment Protection Agency and the BSA.

Notes on Provisions

Part 1 - Preliminary

Short Title

Clause 1 provides that the short title of this Bill is the *Building and Other Legislation Amendment Bill 2006*.

Commencement

Clause 2 provides that the Act, other than the amendments to the *Plumbing and Drainage Act 2002* provided for in part 4, section 101 and the schedule (to the extent the schedule amends the *Plumbing and Drainage Act 2002*), will commence on a day to be fixed by proclamation.

Amendments to the *Plumbing and Drainage Act 2002* will commence on Assent.

Part 2 – Amendment of Building Act 1975

Act amended in Part 2

Clause 3 provides that part 2 of the Bill amends the *Building Act 1975*.

Replacement of long title

Clause 4 replaces the long title to more accurately describe the purpose of the Act which is to regulate for the approval of building development applications, the construction and certifying of building work in Queensland, the licensing of building certifiers and for other purposes.

Replacement of parts 1 and 2

Clause 5 replaces Parts 1 and 2 with new chapters 1 through to 6, namely:

- Chapter 1 - Preliminary
- Chapter 2 - When building work is assessable, self-assessable or exempt development
- Chapter 3 - Additional requirements for building development applications
- Chapter 4 - Assessment of building development applications and the carrying out of self-assessable building work
- Chapter 5 - Inspections, building classification and the use of buildings
- Chapter 6 - Provisions about private certifiers and other building certifiers

These chapters insert new sections 1 to 11V. The new chapters represent a significant change to the format of the BA which is based on the process of lodging a building development application. The format is explained in more detail in new section 3 (Simplified outline of main provisions of the Act)

Chapter 1 Heading – Preliminary

Chapter 1 provides an introduction to the BA and outlines the main provisions of the Act. It describes how new chapters follow the process of lodging a building development application, the interrelationship with the Integrated Development Assessment Scheme (IDAS) under the IPA, the assessment of the application and by whom, the approval and other related matters. IPA specifies that all development is exempt development, that is, no approval is required unless it is assessable or self-assessable

development, including building work. The first step is to determine if the proposed building work is assessable. The framework of the new provisions in the BA is to assist the user in deciding if the proposed building work is assessable development and, if so, what are the next steps in obtaining an approval.

It also provides for definitions used in the Act listed in the dictionary schedule 2, key definitions and other references used in the Act.

Part 1 Heading-(Introduction)

New section 1 (Short title)

Section 1 provides for the short title of the *Building Act 1975*.

New section 2 - (Act binds all persons)

Section 2 provides that the Act binds all persons as far as the legislative power of Parliament permits. The persons bound by the Act include the State (that is, it binds public sector entities unless otherwise excluded), as well as the Commonwealth and other States – to the extent that the legislative power of the State allows. Under the provisions of the *Acts Interpretation Act 1954* this includes the Territories as well as the States. Nothing in the Act makes the State liable to be prosecuted for an offence.

New section 3 - (Simplified outline of main provisions of Act)

New section 3 describes the purpose of chapters 2 – 9 of the BA.

- Chapter 2 (sections 5O to 5Q) specifies what building work is assessable and will therefore trigger the need for a building development application. Chapter 2 also notes the interrelationship with IPA for determining what is assessable building development.
- Chapter 3 (sections 5R to 5X) imposes additional requirements to those under IPA for the making of a building development application. The IPA specifies the general requirements for a building development application under section 3.2.1 (Applying for development approval).
- Chapter 4 (sections 5Y to 8K) provides for:
 - the laws and other documents for the assessment of building development applications;

- who is responsible for assessing building development applications. Chapter 4 part 2 division 1 also notes that generally, building assessment work is carried out by building certifiers, however, some aspects of the application must be assessed by concurrence agencies under *Integrated Planning Regulation 1998*.
- the regulation of the assessment and approval;
- the regulation for the carrying out of building work.
- Chapter 5 (sections 8L to 9K) provides for the giving of inspection documents for particular buildings, including final inspection certificates for houses, certificates of classification for other buildings and restricts the use of particular buildings.
- Chapter 6 (sections 9L to 11V) regulates building and private certifiers and the performance of building and private certifying functions including the engagement of private certifiers and the licensing of, complaints, investigations, and disciplinary proceedings against, certifiers.
- Chapter 7 makes provision about fire safety for budget accommodation buildings.
- Chapter 8 regulates swimming pool fencing.
- Chapter 9 provides for the giving of show cause and enforcement notices for particular buildings.

New Part 2 Heading - (Interpretation)

New Division 1 heading - (Dictionary)

New section 4 - (Definitions)

Section 4 provides in schedule 2 a dictionary that defines terms used in the Act. All definitions, including key definitions, are listed in the dictionary either by referring to the particular section in which the term appears or a definition will be provided in the dictionary. Defined terms throughout the Act appear in bold and italicised text for easy identification.

New Division 2 heading (Key Definitions)

Division 2 provides for key definitions used in the Act that are crucial in interpreting the Act and regulations.

New section 5 (What is *building work*)

Section 5 provides the definition of the term *building work* which is a key definition to be used in interpreting the Act. Clause 1.3.5 of IPA is currently relied on for the definition of building work and is significantly broader than that required for the application of the BA provisions.

The definition has been refined to focus on matters dealt with by the Act and includes a new provision to cover work regulated under the building assessment provisions (other than IDAS). Subsection (2) includes work that is a management procedure or other activity relating to a building even though there may be no structural change to the building or structure. This could be a management procedure under the fire safety standard relating to a budget accommodation building.

New section 5A (What is a *building development application*)

Section 5A provides a definition that distinguishes development applications for building work from other development applications made under IPA. A *building development application* is a separate application for work that falls within the definition of building work under section 5. This is distinct from other types of development applications that may be made under IPA even though those may depict buildings and structures.

New section 5B (What is *building assessment work*)

Section 5B defines *building assessment work* to identify it as assessment of a building development application against specific provisions in the Act. These specific provisions are the “building assessment provisions” set out in new section 5Y. Assessment of a building development application is a comparison of the material in the application against these provisions to the extent they apply.

New section 5C (Who is a *building certifier*)

Section 5C replaces the current definition of a *building certifier* that is narrow and without a specific link to the term private certifier. The narrow

definition of building certifier in the BA and the separate definition of private certifier in IPA has led to confusion about the two roles. The new definition under section 5C(2) clarifies that a reference to a building certifier includes a reference to a private certifier and section 5C(3) includes a reference to a former building certifier. The two roles are further clarified under the new section 5D which provides for the classes of private certifiers.

New section 5D (Private certifiers and their classes)

Section 5D replaces the current definition of a *private certifier* in 5.3.3 of IPA. The current definition in IPA does not make it clear there are restrictions on a private certifier to issue development approvals, depending on the type of endorsement on a certifier's licence. To avoid confusion, section 5D has redefined the term private certifier and created two separate classes of certifier indicating the corresponding endorsements.

Section 5D (1) defines a private certifier as a building certifier whose licence includes a private certification endorsement under section 10T.

Section 5D(2) provides for a *private certifier (class A)*, who has a licence containing a development approval endorsement. A private certifier (class A) can issue development approvals for building work.

Section 5D(3) provides for a *private certifier (class B)*, who has a licence that does not contain a development approval endorsement. A private certifier (class B) cannot issue building development approvals, but can assess building work against the BCA and QDC.

New section 5E (What is a building certifying function)

Section 5E defines a *building certifying function* as any of the functions listed in section 5E that only a building certifier may perform. These functions apply to both local government building certifiers and private certifiers.

If a building development application is made to the local government under section 6S, the local government must appoint or employ a building certifier to perform building certifying functions.

If a building development application is made to a private certifier, the private certifier must perform building certifying functions for the application and any relevant private certifying functions for the application. Building certifying functions are expanded under section 6P to include the

additional functions that a private certifier (class A) is licensed to perform, or reduced under section 6Q in the case of a private certifier (class B).

Section 5E(a) provides that a building certifying function, performed by a building certifier, is the carrying out of building assessment work but excludes anything a concurrence agency has jurisdiction to assess and decide.

Section 5E(b) provides that the giving of a *compliance certificate* is a certifying function but only for aspects of building assessment work that are not the responsibility of a concurrence agency.

Section 5E(c) provides that inspecting of building work for the purpose of certifying the work, is a building certifying function. This clarifies that the inspecting of building work relates only to work covered by the building development approval.

Section 5E(d) applies to building work for a single detached class 1a building or class 10 building or structure. It provides that the giving of inspection certificates for the stage of building work that is after excavation of foundation material and before the footings for the building are laid; and final inspection certificates, are building certifying functions that must be performed by a building certifier.

Section 5E(e) provides that the giving of a certificate of classification for another class of building is a building certifying function that can only be performed by a building certifier. Certificates under section 5E(d) and (e) must be given in the approved forms and signed by a building certifier.

The provisions in section 5E differ from the current definition of building certifying function which refers to the taking of enforcement action about development approvals issued by a building certifier. Section 6P now provides for private certifier enforcement, and clarifies that when a private certifier (class A) is engaged to assess and approve a development application, the certifier's functions include deciding to take enforcement action if the circumstances are warranted.

Removing the enforcement function from the definition of building certifying function better reflects the existing policy intent that a local government does not require a building certifier to take enforcement action. To remove any doubt about the functions or powers of a local government in relation to enforcement action, section 6P(5) provides that while it is a function of a private certifier (class A) to decide to take enforcement action for their approval, this does not limit a local government's enforcement powers or functions under IPA. Section 22 of the BA provides for a local government to take enforcement action at any time if the local government

reasonably believes the building work is dangerous, dilapidated, unfit for use etc. and an enforcement notice may also be given to a person who does not comply with the BA.

New section 5F (Who is the *assessment manager* for a building development application)

Section 5F defines *assessment manager* and clarifies that, despite the definition of assessment manager under IPA, when a private certifier is performing functions for a building development application, the certifier is the assessment manager for the application.

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

Section 5G defines the *Building Code of Australia* as the current edition with the Queensland Appendix, including any amendments published from time to time. The Building Code is published and amended by the Australian Building Codes Board.

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

Section 5H defines the *Queensland Development Code*. The Queensland Development Code (QDC) is an existing technical code containing Queensland specific building standards that are outside the scope of and in addition to matters dealt with in BCA, where a Queensland specific technical standard is needed. The QDC is available on the DLGPSR website.

DLGPSR is progressively consolidating into the QDC, all State agency building requirements dealing with such matters as tents and temporary buildings, child care centres, private hospitals, fire safety in budget accommodation buildings and pastoral workers' accommodation. The intent is to make the QDC the one place for industry and government to find Queensland specific building standards, in one easily accessed and well recognised document, instead of scattered across Queensland's legislative framework.

The QDC consists of mandatory parts and model parts. It is made and amended by the chief executive of the Department of Local Government, Planning, Sport and Recreation (DLGPSR). Currently, each mandatory part of the QDC is called up when individually notified in the SBR. This

has ensured that the QDC remains subject to Parliamentary scrutiny and potential disallowance.

The Bill further enhances the control of Parliament, by moving the authorising provisions from the SBR to the BA. Section 5H(1) provides that the QDC consists of the parts published by DLGPSR and stated in schedule 1 to the Bill. The schedule will list all the current parts of the QDC with mandatory effect. Section 5H(2) provides for the chief executive amend, replace or add parts of the QDC.

Section 5H(3) provides that any amendment or replacement does not become effective until the chief executive publishes the changes on the Department's website and a regulation (the proposed *Building Regulation 2006*) approves the amendment. Section 5H(4) provides the regulation must state the day on which the amended or replaced part was published. Using a regulation will provide a more rapid means than Act amendments to create new technical standards to address building problems that arise without notice, particularly when Parliament may not be sitting.

Under IPA, section 5.7.6, the chief executive of the department in which that Act is administered must make the QDC available for public inspection and supply copies, free of charge.

In addition to the parts of the QDC that have mandatory or legislative effect and are called up in the SBR, the QDC contains model or advisory standards that outline best practice on specific building related issues such as erosion and sediment control on building sites. The model standards provide minimum standards that can be adopted by local governments through their planning schemes, but adapted where necessary for the needs and characteristics of their local area.

New section 5I (When building work *complies* with the BCA or QDC)

Section 5I applies as a general application provision where there is a reference to building work complying with the BCA, QDC, or the building assessment provisions, to the extent they include the BCA and the QDC.

Subsection 5I(2) provides that for building work to comply with the BCA and the QDC (the **Code**), it must comply with all the relevant performance requirements under the code. Subsection 5I(3) provides that for building work to comply with a relevant performance requirement, it must achieve a relevant building solution under the code.

Subsection 5I(4) provides that a relevant building solution is achieved for a performance requirement by:

- for the BCA, complying with the relevant deemed-to-satisfy provisions under the BCA. For the QDC, complying with the relevant acceptable solution under the QDC;
- formulating an alternative solution that complies with the performance requirement or is shown to be at least the equivalent to the relevant requirement; or a combination of both these approaches.

Division 3 – Other References

New section 5J (References to changed BCA or QDC provision)

Section 5J provides that if the Act refers to a specific provision in the BCA or the QDC the reference, under section 14H of the *Acts Interpretation Act 1954*, applies as if it were a reference to a law as remade or renumbered and the reference continues to apply as if it were about the original provision.

New section 5K (Reference in Act to applicants, development, assessment managers, referral agencies, building work or building certifiers)

Section 5K clarifies what is meant in the Act by the following terms: applicant, building work, building, development, assessment manager, referral agency, concurrence agency, advice agency, decision notice, building certifier, and building development approval – where these terms are used in relation to a building development application, a building development approval, a building or building work.

New section 5L (Reference in Act to local government)

Section 5L specifies that a reference to local government means the local government for the area relevant to a building, proposed building, building work, proposed building work, a building development application or development approval.

New section 5M (Reference to local government includes any other assessment manager under IPA)

Section 5M provides that if the local government is not the assessment manager for a development within its jurisdiction, a reference to the local government means the entity acting as the assessment manager.

New section 5N (Reference to a proposed building or structure)

Section 5N provides that any references to a building, structure, owner of building or structure respectively include a reference to a proposed building or structure or a person who may be the owner when the building or structure is finished. A reference to the use of a building that is proposed to be built is a reference to the use once the construction of the building is completed.

It is quite common for the ownership of a building to change throughout the design and/or construction phase of a building. This provision removes the need to provide a separate provision and definition for a change of ownership throughout the design and construction phase or before the building or structure is finished.

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

Chapter 2 (sections 5O to 5Q) specifies what ‘building work’ is assessable and will therefore trigger the need for a building development application. It also notes the interrelationship with IPA for determining what is assessable building development.

New section 5O (Building work that is assessable development for IPA)

Section 5O provides that all building work is assessable, unless it is exempt development, self-assessable development or it is building work that relates to a retaining wall under the provisions of section 3.2.2B of IPA.

New section 5P (Building work that is self-assessable for IPA)

Section 5P(1) declares the building work that is self-assessable for IPA, schedule 8, part 2, table 1. This provision is intended to include both items 1 and 2 in table 1, part 2, of schedule 8 under IPA.

Section 5P provides that building work is self-assessable where it is prescribed under a regulation, if it complies with the codes or alternative provisions. If the building work is self-assessable under a regulation but does not comply with the codes or alternative provisions, the building work becomes assessable development.

New section 5Q (Building work that is exempt development for IPA)

Section 5Q specifies that building work prescribed under a regulation is exempt development.

Chapter 3 – Additional requirements for building development applications

Chapter 3 imposes additional requirements to those under IPA for the making of a building development application. IPA specifies the general requirements for a building development application under section 3.2.1 (Applying for development approval).

Part 1 – Requirements for supporting documents

New section 5R (Operation of pt 1)

Section 5R specifies requirements for *supporting documents* to be given for a building development application.

New section 5S (Required information for supporting documents)

Section 5S provides that supporting documents must state particular details about the person preparing them. These details must identify authorship of the documents, and if the author (the *designated person*) is an architect, licensed builder, building designer or registered professional engineer, provide their relevant licence or registration number. Licence or registration numbers on the documents will allow for checking on an appropriate register or record for the authorised person's current status. It is also provided to underpin the compliance roles of regulatory bodies such as the BSA so that they may audit the aspects of a particular practitioner's activities.

Alternatively, under section 5S(1)(b), a person may provide a separate document stating this required information. This subsection allows for instances where there are large amounts of material that forms the supporting documents.

Section 5S(2) clarifies who may be *designated persons*.

New section 5T (General requirements for supporting documents)

Section 5T(1) provides that documents, such as plans of proposed building work, must generally show that building work will comply with the building assessment provisions. Examples include a site plan showing the location of buildings with relevant boundary clearances to demonstrate compliance with siting provisions or documents showing external walls having a particular type of construction material that achieves a specific fire resistance level.

Section 5T(2) provides the particulars that must be stated on specific supporting documents, which are intended to ensure all necessary information is available to the assessment manager before an approval is given.

New section 5U (Requirements if alternative solution used)

Section 5U provides that a document must be provided to support how an alternative solution has been applied to a development approval. It requires information about an alternate solution that can be used and relied upon to justify the deviation from normal deemed to satisfy requirements of particular codes.

Part 2 – Other requirements

New section 5V (Application for building work for budget accommodation building)

Section 5V specifies that a building development application for a budget accommodation building must also include a fire safety management plan. This section intends that the fire safety management plan is lodged as part of the documentation for the development application.

This is to ensure the availability of all relevant information, and in particular the fire safety management plan, at the assessment stage of the application. After the building work is carried out, the plan must comply with the *Fire and Rescue Service Act 1990*.

New section 5W (Application to build swimming pool on residential land must include fencing)

Section 5W specifies that building development applications for swimming pools on residential land must also provide for construction of a pool fence. The construction of a fence around a pool on residential land is crucial to the overall function of pool safety. A separate approval for the fencing component would not guarantee the safety of the overall pool enclosure at the time the pool is constructed. Therefore, the inclusion of the fence construction in the application is critical to ensuring a complete assessment can be made and pool safety is not compromised.

New section 5X (Application must include required site works)

Section 5X specifies that a building development application must include any site works required under the building assessment provisions to be carried out as part of the development. It is intended the site works to be assessed relates to the proposed building work in the development application. This will ensure site works such as earthworks are suitably retained where necessary. The term site works is defined in schedule 2-dictionary.

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

Chapter 4 (sections 5Y to 8K) provides for:

- the laws and other documents for the assessment of building development applications;
- who is responsible for assessing building development applications. Chapter 4 part 2 division 1 also notes that generally, building assessment work is carried out by building certifiers, however, some aspects of the application must be assessed by concurrence agencies under the *Integrated Planning Regulation 1998*;
- the regulation of the assessment and approval assessment;
- the regulation for the carrying out of building work.

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

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

New section 5Y (Relevant laws and other documents for assessment of building work)

Section 5Y(1) provides the *building assessment provisions* against which all assessable building work and self-assessable building work must be assessed.

Even though self-assessable building work does not trigger a building development application and does not require a building certifier to perform building certifying functions for the work, self assessable building work must still be assessed against all relevant laws applying to the self-assessable building work

Section 5Y(2) provides for the application of the building assessment provisions for the building work or self-assessable development. These building assessment provisions may only be varied under division 2.

New section 5Z (Building assessment provisions form a code for IDAS)

Section 5Z specifies each of the building assessment provisions in section 5Y, with the exception of IDAS, are codes for IDAS. This triggers the requirement for building applications to be assessed against the building assessment provisions. This general rule is subject to Divisions 1 and 2.

A local government can not make additional building assessment provisions either through local laws, local planning instruments or by resolution except as specifically provided for in sections 6 and 6A.

New section 6 (Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions)

Section 6 enables a local government to make provision in a local planning instrument, planning scheme, local law or a resolution about specific matters that may form part of the building assessment provisions. The Bill has clarified and moved provisions from the SBR to the BA, that currently enable local governments to make local laws, planning scheme provisions or resolutions about provisions against with building work is assessed. Section 6 limits local government discretion to matters authorised by a regulation and to the matters specified in the section, which maintains controls over the content of such local government rules. It also prevents local governments duplicating building assessment provisions under section 5Y.

These powers are needed to allow local governments to deal with building related matters that arise and require urgent attention, where public safety or other public interests would be at risk from failure to act, such as protecting children from drowning through pool fencing standards, creating bush fire hazard areas or providing for water conservation through declaring rain water tank areas. It is also needed where area-specific controls are needed such as building requirements to help control noise in Fortitude Valley.

The QDC contains advisory or model standards that contain minimum standards on building related issues such as erosion and sediment control on building sites. Local governments can adopt and adapt these standards

through their planning schemes. This provides for a level of consistency where standards are applied, but leaves it up to local governments to determine whether these standards are required in local circumstances.

Section 6(1)(a) enables a local government to designate in its local planning instrument, matters for the BCA or QDC, but only for those matters authorised by a regulation. Examples include designating rain water tank and bushfire prone areas within the local government area. This designation requires building work in those specific areas to be assessed against particular provisions as required under the building regulation.

Section 6(1)(b) enables a local government to provide in a local law, planning scheme, or resolution other aspects of building work, where these aspects are authorised by a regulation. This means building development applications for building work that includes those aspects must be assessed against particular provisions as required under the building regulation. Examples include swimming pool fencing and land liable to flooding.

Section 6(1)(c) authorises a local government to make alternative provisions under section 6A.

Section 6(2) enables a local government to make provision in a planning scheme for other building assessment requirements, that are outside the scope of the building assessment provisions provided for in section 5Y. The intent of this subsection is to enable local governments to make building assessment provisions that have not been covered by the building legislation.

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

Section 6A applies to building assessment work and self-assessable building work (*relevant work*) in relation to single detached class 1 or class 10 buildings or structures. Section 6A enables a local government to make *alternative provisions* in a planning scheme for the relevant work that provide an alternative to the QDC provisions for boundary clearances and site cover. The Bill clarifies and transfers from the SBR to the BA, current provisions enabling local governments to use their planning schemes to relax the QDC requirements for site clearances and boundary setbacks where this is needed to cater for local circumstances such as small lot development, heritage areas or where rain water tanks are installed on urban lots where this was not originally envisaged. The intent of this section is to provide local governments with the option to vary the QDC

boundary clearance and site cover provisions if the local government considers its alternative provisions are more appropriate for its local government area.

Requiring local governments to do this via planning schemes ensures that broad community consultation and State interest checks are conducted before any provisions can be made. The provision in the local government's planning scheme must be a ***qualitative statement*** or a ***quantifiable standard***. If the alternative provisions are not in a planning scheme, or are in a planning scheme but are not a qualitative statement or quantifiable standard, they have no effect.

Under section 6A(6) a qualitative statement means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed. A qualitative statement is intended to operate in the same way as a performance requirement in the BCA or performance criteria in the QDC.

A quantifiable standard means a standard that achieves a performance or outcome sought under a qualitative statement. A quantifiable standard is intended to operate in the same way as a deemed-to-satisfy provision in the BCA or an acceptable solution in the QDC.

Alternative provisions must be qualitative and quantifiable, and therefore the alternative provisions provide a clear documented outcome which can be achieved by applying the documented standard. Thus, the private certifier (class A) engaged to perform building certifying functions can assess the application against the alternative provisions without needing to seek an approval from the local government. So, where a local government has made alternative provisions in their planning scheme, a private certifier (class A) may assess an application against these alternative provisions. If the proposed building work complies with the alternative provisions, there is no requirement to refer the application to the local government for assessment against the alternative provisions.

However, if the private certifier (class A) assesses the application and the proposed building work does not comply with the alternative provisions, the private certifier must refer the application to the local government as a concurrence agency for assessment of that aspect of the application.

Section 6P provides for the concurrence agency to assess certain aspects of a building development application and the *Integrated Planning Regulation 1998* provides for the jurisdiction of concurrence agencies.

Subsection (4) provides that if there are alternative provisions in the planning scheme for the relevant work, the QDC boundary clearances and

site cover provisions only apply to the extent the alternative provisions do not apply to the work. In effect, the QDC's provisions for boundary clearances and site cover are default provisions, but only for those matters not provided for in the alternative provisions. The alternative provisions are alternative to all the performance criteria and acceptable solutions in the QDC for boundary clearances and site cover, and the QDC will not apply. If the planning scheme contains alternative provisions in place of merely some of the QDC's performance criteria and acceptable solutions relating to boundary clearance and site cover, the remaining performance criteria and acceptable solutions in the QDC will apply.

Section 6A clarifies the policy intent in the current legislation, that is to ensure there will always be requirements for boundary clearances and site cover for building assessment work and self-assessable building work for single detached class 1 or class 10 buildings or structures. The only question is whether these requirements are in a local government's planning scheme or the QDC. A local government referral will only be triggered if the proposed building work does not comply with the alternative provisions or if the QDC provisions apply, a referral to the local government will be triggered if the proposed building work does not comply with the QDC.

For building assessment work and self-assessable building work for other building classes (not single detached class 1 or class 10 buildings or structures), a local government is under section 6(2) using its powers under IPA to make provision in a planning scheme for building work, provided it relates to building outside the scope of the building assessment provisions.

Limiting alternative provisions to a planning scheme (instead of under local planning policies or local government resolutions) means alternative provisions can only be made using a rigorous process of community consultation. This ensures consideration of potentially significant community impacts resulting from creating of alternative siting provisions in a local government's area.

New section 6B (Relationship between IDAS and other building assessment provisions)

Section 6B provides that IDAS applies subject to other building assessment provisions.

New section 6C (Relationship between the BCA and the QDC)

Section 6C provides that if there is inconsistency between the BCA and the QDC, the BCA will override the QDC.

New section 6D (When building assessment provisions must be applied)

Section 6D provides that subject to sections 6E and 7B (Alterations to safe existing work may be approved on basis of earlier building assessment provisions), building assessment work, other than building work under section 6N (Concurrence agencies may carry out building assessment work within their jurisdiction), must comply with building assessment provisions that were in force at the time the application was approved.

New section 6E (Provision for changes to building assessment provisions)

Section 6E provides for the assessment of building work following an amendment to the building assessment provisions if the building work:

- started before an amendment commenced;
- approval was given but work has not started before an amendment commenced;
- an application is made but not decided before an amendment commenced; or
- planning started before an amendment and the building certifier is satisfied that replanning would impose financial hardship.

In these circumstances, the building work can be lawfully carried out under the building assessment provisions in force immediately before the amendment and IDAS, or a building development approval can be given under the building assessment provisions in force immediately before the amendment.

Division 2 - Variation of how particular building assessment provisions apply

New section 6F (Applying to vary how particular building assessment provisions applies)

Section 6F provides that building assessment provisions can be varied either before, during or after construction of a building is completed. This applies where building work will not or does not comply with a provision of the building assessment provisions other than IDAS. In these circumstances, a person can apply to the chief executive to vary how the building assessment provision applies, using the prescribed form and paying the prescribed fee.

Section 6F(2) provides that a person cannot apply to vary the assessment provisions if a building certifier already has the ability to exercise discretion under the building assessment provisions about the matter.

New section 6G (Applying for fast-track decision)

Section 6G provides that an application can be fast tracked and a decision made within 2 business days. A prescribed fee is required to fast track an application; however an application can be accepted or refused. The applicant may also need to pay reasonable additional costs for deciding the application within 2 business days.

New section 6H (Effect of application on IDAS process)

Section 6H specifies that if an application is made for building work or building development application, the process under IDAS stops on the same day the application is received by the chief executive and it starts again on the same day when the chief executive gives the applicant notice under section 6K.

New section 6I (Deciding variation application)

Section 6I provides that the chief executive must decide to vary or refuse an application for variation of the assessment provisions in consultation with particular people and within certain timeframes.

The chief executive, before deciding an application for variation, must consult with an assessment manager if there is one for the building work unless it is work for the State. The chief executive may consult with

anyone before deciding the application. The chief executive must make a decision about the application that either varies it or refuses the application in total. The chief executive must decide the application within 20 business days after the application is made.

New section 6J (Criteria for decision)

Section 6J requires the chief executive officer to consider all relevant matters when considering an application to vary the application of the building assessment provisions. Examples have been provided for the types of matters that may be considered as relevant and include::

- whether the building work substantially complies with the other building assessment provisions;
- whether compliance with the provisions is unnecessary in the particular circumstances; and
- whether the proposed variation is as effective as or more effective than compliance with the provisions.

Applications for variations may include allowing a horizontal member of a pool barrier to be a less distance above the ground than the minimum required. The chief executive may consider the variation to the pool barrier is as effective as the existing minimum requirements and that the pool barrier would not be likely to pose any greater danger to children under five years of age than it would had it fully complied.

Another example may involve an application to vary automatic warning smoke detection. The variation may require a system of heat detection in lieu of smoke detection. After considering relevant matters the chief executive may determine the interests and safety of the building's occupants will be no less than that provided by meeting either the deemed to satisfy provisions or performance requirements of the BCA.

New section 6K (Notice of decision)

Section 6K stipulates that within 5 business days of deciding an application, the chief executive must give the applicant and any assessment manager for the building work, a notice of the decision. If the chief executive decides to refuse to vary how the provision applies to building work, the notice must be an information notice.

New section 6L (Effect of variation)

Section 6L provides that the chief executive's decision to vary an application has particular effects on the application for building development work made to an assessment manager. Where the chief executive decides to vary how the building assessment provisions apply to building work, the varied building assessment provisions apply to the building work - unless the chief executive's decision to vary the assessment provisions is appealed against.

An assessment manager is not allowed to refuse a building development approval for reasons relating only to a decision by the chief executive to vary a building assessment provision. If a provision is varied it may be the case that it no longer complies with some aspects of the building assessment provisions, for example a provision under the BCA or QDC. This section intends that this must not be the sole reason for an assessment manager to refuse a building development approval. An assessment manager can, under section 3.5.11 of IPA, refuse a building development approval if there are other reasons.

Part 2 – Persons responsible for assessing building development applications**Division 1 – Who carries out building assessment work****New section 6M (Generally a building certifier must assess)**

Section 6M provides that building assessment work must be carried out by a building certifier.

New section 6N (Concurrence agencies may carry out building assessment work within their jurisdiction)

Section 6N provides that a concurrence agency may carry out building assessment work even though it is not a building certifier. This section applies if, under IPA, a concurrence agency has jurisdiction for part of building assessment work, for example, the chief executive under the *Child Care Act 2002* for the building of child care centres.

Only the concurrence agency can assess that part of the building assessment work for which it has jurisdiction, as set out in the schedules 2 and 2A of the IPA regulation. A concurrence agency can only assess the matters within its jurisdiction under the building assessment provisions that are in force at the time the assessment is made.

If a concurrence agency's jurisdiction for a part of the building assessment work is assessing compliance against a fire safety standard, it must employ or appoint a building certifier to carry out the actual assessment.

Division 2 – Functions of private certifiers

New section 6O (Operation of div 2)

Section 6O confers on private certifiers, *private certifying functions* for building development applications. Private certifiers are accredited and licensed primarily as building certifiers performing building certifying functions. Through licence endorsement, private certifiers perform additional functions together with building certifying functions which are private certifying functions. There are 2 classes of private certifiers according to licence endorsement, class A who are assessment managers and class B, who assess a building development application for technical compliance against the BCA and certain parts of the QDC.

New section 6P (Functions of private certifier (class A))

Section 6P provides private certifiers (class A) can receive, assess and decide a building development application and either grant or refuse the building development approval as if they were the assessment manager under IPA for the application under section 3.1.7 IPA. These functions are in addition to the functions a private certifier (class A) may perform as a building certifier under section 5E.

Section 6P(1)(c) provides that the functions of a private certifier (class A) include the decision as to whether enforcement action ought to be taken for a building development approval granted by the private certifier (class A) or another private certifier (class A) employed by the same private certifier employer when the decision to take the enforcement action is made.

The power of a private certifier (class A) to take enforcement action for the approval is as the assessing authority under IPA chapter 4, part 3, divisions 2 and 3. In addition, section 22 of the BA provides for specific circumstances under which the local government may also take

enforcement action in relation to building work and section 6P(3) provides the same ability for a private certifier (class A) when the certifier is performing the functions under section 6P(1)(c).

The enforcement functions of a private certifier apply only until the giving of a final inspection certificate for the building work or a certificate of classification for the building. This provision provides a point at which the private certifier has decided that the building work complies, or substantial completion has been achieved, and there could be no reason for the certifier to take enforcement action past this point.

Section 6P(5) removes any doubt about the functions or powers of a local government to take enforcement action for a private certifier (class A) approval by stating that a local government's enforcement powers or functions under IPA are not limited.

Section 6P(6) provides if a private certifier gives an enforcement notice and the person does not comply with the notice, the certifier must ensure the local government is given notice of the fact. The purpose of this provision is to ensure the local government is informed of enforcement issues within their area and enable the local government to take further action if warranted.

New section 6Q (Functions of private certifier (class B))

Section 6Q specifies that for IDAS a private certifier (class B) can receive and assess building development applications and perform building assessment work against the BCA and the QDC (except for assessment of the application in relation to boundary clearances and site cover). The basis for the difference in functions of a private certifier (class A) and a private certifier (class B) is the class B certifier does not have the necessary development approval endorsement on their licence.

The function of receiving a building development application is in addition to the functions of a building certifier provided for under section 5E. However, a private certifier (class B) is restricted in the performance of other building certifying functions as indicated in section 6R.

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

Section 6R provides that a private certifier (class B), can only give compliance certificates about how the building work complies with the BCA and QDC other than for boundary clearances and site cover. This

restricts a private certifier (class B) from giving certificates of classification and final inspection certificates for a building.

Division 3 - Functions of local government

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

Section 6S stipulates that if a private certifier (class A) is not engaged for a building development application and the application is properly made under IDAS, the local government must receive, assess and decide the application. The local government must appoint or employ a private certifier or another building certifier to perform building certifying functions for the application and if approved, the building work. If a private certifier is appointed or engaged under this section, the private certifier can not perform private certifying functions under section 6P for the application, only building certifying functions under section 5E (What is a building certifying function). To clarify, if a private certifier (class B) is engaged, the local government can rely on the work of that certifier.

If a private certifier (class A) has given the building development approval and subsequently the engagement of the private certifier is discontinued before building work is certified, the local government for the approval must perform building certifying functions if asked in writing by the owner of the building.

New section 6T (Restriction on local government issuing building development approval)

Section 6T provides that a local government can only issue a building development approval if a local government has appointed or employed a appropriately licensed private certifier or another building certifier to carry out the building assessment work for the application. This section provides that only a building certifier is qualified to perform building certifying functions for the application.

New section 6U (Local government may rely on particular compliance certificates and other documents)

Section 6U specifies that if a private certifier (either class A or class B) engaged for the application, or a local government building certifier, gives

a compliance certificate or other documents for the building work, the local government may, if carrying out functions for the application, accept and rely on the certificate or document. This enables the local government to continue the assessment of an application only for those aspects that have not been given a compliance certificate. A compliance certificate is defined in section 5E (What is a building certifying function).

New section 6V (Local government may rely on documents private certifier gives it for inspection or purchase)

Section 6V provides that when a private certifier gives the local government documents required under the Act, such as the building approval and inspection documents, the local government may accept, and without further checking, rely on the documents. This reliance can be archiving and making it available for inspection and purchase as specified under IPA.

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

New section 6W (Power to decide what stage of IDAS application is to resume or start)

Section 6W applies if a private certifier (class A) has been disengaged before the application has been decided and there is a new assessment manager for the application. Section 6W also applies if a building development approval lapses under IPA and the owner of the land makes a new building development application for all or part of the building work covered under the lapsed approval.

The assessment manager for the application can start the application process at any stage of IDAS as it deems appropriate.

Part 3 – Discretionary matters in the assessment of building development applications

New section 6X (Building certifier’s discretion – BCA)

Section 6X applies if the BCA allows a discretionary decision about building design and specification and a building development application proposes to use the design or specification. The building certifier must decide if the design or specification complies with the BCA under section 5I (When building work complies with the BCA or QDC).

New section 6Y (Building certifier’s or concurrence agency’s discretion – QDC)

Section 6Y applies for a building development application if a part of the QDC applies to the application and the part allows a discretionary decision about building design and specification and a building development application proposes to use the design or specification.

The certifier or the concurrence agency carrying out the building assessment work for the application must decide if the design or specification complies with the QDC or the QDC as varied under part 1, division 2.

New section 6Z (Survey certificate)

Section 6Z provides that a building certifier may before assessing the building development application, require a cadastral survey be carried out to show the boundaries of the allotment on which the building work is proposed and the location of any proposed or existing buildings or structures on the allotment. This requirement may be a condition of the building development approval under section 7S.

New section 7 (Discretion for building development applications for particular budget accommodation buildings)

Section 7(1) applies to the assessment of a building development application for building work completed on a budget accommodation building, for the purposes of complying with the fire safety standard.

The assessment of a building development application for this type of work can only be carried out by local government.

Section 7(2) specifies that a local government may approve a building development application that conflicts with environmental outcomes, such as street appeal, as set out in a local government planning scheme. The intent is to give local governments the discretion to compromise these outcomes in particular circumstances.

For example, a budget accommodation building may require an additional fire-stair to comply with the fire safety standard. The cost of accommodating the stair inside the building may be excessive and place the owner in financial hardship. Therefore, the local government may decide to allow the stair to be placed externally even though the aesthetics of the street are compromised.

New section 7A (Building certifier may rely on particular compliance certificates and other documents)

Section 7A applies if a building certifier has given anyone else a compliance certificate or other document made by or given to the building certifier for the purpose of carrying out building assessment work. Another building certifier may accept and without further checking, rely and act on the document.

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

Section 7B applies if the building certifier is satisfied that, under *building assessment provisions* (including former Standard Building By-laws) and *earlier building assessment provisions*, (includes building assessment provisions as they were in force at a particular time before the application was made), alterations to a building would be generally safe and structurally sound. This section allows a certifier to approve building work under earlier provisions if they consider the work must be carried out that way. An example would be a heritage building that cannot be made to comply with current building assessment provisions without compromising its heritage status.

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

New section 7C (Requirement to consider any agency advice response)

Section 7C provides that the assessment manager for a building development application must not approve the application if an advice agency under IPA has jurisdiction for a part of building assessment work. A note to the section provides information about advice agency jurisdiction under the Integrated Planning Regulation and for treatment of advice agency matters under IPA.

New section 7D (Restriction on granting building development application for budget accommodation building)

Section 7D provides that an assessment manager must not approve a building development application for a budget accommodation building that does not have a fire safety management plan compliant with the *Fire and Rescue Service Act 1990*, or where building work involves an alternative solution under the BCA that includes a fire safety management procedure and the fire safety management plan does not adequately reflect the procedure.

New section 7E (Required report before assessing application for temporary building or structure with special fire service)

Section 7E requires a building certifier to obtain a report from QFRS before assessing a temporary building or structure that is proposing to have a special fire service. The QFRS report must comment on the suitability of the proposed special fire service.

New section 7F (Land subject to registered easement or statutory covenant)

Section 7F prohibits an assessment manager from approving a building development application for land in an easement or subject to a registered statutory covenant without the holders of registered interests consenting to the building work. Statutory covenant is defined as a covenant for which

the registered holder of the covenant is the State, or a statutory body representing the State, or a local government.

New section 7G (Special structures)

Section 7G specifies that building development applications for buildings classified as special structures under section 9G cannot be approved unless the application complies with all building assessment provisions. The application must address the safety of persons if there is a fire, the prevention, suppression and spread of fire, and the health and amenity of persons using the special structure.

New section 7H (Temporary building or structure that does not comply with other building assessment provisions)

Section 7H applies to a building development application for temporary buildings or structures. If the application will not comply with the building assessment provisions, a compliance alternative is provided for under subsections (2), (3) and (4). The building certifier must not approve the application unless the temporary building or structure satisfies certain safety criteria and the approval must impose a condition that limits the period during which the temporary building or structure is to remain and requires the removal or demolition of the temporary building or structure at the end of the period.

New section 7I (Particular alterations not permissible)

Section 7I provides that alterations to an existing building or structure should not substantially reduce the existing level of protection from fire for persons living in or using the building or structure. Alterations should also not significantly reduce the level of fire resistance, safeguards against fire to prevent the spread to other buildings or the level of emergency egress from the building. This does not apply to budget accommodation buildings undergoing alteration to be able to comply with the fire safety standard.

Part 5 – Conditions of building development approvals

Division 1 – Conditions taken to be imposed

For general provisions about conditions on development approvals, including building development approvals, see IPA chapter 3, part 5 division 6. The conditions imposed under this division 1 must be imposed on certain building development approvals.

New section 7J (Operation of div 1)

Section 7J provides that division 1 imposes conditions on particular building development approvals. However, this division does not limit the conditions that may be imposed under IPA.

If a provision of this part applies to a building development approval, the condition, (*imposed condition*), is taken to be relevant and reasonable under the requirements of IPA section 3.5.30.

However, IPA sections 3.5.33 (Request to change or cancel conditions) and 3.5.33A (When condition may be changed or cancelled by assessment manager or concurrence agency) do not apply to imposed conditions under this division.

If there is a conflict between an imposed condition and any other condition of a building development approval the imposed condition prevails to the extent of the inconsistency.

New section 7K (Engineering drawings)

Section 7K applies to an approved application where engineer's drawings supported the building development application and the drawings were not included with the application. In these circumstances, the imposed condition requires that work on the footings must not start until the drawings and details for the footings have been approved by the building certifier. Similarly subsection (3) imposes the condition that a stage of building work must not be started until the drawings and details for the stage have been approved by the certifier.

New section 7L (When demolition, removal and rebuilding must start and finish)

Section 7L imposes conditions on building development approvals for building work to demolish or remove a building or structure or rebuild after removal. The *imposed demolition/removal completion condition* requires the building work to substantially start within 2 months after the giving of the approval. Within six months after the giving of the approval, the building work must be completed. If the approval is for rebuilding after removal of a building or structure, the building work is completed after a final inspection showing the building work complies, or the issue of a certificate of classification has been given for the building under chapter 5.

New section 7M (Building work in erosion prone area)

Section 7M imposes a condition on a building development approval for building work in an erosion prone area under the *Coastal Protection and Management Act 1995*.

The condition requires all material excavated from land for the building work to be placed, levelled and stabilized against wind erosion.

Section 7M(3) specifies if the building work includes the erection or alteration of a roof drainage system or stormwater drain, the system or drain must not be likely to cause erosion of the area.

However, these conditions do not apply if the approval states that the person carrying out the building assessment work for the application is satisfied the conditions are not necessary.

New section 7N (Obligation to make current drawing available for inspection)

Section 7N provides that a legible set of drawings for a building development application is available to anyone who under this or any other Act can inspect the building site.

New section 7O (Inspection and testing of special fire service installation)

Section 7O applies to a building development approval for a building served by a special fire service. The imposed condition requires the person who installs the service to give QFRS a notice to inspect the installation. The installer must also give the QFRS a notice to test the service before interior surface finishes are applied. A copy of the notices must also be

given to the assessment manager when they are given to the QFRS. The QFRS is limited to inspecting and testing the building work only about special fire services.

New section 7P (Earthworks and retaining walls)

Section 7P provides that if soil conditions, ground levels, excavation or filling make it necessary to protect land, buildings and structures around the building work, the imposed condition on the approval requires a retaining wall to be built and drainage to be provided.

New section 7Q (Drainage of buildings or land)

Section 7Q requires that a building development approval permits drainage of a building or land, the imposed condition requires the drainage to be carried out in a way that protects land, buildings and structures in the neighbourhood of the building or land.

New section 7R (Building work over existing sanitary drainage)

Section 7R imposes the condition requiring building work over or adjacent to existing sanitary drainage to comply with the Standard Plumbing and Drainage Regulation.

Division 2 - Conditions that may be imposed

Division 2 provides for conditions that may be imposed on certain building development approvals.

New section 7S (Survey certificate)

Section 7S provides that a building development approval may include a condition to provide the building certifier with a cadastral survey that shows the allotment boundaries and the location of the buildings or structures. The survey must be given as soon as the location of buildings or structures can be established, or at a later time if permitted by the building certifier.

New section 7T (Hazardous buildings)

Section 7T applies to building development approvals for buildings that are class 5, 6, 7 or 8 with total floor areas greater than 36000m² that the building certifier considers should have special fire protection provisions because of its use. The conditions may be to restrict or combat the spread of fire within or from the building, but can only be imposed after the certifier has consulted the QFRS about their appropriateness.

New section 7U (Alterations to unsafe existing work)

Section 7U applies if the building certifier believes that a building or structure is unsafe or structurally unsound. As a condition of approving the alteration, the building certifier can require that all or part of the building or structure complies with the building assessment provisions at the time the application is approved. The building certifier can also require that the structure complies with building assessment provisions at another time that will ensure the building or structure is made safe and structurally sound.

New section 7V (Building development approval for particular alterations may require existing building or structure to comply with building assessment provisions)

Section 7V applies to a building development approval for alterations to an existing building or structure if:

- the total of the alterations or any previous structural alterations to it approved or finished in the previous three years, represent more than half the total volume of the existing building or structure, measured over its roof and external walls or
- the building certifier has decided the alterations pose a risk to the safety of persons accommodated in or using the building or structure, or of spreading fire to the adjoining buildings or structures.

In these circumstances the building development approval may include a condition that all or part of the existing building or structure must comply with all or part of the building assessment provisions as if it were a new building development or structure.

This section does not apply if the alterations are for a budget accommodation building and the purpose of the alteration is to ensure the building or structure complies with the fire safety standard.

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

New section 7W (Application of part 6)

Section 7W applies if a private certifier (class A) is assessing a building development application or deciding and issuing a decision notice. The functions of a private certifier (class A) are listed in section 6P.

New section 7X (General restrictions on granting building development approval)

Section 7X stipulates that a private certifier must not grant a building development approval if the building development application includes development that is not building work, until;

- under IPA, all requisite development permits are effective for the other development;
- under IPA, all necessary preliminary approvals under IPA are effective for the other assessable development;
- under the BA, the building assessment work for the application has been carried out under the building assessment provisions;
- under IPA, a concurrence agency has assessed that part of the application within its jurisdiction and local governments acting as concurrence agencies have been given any required security;
- under the *Plumbing and Drainage Act 2002*, a compliance permit has been issued where necessary;
- under the *Water Act 2000*, consent has been given for the work to be carried out over or adjacent to the sewer or water main and the work meets specifications under this section.

Subsection (3) provides that if the certifier receives the application before all other approvals or permits required under this section have been given, then for the timelines under IPA the application is taken to have not been received until the day all other assessments under IDAS have been completed. This section does not limit part 4.

New section 7Y (Approval must not be inconsistent with particular earlier approvals or self-assessable development)

Section 7Y makes it an offence for a private certifier to approve an application if the building development application relates to an earlier development approval granted by the local government, the approval has not lapsed and the new application is inconsistent with the earlier approval.

Subsection (2) also makes it an offence for the private certifier to approve an application if the application is inconsistent with a local planning instrument that has declared the development to be self assessable and the development affects the height or form of building work.

New Section 7Z (Additional requirement for decision notice)

Section 7Z provides that when private certifiers issue a decision notice, details of any self assessable code under IPA with which the applicant must comply, are to be included in the notice.

New section 8 (Requirements on approval of application)

Section 8(1) stipulates that once a private certifier approves an application, then within 5 days the local government must be given a copy of the application and the approval documents. The certifier must also provide the local government with the approved form for the application and pay the local government fee for accepting the application and approval documents. Failure to lodge the documents and pay the fee attracts a penalty.

Section 8(2) specifies that the documents lodged with the local government either be individually identified as approved by the private certifier for the application, or have a cover sheet that identifies all the documents relating to the application any edition number and that they have been approved by the private certifier.

The term '*approval documents*' referred to in this section is defined in the dictionary to the Act and includes the following:

- The decision notice or the negotiated decision notice;
- A copy of the plans, drawings and specifications and other information lodged by the applicant;
- A list of required fire safety installations and special fire services;
- Certificates relied on by the private certifier to make a decision;

- A list of development information relied on by the private certifier to decide the application in the approved form.
- This includes a description of physical characteristics, the location of infrastructure relevant to the application, local government easements, encumbrances, estates or interests in the land, site characteristics such as the design or location of stormwater connections or details of any heritage listed buildings.
- The reasons for using an alternative solution for building work.

New section 8A (Local government acknowledgement)

Section 8A requires the local government to immediately give the private certifier an acknowledgement that fees have been paid. The acknowledgement document is not a receipt for the fees, and can be in either written or electronic format.

The approved form includes a tear-off section for local governments to give to certifiers as the acknowledgement of the fee for archival of the approval documents. This will allow local governments who issue receipts on a monthly basis, to issue immediate ‘acknowledgement’ for the payment of the fee.

Local governments do not have the same 5 day period mentioned in section 8B to acknowledge receipt of payment of the fee for archival. This 5 day period applies only to private certifiers for the lodgement of the application and approval documents.

New section 8B (When applicant is to be given the approval documents)

Section 8B requires that if the private certifier approves the application, approval documents must not be given to the applicant until local government acknowledgement has been received by the certifier. Once the acknowledgement has been received, the certifier has 5 business days to give the approval documents to the applicant.

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

Division 1 – Building work for demolition or removal

New section 8C (Application of div 1)

Section 8C specifies that Division 1 applies to a building development approval to which a demolition or removal completion condition applies.

New section 8D (Relevant period under IPA, s 3.5.21 for development approval)

Section 8D specifies that the period mentioned in the demolition or removal completion condition is the currency period specifically for the development approval, and can not be extended under IPA.

New section 8E (Lapsing of building development approval)

Section 8E specifies that this section applies despite the provisions in section 3.5.21 of IPA.

A building development approval lapses if the demolition or completion condition, under section 7J, has not been complied with by the end of the currency period. This section provides that if section 8F applies, the approval does not lapse until the local government decides not to take action.

Section 8E(3) is intended to ensure that the obligation under section 3.5.21(7) to refund a monetary security on lapsing does not apply until the local government decides not to take action under that section.

New section 8F (Local government may complete particular work if condition not complied with)

Section 8F applies where a building development approval lapses under section 8E and it does not apply to demolition work.

A local government may take necessary action to complete building work if the building development approval lapses, and has discretion regardless of the extent of work necessary to complete building work under the development approval. However, the local government can only complete

the building work that was covered under the building development approval and not building work additional to it.

Section 8F(3) provides that if the local government takes action to complete building work, the lapsed approval continues to be in force. This allows the local government to enforce all relevant conditions of the approval as they were applied in the first instance to the building development approval. The local government is entitled to use the approval and has authority to carry out whatever may be necessary to complete the works. In addition the local government may use all or part of any monetary security to carry out the building work

New section 8G (Releasing security)

Section 8G(1) empowers the local government to decide to refund all or part of a monetary security given to for the carrying out of building work. This can be based upon the progress of the building work. However, the local government must refund or release all of the monetary security if a demolition or removal completion condition is complied with or the building development approval lapses.

Division 2 – Other building work

New section 8H (Application of div 2)

Section 8H(1) applies if a condition is placed on a building development approval requiring the development to be completed by a particular time. This section refers to this particular time as the *condition time*. This clarifies that Division 2 -Other Building Work, does not apply to building work to which demolition or a removal condition applies.

Under Division 2 –Other building work, the general provisions of IPA, chapter 3, part 5, divisions 5 and 6 for lapsing and conditions apply. These provisions generally apply to development approvals and have not been included in the Building Act so as to avoid duplication.

New section 8I (Reminder notice requirement for lapsing)

Section 8I stipulates when a building development approval lapses and when the provisions in IPA, chapter 3, part 5, divisions 5 and 6 do not apply. It also provides that a building development approval only lapses if

the assessment manager has given the owner of the building a reminder notice containing certain matters about the lapsing time.

The owner of a building is defined in the *Building Act 1975* to include the person who at the time would be entitled to receive rent if the building were let to a tenant. Over the period of the development approval, which could be almost two years in some cases, ownership of the building could change hands. However this definition ensures the most recent owner of the building receives the reminder notice and is therefore not disadvantaged.

The approval only lapses if the time stated in the reminder notice has passed without all of the building work being completed. The development approval lapses if the development or an aspect of the development is not completed before the time set out in the reminder notice. This lapsing may be a later time than the original *condition time* (referred to under section 8H(1)). This would come about if the assessment manager neglected or forgot to give the owner of a building a reminder notice within the timeframes set out in section 8I(3). Neglecting or forgetting to give the owner of the building a reminder notice within the timeframes in section 8I(3) has the effect of allowing the development approval to continue indefinitely.

The lapsing time stated in the reminder notice must be after but not before the *condition time*. This is intended to ensure the assessment manager cannot reduce the time for the building work to be completed under the development approval.

This section is to ensure the owner of the building is made aware of the date the development approval for the building work will lapse. This will also allow the owner of the building to take whatever measures necessary to either complete the building work or apply to have the lapsing date extended.

Section 8I(3) specifies the particular requirements relevant to a reminder notice. Firstly, the reminder notice must be given at a time that is no more than 6 months before the lapsing time and secondly, at a time that is at least 3 months before the *lapsing time*. The lapsing time referred to in this subsection is the lapsing time set out in the reminder notice which, as in section 8I(1)(b), may be a time beyond the original *condition time*. The reminder notice must state all of the matters set out in items (i) to (iv) under subsection (3)(b). The reminder notice must highlight:

- The relevant condition dealing with time for lapsing;
- The actual lapsing time which is a date and may include a time if desired;

- The fact that the development approval will lapse unless the development or an aspect of the development is completed by the lapsing time; and
- That if the currency period under IPA for the building development approval is extended past the lapsing time provided in the reminder notice, that time is taken to be when the currency period ends.

Only one reminder notice may be given. If another reminder notice is to be given and the assessment manager is a private certifier, the provisions of section 8K apply. Also an assessment manager cannot change the lapsing time unless a request has been made under the provisions of section 8J.

New section 8J (Extension of lapsing time because of application to extend currency period under IPA, s3.5.21)

Section 8J(1) applies if a reminder notice has already been given under section 8CB, and before the lapsing time, a request is made to extend a currency period under IPA.

In these circumstances, for section 8I, the lapsing time in the reminder notice is taken to have been extended until the request has been decided. The intent of this subsection is to provide a deemed extension to encourage the assessment manager to progress a decision for a request as quickly as possible. This will also ensure the owner of the building is not disadvantaged by any tardiness on the part of the assessment manager in deciding the request. Also, if the currency period is extended beyond the lapsing time stated in the reminder notice, the extended currency period ends when that lapsing time has passed.

New section 8K (Restriction on private certifier (class A) extending relevant period under IPA, s3.5.21 more than once)

Section 8K(1) applies to a private certifier (class A) acting as assessment manager for a building development approval, where they have already extended the currency period under section 8I.

The private certifier may give a further extension to the currency period if they have consulted with the local government. Consultation with the local government also applies to any other subsequent extension.

Section 8K(3) specifies that if 8K(2) applies, the provisions of IPA chapter 3, part 5, divisions 5 and 6 do not apply.

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

Chapter 5 (sections 8L to 9J) provides for the giving of inspection documents for particular buildings, including final inspection certificates for houses, certificates of classification for other buildings and restricts the use of particular buildings.

Part 1 – Giving of inspection documentation for single detached class 1A buildings and class 10 buildings or structures

New section 8L (Application of pt 1)

Section 8L stipulates that this section only applies to a local government building certifier or a private certifier (class A) if either is the certifier for a development approval for buildings that are single detached class 1a or class 10 building and structures.

New section 8M (Obligation to give owner inspection documentation on final inspection)

Section 8M(1) applies if the building certifier's inspection of building work for the final stage is based on industry best practice for inspections and the certifier is satisfied that the work complies with the building development approval.

The building certifier must give the building owner a copy of the final inspection certificate and any other inspection documentation within the specific timeframe set out in 8M(3). The owner of the building is defined under the *Building Act 1975* to include the person who at the time would be entitled to receive the rent, if they let the building to a tenant.

Section 8M(3) sets the specific timeframes for giving documents to the owner as 5 days from when the building certifier has accepted the certificates making up the inspection documentation. If there are no certificates to accept, the 5 day period starts when all of the building work has been inspected and the certifier considers it complies in relation to the building approval.

Part 2 – Certificates of classification for other buildings

Division 1 - Preliminary

New section 8N (Application of pt 2)

Section 8N stipulates that part 2 applies to a local government building certifier or a private certifier (class A) where either is the certifier for a development approval for buildings that are not a single detached class 1a or class 10 building or structure.

New section 8O (Meaning of *substantially completed*)

Section 8O provides a list of work that must be undertaken for a building or part of a building to be substantially completed.

Division 2 - Giving of certificate

New section 8P (Obligation to give certificate of classification on inspection after particular events)

Section 8P(1) applies if the building certifier has inspected the building and decided the building or alterations to it are substantially completed or has consented to occupation of part of the building before it is substantially completed. It also applies if the applicant has given the certifier information about fire safety installations, requirements under the building assessment provisions or conditions imposed by referral agencies.

Section 8P(2) specifies that the building certifier must give the owner of the building a copy of the certificate of classification that complies with the requirements of section 8Q. The owner of the building is defined under the *Building Act 1975* to include the person for the time who would be entitled to receive the rent if they let the building to a tenant.

Section 8P(3) provides that the certificate of classification cannot be issued to the owner unless any referral agency conditions or inspections have been complied with.

New section 8Q (Certificate requirements)

Section 8Q provides that a certificate of classification must be in the approved form and include information about the building's classification, any building solutions that restrict the building's use or occupation, and the performance requirements of any alternative solutions used. Not all the requirements would necessarily apply to all developments and therefore would not be required to be included on the certificate of classification.

New section 8R (Interim certificate if building is remote)

Section 8R applies to a remote building where it is not practical for the certifier to inspect the building to decide if it is substantially completed. In this case, an interim certificate of classification can be given to the owner until an inspection of the building can be undertaken. The interim certificate must comply with requirements, state that it is an interim certificate, and when it will expire. The interim certificate can be based on information that the building owner provides to the certifier. The interim certificate expires after six months or when an inspection is carried out. The building certifier can also cancel the certificate at any time if the information provided to the certifier by the building owner was false.

New section 8S (Certificates for a building occupied in stages)

Section 8S applies to unfinished buildings where the owner has been given a certificate of classification for part of the building, and the building certifier has consented to the occupation of a further part of the building. The building certifier must also make sure that the owner is given another certificate of classification for the further part of the building. This certificate must comply with all requirements set out in section 8Q.

Division 3 – Miscellaneous provisions about certificates of classification**New section 8T (Term of certificate of classification)**

Section 8T stipulates that a certificate of classification other than an interim certificate under section 8R – Interim certificate if building is remote, is in force until it is replaced under section 9 –Obligation of building certifier approving BCA classification change to give new certificate of classification.

New section 8U (Building certifier's obligation to give referral agency certificate and other documents)

Section 8U applies if a referral agency must be given notice to inspect a building under a building development approval and a building certifier issues a certificate of classification. Within 10 business days, the certifier must give the referral agency a copy of the certificate and a copy of plans and specifications of the finished building work that the agency has jurisdiction over. If the referral agency is the QFRS, drawings and a list of all fire safety installations must be supplied.

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

Section 8V provides that a private certifier (class A) must give the relevant local government a copy of certificate of classification within five business days of issuance. The certifier must also keep a copy for five years from the date it was issued.

Part 3 – Changes to BCA classification**New section 8W (What is a *BCA classification change* to a building)**

Section 8W specifies that a *BCA classification change* to a building is a change of use from the use for which the building was originally designed for, built or adapted. A BCA classification change can also occur when there is a change of circumstances affecting the way a building complies with a restriction on its use outlined in the certificate of classification.

New section 8X (Restriction on making a BCA classification change)

Section 8X provides that the owner must ensure a BCA classification change is not made to the building unless the change is approved by a local government building certifier or a private certifier. The changed building must comply with building assessment provisions.

New section 8Y (Provision for applying to local government to obtain approval for BCA classification change)

Section 8Y provides that the owner of a building can apply for a BCA classification change. The application must be made to the relevant local government for the building, be in the approved form and include sufficient detail about the proposed change, that a local government building certifier could issue a certificate of classification. The local government certifier can approve or decline the application. Private certifiers engaged by the owner of a building can also grant a BCA classification change. Both local government and private certifiers should not approve a classification change unless the building complies with building assessment provisions. If there is a condition of the building development approval, that an inspection needs to be undertaken by a referral agency about the classification change, BCA classification should not be granted by either a local government or private certifier until this inspection takes place or it is no longer a requirement of the approval.

New section 8Z (Concessional approval for particular existing buildings)

Section 8Z applies only to buildings that existed before 14 December 1993 when the SBR was made. A local government building certifier or a private certifier (class A) may approve a BCA classification change without the building having to comply with the building assessment provisions other than BCA parts E1 and E4.

However, a certifier may only approve a classification change if they consider the building will have the structural capacity to withstand the loads imposed by the new use. The certifier must also ensure the building will have reasonable provision for fire safety, fire prevention and suppression and prevention of fire spread. If the building has special fire services, the certifier may only approve a change of classification if they have received a report from the QFRS about the suitability of the special fire services in the building. The certifier may also impose any conditions necessary about matters in BCA parts E1 and E4 or anything in section 8Z(3).

New section 9 (Obligation of building certifier approving BCA classification change to give new certificate of classification)

Section 9 applies if a building certifier approves a BCA classification change to a building. The building certifier must give the owner a new certificate of classification, which replaces any existing certificates.

Part 4 – Restrictions on the use of buildings**New section 9A (No occupation or use of particular buildings without certificate of classification)**

Section 9A applies when a certificate of classification has not been issued for the building and the building is not classified as a single detached class 1a or class 10 building or structure. The building must not be occupied or used without reasonable excuse, and the owner must ensure that another person is not using the building.

New section 9B (Occupation and use of building must comply with relevant BCA and QDC provisions)

Section 9B specifies that a person must not occupy or use a building (without a reasonable excuse) if the building does not comply with any relevant BCA provisions for its class and any relevant QDC provisions. The provisions are subject to any variation of them under the Building Act and any local law or local planning instrument, that applied to the building work. Subsection (4) clarifies that the use or occupation of the building must comply with the provisions even if the building development approval is contrary to the BCA or the QDC provisions.

New section 9C (Exception for use of government buildings in emergency)

Section 9C applies if there is an emergency situation or a potential emergency situation that would justify the use of a government building for emergency use for other than its BCA classification. A government building is owned and occupied by the State or government owned corporations. The building must be structurally sound and be suited to the emergency use. Section 9C permits the emergency use or occupation of government buildings as a reasonable excuse for not complying with a BCA classification. However, this section does not limit what may be

considered a reasonable excuse under section 9A or 9B. An example would be using a school for emergency accommodation in the event of houses damaged by flooding or a cyclone.

New section 9D (Enforcement action required)

Section 9D applies if a building other than a single detached class 1a or class 10 building or structure has been occupied without a certificate of classification, therefore contravening section 9A. The assessment manager must take enforcement action against the building owner, unless only minor building work is needed to be undertaken to issue a certificate of classification. If a private certifier (class A) issues an enforcement notice and it is not complied with, the local government must be informed.

New section 9E (Restriction on use of buildings built on or after 1 April 1976)

Section 9E stipulates that owners of building constructed after 1 April 1976 must make sure that the use of the building does not change from the use stated in the last certificate of classification issued.

New section 9F (Further restriction on occupation of building for residential purposes)

Section 9F provides that only class 1, 2, 3 and 4 buildings can be used for residential purposes. Other classes of buildings cannot be used for residential purposes unless approved by local government.

Part 5 - Miscellaneous provisions

New section 9G (BCA classification as special structure)

Section 9G stipulates that a building or structure that cannot be classified under part A3 of the BCA must be classified as a BCA special structure.

New section 9H (Doubtful BCA classifications)

Section 9H applies when a building's BCA classification is doubtful. The classification must be either a building class mentioned in part A3 of the BCA or a special structure.

New section 9I (Building certifier's obligation to give owner inspection documentation if building development approval lapses)

Section 9I specifies that the building certifier must give the owner of the land a copy of inspection documentation within 5 business days of the building development approval lapsing. The owner of the building is defined under the *Building Act 1975* to include the person who would be entitled to receive the rent for the land if they let the land to a tenant.

New section 9J (Certificate of classification for particular buildings built before 30 April 1998)

Section 9J applies to buildings built before 30 April 1998. The building owner can make a written application for a certificate of classification from a local government building certifier. The application must contain sufficient detail for the certifier to issue a certificate that complies with requirements. If the application complies with certificate requirements, the certifier must give the owner a certificate of classification.

New section 9K (Building certifier's obligation to give information notice about particular decisions)

Section 9K requires the certifier to give the applicant or client an information notice about the following decisions:

- not to give a final inspection certificate because the building work does not comply with the building development approval;
- not to give a certificate of classification because the building has not been substantially completed;
- to refuse an application in relation to a certificate of classification;
- a private certifier (class A) decides to refuse to approve a BCA classification change;
- approve a BCA classification change with a condition.

An information notice about a decision is defined in the *Building Act 1975* to include a notice stating the decision and the reasons for it, all rights of appeal against the decision and how those rights are to be exercised. For appeals against a decision for which an information notice must be given under section 4.2.12A of IPA

A failure to decide an application under subsection (1) within 20 business days is taken to be a refusal of the application.

For all other inspection decisions, certifiers are required to give written notice. Because of the number, timing and place of decisions made about building inspections, it would be unrealistic to require certifiers to give information notices for every adverse decision. A person may appeal any building certifier decision regardless of whether the decision is given by an information notice or written notice.

Chapter 6 - Provisions about private certifiers and other building certifiers

Chapter 6 (sections 9L to 11V) regulates building and private certifiers and the performance of building and private certifying functions including the engagement of private certifiers, licensing and dealing with complaints, investigations, and disciplinary proceedings against certifiers.

Part 1 - General provisions about building certifiers

Division 1 - Regulation of the performance of building certifying functions

New section 9L (Person must not perform building certifying functions without licence)

Section 9L imposes a penalty on a person who performs the functions of a building certifier without being a building certifier. Under section 5C a building certifier is an individual who, under chapter 6 part 3 (Licensing of building certifiers) is licensed as a building certifier. Section 5E defines *building certifying function*.

To be licensed as a building certifier, a person must have current accreditation as a building surveyor or assistant building surveyor, from the Accreditation Standards Body, (prescribed under regulation as Australian Institute of Building Surveyors). The person must also be assessed as a

suitable person to hold a building certifier's licence and granted a licence by the Building Services Authority.

All private certifiers are building certifiers. Building certifiers are employed by the local government to perform building certifying functions. A private certifier may be contracted or employed by the local government to perform only building certifying functions for the local government and not the additional functions that make up private certifying functions. The private certifier is therefore operating as a building certifier in this capacity.

New section 9M (Building certifier performing building certifying function must be appropriately licensed)

Section 9M imposes a penalty on a building certifier who is not appropriately licensed to perform building certifying functions.

For example, under section 10L a building surveyor, licensed at the level of building surveyor, may perform building certifying functions for all classes of building and structures. An assistant building surveyor, licensed at the level of assistant building surveyor, may perform only certain aspects of building certifying functions as specified under section 10M (Role of assistant building surveyor).

New section 9N (Building certifier's duty to act in public interest in performing building certifying function)

Section 9N provides that a building certifier, must always act in the public interest when performing building certifying functions. Subsection (2) provides a non-inclusive list of acts that, if performed by a building certifier, are acts outside of the public interest.

If a building certifier does act outside the public interest, under section 9S the failure by the certifier is not an offence. However, non-compliance may result in the BSA finding the certifier guilty of unsatisfactory conduct, which is conduct contrary to a function under the Act.

New section 9O (Building certifier must not perform building certifying function if there is a conflict of interest)

Section 9O provides that a building certifier must not carry out building certifying functions if the certifier has a conflict of interest. Subsection (2) includes acts, if performed by a building certifier, will constitute a conflict of interest.

Under section 9S, failing to comply with this section is not an offence. However, non-compliance may result in the BSA finding the certifier guilty of unsatisfactory conduct, which is conduct contrary to a function under the Act.

Division 2 – Code of conduct

New section 9P (Code of conduct)

Section 9P provides that the code of conduct is the Code of Conduct for Building Certifiers made by the chief executive on 20 October 2003 and tabled in the Legislative Assembly on 14 November 2003. A reference to the code of conduct is taken to include any amendment or replacement that has taken effect.

Subsections (2) and (3) provide that the chief executive may amend or replace the code of conduct, but this change does not take effect until it is approved under a regulation.

New section 9Q (Tabling and inspection of amendment or replacement not part of or attached to regulation)

Section 9Q provides that the code of conduct for building certifiers must be amended or replaced by regulation. The regulation must be tabled by the Minister within 14 days of the regulation being notified in the gazette. Failing to table the amendment or replacement does not invalidate the legislation.

New section 9R (Access to code of conduct)

Section 9R requires the chief executive of the department that administers the *Building Act 1975*, to make a copy of the code of conduct available for inspection. The IPA makes provision for the documents the chief executive must make available to the public.

Division 3 - Miscellaneous provisions

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

Section 9S applies to a building certifier who does not comply with a provision of the *Building Act 1975* about building certifying functions or private certifying functions where no penalty is prescribed. The failure by the certifier is not an offence. Non-compliance may result in the BSA finding the certifier guilty of unsatisfactory conduct, which is conduct contrary to a function under the Act.

New section 9T (Additional functions of BSA for building certification)

Section 9T provides the BSA with specific functions under the Building Act which are in addition to its functions under the *Queensland Building Services Authority Act 1991*. The additional functions are to:

1. licence individuals as building certifiers under part 3 and endorse their licenses as private certifiers either class A or class B provided they have insurance as prescribed under a regulation to perform building certifying functions.

Private certifiers (class A) must have a statement of attainment for the course in issuing building development permits for development approval licence endorsement to perform private certifying functions.

Private certifiers (class B) who do not have development approval endorsement are restricted, under section 6SA, in the performance of building certifying functions to the giving of compliance certificates.

Building certifiers who are employees of, or contracted to, the local government to perform building certifying functions are not required to have private certification endorsement, (that is, insurance endorsement and/or development approval endorsement).

2. monitor compliance with chapter 6 of the Building Act by building certifiers through audits.
3. investigate written complaints about unsatisfactory conduct or professional misconduct by building certifiers or former building and private certifiers and where appropriate, take disciplinary action.
4. at least once a year, give the chief executive of the department that administers the Building Act, a report on complaints, a list of building

certifiers and a summary of disciplinary action taken against building certifiers. The intent of the report is to assist the chief executive to:

- monitor the overall effectiveness of the legislation as it relates to the regulation of building certifiers;
 - identify areas for review or amendment;
 - identify training needs through an analysis of complaint investigations; and
 - monitor the financial position of the certification industry.
5. to keep a register of building certifiers.

Part 2 - Private certifiers

Division 1 - Regulation of private certifying functions

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

Section 9U imposes a penalty on a person who performs the functions of a private certifier (class A) under section 6P without being a private certifier (class A). Under section 6P the private certifier that is engaged to assess a building development application, is the assessment manager, and can receive, assess and decide the building development application, inspect and certify the building work, and take enforcement action.

A private certifier is an individual who is a building certifier and whose licence has private certification endorsement under section 10W. Private certification endorsement may be made only if the private certifier has the prescribed insurance for private certification, is an accredited building surveyor or assistant building surveyor and has development approval endorsement.

New section 9V (Restriction on private certifier performing functions for building development applications)

Section 9V imposes a penalty on a private certifier who performs private certifying functions for a building development application without the

appropriate licence for the type of building assessment work required for the application.

For example, a private certifier (class B) is restricted under section 6R to receiving and assessing a building development application for compliance against the BCA and certain parts of the QDC (not boundary clearances and site cover) and can not decide the application.

A private certifier (class A) is the assessment manager for the building development application for which the certifier has been engaged. The certifier can receive, assess and decide the building development application, inspect and certify the building work, and take enforcement action.

New section 9W (Offence for private certifier not to act in public interest in performing private certifying function)

Section 9W imposes a penalty on a private certifier who does not act in the public interest when performing private certifying functions.

Private certifiers perform regulatory compliance functions in place of local governments, who acted in the public interest in making decisions. A certifier working for a local government provides advice but the local government is responsible for the decision. The Ombudsman's Office deals with improper decision making by local governments. However, a private certifier may be prosecuted for breaching their duty to act in the public interest. The level of maximum penalty reflects the importance of this duty, but the courts will determine appropriate penalties in individual cases.

Subsection (2) provides a non-inclusive list of acts that, if performed by a private certifier, are acts outside of the public interest.

New section 9X (Private certifier must not perform private certifying function if there is a conflict of interest)

Section 9X provides that a private certifier with a conflict of interest must not perform a private certifying function. Subsection (2) includes acts, if performed by a private certifier, will constitute a conflict of interest.

Subsection (3) provides for terms defined in the section, that is, *builder*, *building work*, *owner* and *the building*.

Division 2 - Engagement of private certifiers

New section 9Y (Power to contract to perform private certifying functions)

Section 9Y provides that, subject to sections 10 and 10A, a private certifier may enter into a contract to perform private certifying functions with a private certifier employer. This is termed an *engagement*. A private certifier employer is a person (including natural persons and corporations) or a public sector entity who employs private certifiers. A private certifier employer may enter into a contract to provide the services of their employed private certifiers to perform private certifying functions for others.

Subsection (2) provides that a local government can not enter into a contract where a private certifier performs private certifying functions. However, a local government can enter into a contract with a private certifier for the private certifier to perform building certifying functions for the local government.

The provisions of subsection (2) do not prevent a local government from performing functions required under section 6S.

The *client* is the person under an engagement of a private certifier, for whom it is agreed to perform private certifying functions.

Section 9Y applies subject to section 10 which provides that the *service provider* who is a private certifier (class B), or a private certifier employer who does not employ a private certifier (class A), can not enter into an engagement unless the service provider has disclosed in writing to the proposed client that the service provider can not decide whether to grant or refuse the approval. A private certifier (class B) can not grant or refuse the application and can only assess the application for technical compliance against the BCA and certain parts of the QDC.

Section 9Y applies subject to section 10A which provides that the engagement of a private certifier must in writing state the fees payable by the client. The mere making of a building development application does not of itself constitute an engagement of the certifier by the applicant.

New section 9Z (General restrictions on private certifier entering into engagement)

Section 9Z prohibits a private certifier from entering into an engagement to perform private certifying functions if performing the functions will contravene section 9W, that is, act against the public interest and will have a conflict of interest under section 9X(2).

New section 10 (Restriction on engagement of private certifier (class B))

Section 10 defines *service provider* as a private certifier (class B), or a private certifier employer who does not employ a private certifier (class A). It is an offence for a service provider to enter into an engagement without disclosing in writing to the proposed client that the service provider can not decide whether to grant or refuse the approval. A private certifier (class B) can not grant or refuse the application. Class B certifiers can only assess the application for technical compliance against the BCA and certain parts of the QDC.

A service provider may still enter into a written agreement with a private certifier (class A), or an employer of a private certifier (class A), to perform those private certifying functions that the service provider is not licensed to perform, including whether to decide to grant or refuse the development approval.

New section 10A (Requirements for engagement of private certifier)

Section 10A provides that the engagement of a private certifier must be in writing, note the fees to be paid by the client to the certifier or private certifier employer – whichever applies. An applicant making a building development application to a private certifier is not an engagement of a certifier, without the agreement.

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

Section 10B specifies that a private certifier (class A) who is engaged to assess a development application is also engaged to inspect and certify building work for a development approval because of the application.

New section 10C (Notice of engagement to local government)

Section 10C applies to a private certifier engaged by a client for building or building assessment work. Within 5 days of being engaged, the certifier must notify the local government that the certifier has been engaged. If the owner of the building is not the client or applicant for the building development application, the certifier must advise the owner of the private certifier's name and the details of the certifier's responsibilities, using the approved form.

The owner, of the land is defined under the Building Act as including the person for the time being entitled to receive the rent for the land or who would be entitled to receive the rent for the land if it were let to a tenant.

New section 10D (Restriction on discontinuing engagement)

Section 10D applies to discontinuing the engagement of a private certifier by either the private certifier or the client. The engagement can be discontinued if appropriate action is taken but does not take effect until notice, in the approved form, has been given to all parties. Within 5 business days of the discontinuance taking effect, the private certifier must give the local government a copy of the notice.

This section clarifies that any party to the engagement, (namely, the private certifier or the client) may discontinue the engagement.

New section 10E (Effect of transfer of functions for building development approval to local government or replacement private certifier)

Section 10E applies where the original private certifier is discontinued. A replacement private certifier may be engaged in place of the *original certifier*. If a replacement private certifier has not been engaged, a local government under section 6S must act on the building development application or development approval.

Subsection (2) provides that the replacement certifier, private certifier or local government, (the replacement) is not responsible for private or building certifying functions performed by the original certifier.

Subsection (3) provides that the replacement may accept and without further checking, rely and act on any of the original certifier's development information or inspection documentation.

New section 10F (Agreed fee recoverable despite valid refusal of particular actions)

Section 10F applies if a client engages a private certifier to perform any private certifying function under the engagement and the certifier has refused to continue to perform a function because of non-compliance with the building assessment provisions, an applicable code under IDAS or another valid reason.

Subsection (2) provides in these circumstances the client is still liable to pay the certifier the fee for the work agreed to under the engagement.

Division 3 – Record-keeping and related requirements**New section 10G (Building development applications and approval documents)**

Section 10G requires a private certifier to keep a copy of all building development applications and approvals they have approved. Copies must be kept for at least 5 years from:

- for class 1a or class 10 buildings, the day the final inspection certificate is given or the approval lapses; and
- for a private certifier (class B), the day the private certifier gave the compliance certificate for the application.

New section 10H (Obligation to give inspection documentation to owner of building)

Section 10H applies where the engagement of a private certifier is discontinued before the final inspection certificate or the certificate of classification is given. In these circumstances, the private certifier must give the building's owner a copy of the inspection documentation within 5 business days of the certifier accepting certificates from a competent person or within 5 business days after the discontinued engagement.

New section 10I (Obligation to give inspection documentation and any reminder notice to local government)

Section 10I(1) requires a private certifier to give the local government a copy of any inspection documents or the final inspection certificate within 5 business days of the earlier of the following:

- giving the final inspection certificate or the certificate of classification;
- the private certifier engagement; or
- the lapsing of a building development approval.

Where the inspection documents include a certificate relied on by the private certifier the five day period does not start until the private certifier has accepted all certificates.

Where an approval lapses, the documents provided to the local government within 5 business days after the lapsing, must include a copy of the relevant reminder notice given under section 8I.

New section 10J (Obligation to keep inspection documentation)

Section 10J provides that a private certifier must keep all inspection documentation for 5 years after the building work is finished.

Part 3 - Licensing of building certifiers

Division 1 – Licence levels and their roles

New section 10K (Levels)

Section 10K provides that the BSA must issue building certifiers licences at one of three levels, being building surveyor, assistant building surveyor or a building surveying technician.

New section 10L(Role of building surveyor)

Section 10L provides that a building surveyor can perform building certifying functions for all classes of building and structures.

New section 10M (Role of assistant building surveyor)

Section 10M specifies that an assistant building surveyor can only perform certain functions without the supervision of a building surveyor, that is, an assistant building surveyor can only perform building certifying functions on buildings and structures of no greater than 3 storeys and with a floor

area of less than 2000m². Under the supervision of a building surveyor, the assistant building surveyor can help to assess and inspect all classes of buildings and structures.

New section 10N (Role of building surveying technician)

Section 10N(1) specifies that a building surveying technician can only perform certain functions. If employed by a local government, a building surveying technician can perform building certifying functions on buildings or structures that are no more than 2 storeys and a floor area no greater than 500m². This does not apply to designated local governments listed in subsection (2). If employed by a local government that is a designated local government or by a private certifier employee, a technician must be supervised by a building surveyor or assistant building surveyor, and can help to assess and inspect buildings and structures of no more than 2 storeys and with a floor area of no greater than 500m².

This provision must be read in conjunction with section 68, which provides that building surveying technician employed by a local government immediately before 21 October 2003, who works for a 'designated local government', may continue to be a building surveying technician and perform building certifying functions as prescribed under subsection (1) until 20 October 2010. After this period, only those technicians employed by a local government before 21 October 2003 and who after 21 October 2010 are working for a local government, other than a designated local government, may continue to perform functions as a technician.

The transitional period is intended to allow building certifiers licensed as technician to up-skill before the Accreditation Standards Body (AIBS) phases out accreditation for technicians.

'Designated local governments' means any of the following:

Beaudesert Shire Council, Brisbane City Council, Bundaberg City Council, Burnett Shire Council, Caboolture Shire Council, Cairns City Council, Calliope Shire Council, Caloundra City Council, Cooloola Shire Council, Crow's Nest Shire Council, Douglas Shire Council, Gladstone City Council, Gold Coast City Council, Hervey Bay City Council, Ipswich City Council, Livingstone Shire Council, Logan City Council, Mackay City Council, Mareeba Shire Council, Maroochy Shire Council, Maryborough City Council, Noosa Shire Council, Pine Rivers Shire Council, Redcliffe City Council, Redland Shire Council, Rockhampton City Council, Thuringowa City Council, Toowoomba City Council, Townsville City Council, and Whitsunday Shire Council.

Division 2 - Applying for and obtaining licence

New section 10O (Who may apply)

Section 10O provides that only a person with a current accreditation issued by an accreditation standards body may apply for a BSA license.

Accreditation is obtained from the Accreditation Standards Body which is prescribed by regulation to be the Australian Institute of Building Surveyors (AIBS). The accreditation and licensing of building certifiers is a two step co-regulatory process involving accreditation by AIBS at the national level and licensing by the BSA at the State level.

AIBS assess the applicant's qualifications and experience to determine the accreditation level. Accredited building certifiers apply to the BSA for a licence to perform particular functions.

New section 10P (Requirements for licence application)

Section 10P requires license applications to be in the approved form, state the level of license applied for, and include the application fee and the license fee, evidence of the applicant's identity and a copy of the applicant's certificate of accreditation for the level of license applied for.

New section 10Q (Decision on licence application)

Section 10Q requires the BSA to consider an application and either issue a licence at the level the applied for (with or without conditions) or refuse to license the applicant. The BSA must be satisfied that the applicant is a suitable person to hold a license. Section 1T provides that the BSA may seek further information from an applicant to establish if the applicant is a suitable person to hold a licence.

New section 10R (Steps after making decision)

Section 10R states that if the BSA decides to license the applicant, it must issue the license. If the BSA either refuses the application or imposes conditions on the license it must give the applicant an information notice about the decision. There is a right of appeal against an information notice.

New section 10S (Duration of licence)

Section 10S provides that a licence remains in force for 1 year unless it is earlier cancelled, suspended or surrendered under the Building Act. This is subject to section 11A that provides that where an application for a licence renewal is made before the licence expires after 1 year, then the existing licence is taken to be in force while the application is being considered.

Division 3 - Private certification endorsements**New section 10T (Endorsements)**

Section 10T empowers the BSA to endorse the building certifier's license that the certifier may perform building certifying functions as a private certifier. If the license has a private certification endorsement (*development approval endorsement*) the certifier can issue development approvals under section 6P (Functions of a private certifier (class A)). Endorsement is subject to section 10W (Restrictions on making endorsements).

New section 10U (Who may apply for endorsement)

Section 10U provides that a building certifier can apply for private certification or development approval endorsement at any time. An applicant can apply for private certification endorsement or development approval endorsement at the same time as they apply for their license.

New section 10V (Requirements for endorsement application)

Section 10V states that an application for endorsement must be in the approved form with the application fee.

New section 10W (Restrictions on making endorsement)

Section 10W states that private certification endorsement can only be applied for if the applicant has appropriate insurance (prescribed under a regulation), and the applicant is accredited as a building surveyor or assistant building surveyor.

Subsection (2) provides that development approval endorsement may be made only if the applicant has obtained a statement of attainment for successfully completing the prescribed course, 'Issuing development permits for building work'.

New section 10X (Notice of refusal)

Section 10X states that if the BSA refuses a licence application an *information notice* must be given to the applicant. Information notice in the dictionary schedule 2 means a notice stating the decision, and the reasons for it, all rights of appeal against the decision under the Building Act or IPA and how those rights are to be exercised.

Division 4 - Renewals**New section 10Y (Notice of expiry of licence)**

Section 10Y provides that the BSA must notify the certifier within 20 business days before the expiry of their licence. The BSA notice must state the day the licence expires and inform the certifier that if they wish to renew their licence, the certifier must apply to have the licence renewed and the appropriate fee must be paid. The BSA notice must also provide information about how to renew the licence.

New section 10Z (Automatic expiry on failure to apply for renewal)

Section 10Z states that if a building certifier does not renew their licence before the expiry date, the licence expires at the end of that day. The licence will expire even if the BSA has not complied with section 10N and given the certifier notice of expiry of the licence.

New section 11 (Applying for renewal)

Section 11 provides that a building certifier can apply to the BSA to renew their licence, if the application is not made after the licence expires. Applications also cannot be made by a person who is not qualified for a licence under section 10O. Applications for a licence must be in the approved form and accompanied by the licence fee and evidence of identity. The applicant must also provide evidence of their accreditation for the level of licence. Also, if the applicant is applying for continuation of a private certification endorsement, evidence of appropriate insurance must also be supplied.

New section 11A (Existing licence taken to be in force while application is considered)

Section 11A provides that if an application is made to renew a licence, the licence is considered to still be in force while the application is considered. This will not apply if the licence has already been cancelled, suspended or surrendered.

New section 11B (Decision on renewal application)

Section 11B provides that the BSA must consider the application and decide to renew the licence at the level the applicant applied for, or decide to refuse the licence.

Under section 11T, the BSA may also seek information from an applicant about their suitability. The decision to renew a licence is subject to the BSA being satisfied that the applicant is a suitable person to hold a licence.

New section 11C (Steps after making decision)

Section 11C states that if the BSA renews the licence, the licence must be issued to the applicant. If the application is refused, the BSA must give the applicant an information notice about the decision. *Information notice* in the dictionary schedule 2 means a notice stating the decision, and the reasons for it, all rights of appeal against the decision under the Building Act or IPA and how those rights are to be exercised.

Division 5 - Cancellation and suspension of, and other changes to, licences and cancellation of endorsements**Subdivision 1 - BSA's powers****New section 11D (Power to amend, cancel or suspend licence)**

Section 11D provides that if the BSA determines that a building certifier is not a suitable person to hold a licence; the BSA can amend the licence to impose or remove a condition on the licence. The licence can also be cancelled or suspended. A show cause notice must be issued before taking action under this section.

New section 11E (Power to change licence level)

Section 11E applies if the BSA is satisfied that a building certifier no longer holds appropriate accreditation from a standards body. The BSA can amend the licence to impose or remove a condition, or change the level of the licence, or cancel or suspend the licence. The BSA may exercise powers under this section at any time but only after the BSA has complied with the show cause process under subdivision 2.

New section 11F (Cancellation of endorsement of licence to act as private certifier)

Section 11F applies if the BSA is satisfied that the private certifier does not have insurance for private certification prescribed under a regulation. In these circumstances the BSA must give the certifier a show cause notice that it proposes to cancel the endorsement. The BSA may then, subject to any submissions, cancel the endorsement.

New section 11G (Notice of particular events to interstate licensing authorities and other entities)

Section 11G provides that if the certifier's licence is cancelled, suspended or amended (*the event*), the BSA must as soon as practicable after the event, give notice (which includes the information the BSA considers appropriate), of the event to the authority in other States and New Zealand, where the BSA is aware the building certifier has an equivalent licence in that jurisdiction to one under this Act.

The BSA may also give notice of the event to each accreditation standards body, an employer of, or a person who has appointed the building certifier, and/or another entity the BSA reasonably believes needs to know of the event.

Subdivision 2 - Show cause notice procedure**New section 11H (Show cause notice)**

Section 11H provides that if the BSA believes that grounds exist to act under subdivision 1 (amend, cancel suspend, change the level of licence and/or cancel the endorsement), the BSA must before taking the action, give the certifier a *show cause notice*. The show cause notice must state the proposed action, the grounds for taking the proposed action, the facts and

circumstances forming the basis for the grounds, any proposed amendment to the licence, and any proposed suspension period (the suspension period may be fixed by reference to the happening of an event) for the licence. It must also state that the building certifier may, within the ***show cause period*** make submissions about why the proposed action should not be taken.

Subsection (3) provides that the show cause period must be a period ending at least 20 business days after the building certifier is given the show cause notice.

New section 11I (Submissions about show cause notice)

Section 11I provides that a building certifier may make a submission to the BSA about the show cause notice within the show cause period. The BSA is obliged to consider the submission.

New section 11J (Decision on proposed action)

Section 11J provides that the BSA, after considering the show cause submissions, must decide whether to take the proposed action. If the proposed action is to cancel the certifiers licence, the BSA can choose to instead suspend the licence for a specified period.

New section 11K (Notice and taking effect of decision)

Section 11K provides that if the BSA decides not to take the proposed action, the BSA must inform the certifier of the decision. If the BSA does take the proposed action, they must give the certifier an information notice about the decision. The action takes effect when the information notice is given to the certifier. ***Information notice*** is defined in the dictionary schedule to mean a notice stating the decision, and the reasons for it, all rights of appeal against the decision under the Building Act or IPA and how those rights are to be exercised.

Division 6 - General provisions about licences

New section 11L (Register of building certifiers)

Section 11L provides that the BSA must keep a register, in the form the BSA considers appropriate (for example electronic or paper), of building certifiers. The register must contain the following details:

- The certifier's name, licence number and business contact details;
- Details about the licence, including the issue and expiry date, endorsements, licence level, conditions (if any) on the licence and information about eligibility;
- A decision of unsatisfactory conduct or professional misconduct under section 40(1), and the details of the decision. For unsatisfactory conduct, details about further decisions required under section 40(4).
- If the Commercial and Consumer Tribunal has made an order about the certifier, the details of the order unless it is specified that those details are not to be displayed.

More information about recording details of orders is provided in section 45C.

New section 11M (Access to register)

Section 11M provides that the BSA must make the register of building certifiers available in hard copy for inspection by any person during office hours. The BSA must also link the register to their website.

New section 11N (Surrendering licence)

Section 11N provides that a building certifier may by notice surrender their licence to the BSA. The surrender will take effect on the day the notice is given to the BSA or a later day stated in the notice. The licence must be returned to the BSA within 10 business days of the licence being surrendered. If the licence is not returned within 10 days, the certifier must have a reasonable excuse for not returning the licence.

New section 11O (Obtaining replacement licence)

Section 11O states that a building certifier can apply to the BSA for a replacement certifier's licence but only if the BSA is satisfied that the licence has been damaged, destroyed, lost or stolen. If the BSA is satisfied the licence has been damaged, destroyed, lost or stolen, the BSA must give the applicant a replacement licence.

New section 11P (Obligation of building certifier to give notice of change in particular circumstances)

Section 11E provides that a building certifier must give the BSA notice of certain changes in circumstances. The BSA must be advised of a change of

address, or if the certifier holds a licence in another state or in New Zealand and that licence is suspended or cancelled. Also the certifier must advise the BSA if they are convicted of certain offences. The certifier has 20 business days to notify the BSA of these changes in circumstance.

Division 7 - Miscellaneous provisions

New section 11Q (Accreditation standards bodies)

Section 11Q defines an *accreditation standards body*. An accreditation standards body is the Australian Institute of Building Surveyors or any other body prescribed under a regulation as an accreditation standards body. However, accreditation bodies under the regulation can only be prescribed if they have identifiable ability and expertise in issuing accreditation to building certifiers.

New section 11R (Function of accreditation standards body)

Section 11R defines the functions of an accreditation standards body. The role of an accreditation standards body is to issue accreditation to individuals who wish to apply as building certifiers. An accreditation standards body must set educational and experience standards necessary for each level of licensing. The standards must comply with national accreditation for building certifiers. The accreditation body must also implement a continuing professional development scheme. The scheme requires executive approval.

National accreditation framework means the framework approved by the body known as the Australian Building Codes Board.

New section 11S (Criteria for deciding suitability of applicants and licensees)

Section 11S provide for where the BSA is considering whether an applicant for a licence or the renewal of a licence or a licence holder is a suitable person to hold a licence. Subsection (2) provides a list of criteria for deciding whether an applicant for a licence is a suitable person to hold a licence. These criteria are:

- Whether the applicant or holder has been convicted of a relevant offence;

- Whether the applicant has previously been refused a licence, or had a licence suspended or cancelled under this Act or another relevant Act;
- Whether the applicant or holder has under this Act, or another relevant Act been disqualified from holding a licence;
- The standard of honesty and integrity demonstrated in dealings the applicant has been involved in;
- Any failure by the applicant or holder to carry out statutory obligations relating to building or private certifying functions;
- Whether the applicant or holder has current accreditation; and
- All other relevant circumstances.

New section 11T (BSA may seek information from applicants about suitability)

Section 11T applies to an application for or renewal of a licence. The BSA may, by a written notice, request documents or information from the applicant about their suitability to hold a licence. The BSA will provide a timeframe for the information to be submitted by the applicant.

New section 11U (Refund of particular licence fees accompanying applications)

Section 11U provides that the BSA must refund an applicant's licence fee if the application is withdrawn or the BSA refused the application.

New section 11V (Appeals to Commercial and Consumer Tribunal about decisions under pt 3)

Section 11V applies where a person is given or entitled to an information notice about a decision under Part 3. The BSA's decision can be appealed against to the Commercial and Consumer Tribunal. The applicant must lodge the appeal with the Tribunal within 20 days of receiving the information notice.

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

Clause 6 replaces part 2A heading with Chapter 7 because clause 5 inserted 6 new chapters.

Clause 6 inserts a note under new chapter 7 heading, to inform the user that chapters 2 and 3 contain special provisions for obtaining building development approval for budget accommodation buildings and refers the user to section 5V (Application for building work for budget accommodation building), section 6N(4) (Concurrence agencies may carry out building assessment work within their jurisdiction), 7 (Discretion for building development applications for particular budget accommodation buildings) and section 7D (Restriction on granting building development application for budget accommodation building).

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

Clause 7 replaces part 2A division 1 heading with Division 1 with Part 1 of the new chapter 7.

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

Clause 8 amends the heading to section 12A and references within section 12 A to pt 2A by replacing pt 2A with chapter 7.

Clause 8(4) relocates the definition of ‘fire safety management plan’ to the dictionary for ease of reference by the user.

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

Clause 9 amends the div 2 heading by replacing it with ‘Part 2’ as a consequence of renumbering part 2A as chapter 7.

10 Amendment of s 12C (Fire safety standard)

Clause 10(1) replaces section 12C(1) to update the definition of ‘*fire safety standard*’ to include the QDC part 14 and any other standard prescribed under a regulation.

Clause 10 (2) replaces the term ‘fire safety standard’ with the term ‘a prescribed standard’.

The Fire Safety Standard forms part of the QDC and is the only standard that is so prescribed at this time. The experience with the Fire Safety Standard showed there can be a need to speedily create prescribed standards, for example the need to create the standard for fire safety in budget accommodation buildings after the fatal Childers fire. There can be a need to urgently create new standards when unanticipated situations arise with a danger to life and public safety. The provision for prescribed

standards will, in future, allow such situations to be addressed and provides the flexibility to cater for whatever danger to life and property may arise.

11 Omission of ss 12E and 12F

Clause 11 omits sections 12E and sections 12F which provided public access and notification of guidelines for fire safety standards. These requirements have been incorporated into the generic provisions about guidelines issued or made by the chief executive under new sections 51A (Guidelines), and new section 51B (Access to guidelines).

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

Clause 12 amends the div 3 heading by replacing it with ‘Part 3’ as a consequence of renumbering part 2A as chapter 7.

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

Clause 13(1) amends section 12G heading by replacing ‘div 3’ with ‘pt 3’ as a consequence of renumbering part 2A as chapter 7.

Clause 13(2) replaces the word ‘division’ in the section with ‘part’.

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

Clause 14(1) amends section 12I(4)(b) to replace the term ‘written notice of’ with ‘an information notice about’. Information notice is defined in the dictionary to mean the decision and the reasons for it, all rights of appeal and how the rights are to be exercised.

Clause 14(2) omits section 12I(5) which duplicates information about a notice now contained in the dictionary.

Clauses 14(3), (4) renumbers 12I(6) as (5) and the reference in the section has been update.

Clause 14(5) inserts a note to the section to inform users about the rights of appeal to a building and development tribunal against a decision under this Act, other than a decision by the BSA, for which an information notice must be, or is taken to be given. See also section 4.2.12A (Appeals for plumbing and drainage matters) under IPA.

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

Clause 15(1) amends section 12J(2)(b) to replace the term ‘written notice’ with ‘notice’. Notice is defined in the dictionary to mean a written notice.

Clause 15(2) amends subsection (3) to provide that if the local government decides the building does not conform with the fire safety standard, the notice must be, or include, an information notice about the decision, the reasons for the decision and the appeal rights.

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

Clause 16 omits section 12K as it duplicates rights of appeal to the building and development tribunal contained under IPA.

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

Clause 17 amends section 12L to correct a cross reference to section 12J(3) instead of section 12K(1)(a).

18 Amendment of s 12M (Local government decisions)

Clause 18 amends section 12M to replace the term ‘written notice’ with ‘notice’. Notice is defined in the dictionary to mean a written notice.

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

Clause 19 amends division 4 heading by replacing the heading with ‘Part 4’ as a consequence of renumbering part 2A as chapter 7.

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

Clause 20 amends section 12N heading and section by replacing the term ‘div 4’ in the heading and ‘division 4’ in the section, with ‘pt 4’ and ‘part 4’ respectively, as a consequence of renumbering part 2A as chapter 7.

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

Clause 21 amends section 12O to omit a cross reference in subsection (1)(a) to section 12Q which is now omitted.

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

Clause 22 omits section 12Q as the requirements under section 12Q have been relocated to section 5V (Application for building work for budget accommodation building).

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

Clause 23 amends division 5 heading by replacing the heading with 'Part 5' as a consequence of renumbering part 2A as chapter 7.

24 Insertion of new ss 12SA and 12SB

Clause 24 inserts into Chapter 7, part 5, as renumbered, new sections 12SA (Local government's fire safety record-keeping obligations) and 12SB (Owner's fire safety record-keeping obligation)

New section 12SA (Local government's fire safety record-keeping obligations)

Section 12SA provides that a local government must keep all documents relating to the application made under section 12I (Approval of longer period for conformity with fire safety standard), and a record of each inspection made under section 12R (Random inspection of buildings for which development approval is given), until the building is demolished or removed.

New section 12SB (Owner's fire safety record-keeping obligation)

Section 12SB provides that the owner of a budget accommodation building to which section 12R (Random inspection of buildings for which development approval is given) applies, must keep complete and accurate records for the building showing the owner is complying with the fire safety standard.

The records must include, if an alternative solution (within the meaning of the BCA) is involved, the records required under the alternative solution, and if the local government imposes conditions on an approval given under section 12I(3), details of how the building complies with the conditions.

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

Clause 25 substitutes part 3 heading as chapter 8 as a result of new chapters 1 to 6 being inserted by clause 5.

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

Clause 26 amends section 12T heading by replacing ‘pt 3’ with ‘ch 8’ as a result of new chapters 1 to 6 being inserted by clause 5.

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

Clause 27 omits section 13 as the provision for a local law to be made about swimming pool fencing has been made under new section 6 (Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions under section 5Y (Relevant laws and other documents for assessment of building work)).

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

Clause 28 amends section 16D to replace ‘written notice’ with ‘information notice’ as defined in the dictionary to mean a notice stating the decision and the reasons for it and appeal rights against the decision under the Building Act.

29 Amendment of s 16E (Revocation of exemption)

Clause 29 amends section 16E to replace the term ‘written notice’ with the term ‘notice’.

Clause 29(3) amends subsection (4) to provide that the ‘revocation notice’ must be, or be accompanied by, an information notice about the decision. ‘Information notice’ as defined in the dictionary, means a notice stating the decision and the reasons for it and appeal rights against the decision under the Building Act.

30 Insertion of new s 16F

Clause 30 inserts new section 16F (Register of exemptions) after section 16E.

New section 16F Register of exemptions

Section 16F provides that the local government must keep a register of exemptions it grants under chapter 8 (Swimming pool fencing) that are still in force and make the register available for inspection and purchase as if it were a document under IPA chapter 5 part 7 (Public access to planning and development information).

31 Amendment of s 17 (Advice as to compliance)

Clause 31 amends section 17 to replace the term ‘written notice’ with the term ‘information notice’ as defined in the dictionary to mean a notice stating the decision and the reasons for it and appeal rights against the decision under the Building Act.

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

Clause 32 omits section 20 which duplicates the general appeal provisions under the Building Act.

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

Clause 33 amends part 4 heading by replacing part 4 with chapter 9 as a result on new chapters 1 to 5 inserted by clause 5.

34 Amendment of s 22 (Enforcement notices)

Clause 34 amends section 22 by omitting section 22 (3), omitting from section 22 (4) and (5) the term ‘or private certifier’ and replacing the “*Integrated Planning Act 1997*” with ‘IPA’, then renumbering section 22.

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

Clause 35 omits from section 23(1)(a) the reference to the *Integrated Planning Act 1997*.

36 Amendment of s 24 (Appeals against enforcement notices)

Clause 36 amends section 24(1) by replacing the “*Integrated Planning Act 1997*” with ‘IPA’

37 Amendment of s 25 (Register of notices given)

Clause 37 omits from section 25 the term ‘open to inspection by the public’ and relies on the IPA chapter 5 part 7 for public access rights.

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

Clause 38 omits part 5 as the provisions under division 1 (Accreditation), division 1A (Functions of BSA and licensing of building certifiers), division 2 (Jurisdiction), and division 3 (Code of Conduct for building certifiers), have been relocated to other chapters of the Building Act.

The authorisation and functions of the accreditation standards body are now located at new sections 11F (Accreditation standards body) and 11G (Function of accreditation standard body).

The provisions for the functions of the BSA have been relocated to new section 9I (Additional functions of the BSA for building certification) and the provisions for the licensing of building certifiers has been relocated to new chapter 6 (Provisions about private certifiers and other building certifiers) part 3 (Licensing of building certifiers).

The provision for the jurisdiction of building certifiers has been relocated to chapter 4 (Assessment of building development applications and the carrying out of self-assessable building work), part 2 (Persons responsible for assessing building development applications).

The provisions for the code of conduct for building certifiers have been relocated to chapter 6 part 1 (General provisions about building certifiers) division 2 (Code of conduct).

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

Clause 39 relocates part 5A to chapter 6 (Provisions about private certifiers and other building certifiers), as inserted under this Act, and renumbers it as chapter 6, part 4 as part of rationalising the new format of the Building Act.

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

Clause 40 amends section 34 by replacing the term ‘written notice’ with the term ‘notice’.

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

Clause 41 amends section 34A by replacing the term ‘written notice’ with the term ‘notice’.

42 Amendment of s 34B (Mediation process)

Clause 42 amends section 34B by replacing ‘the term ‘written notice’ with the term ‘notice’.

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

Clause 43 amends section 36 by replacing the term ‘written notice’ with the term ‘notice’.

44 Insertion of new sections 36A and 36B

Clause 44 inserts new sections 36A and 36B which require a BSA auditor to have and display their identity card when exercising their powers under the Act to investigating a building certifier. These provisions provide some constraint on the new power of the BSA under the Bill to enter and inspect a building construction site to investigate complaints about a building certifier or to conduct an audit.

New section 36A (Issue of identity card to auditor)

Section 36A requires the BSA to issue each auditor an identity card containing a recent photo, copy of the auditor’s signature, identify the person as an approved auditor and state the expiry date for the card.

New section 36B (Production or display of identity card)

Section 36B requires the auditor to produce their identity card for an inspection and clearly display the card.

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

Clause 45(1) amends section 38 heading and subsection (1) to replace 'building' with '*building site relating to complaint or audit*' to more accurately describe the extent of the powers of the BSA to enter a construction site.

Clause 45(3) amends subsections (2)(a), (3), (6) and (7)(a) to replace 'building' with 'building site' to clarify that the BSA's powers extend to the site.

Clause 45(4) amends subsection (2) to insert new subparagraph (c) to extend the powers of the BSA, when investigating a complaint or conducting an audit of a building certifier, to enter and inspect a building when the building work is being carried out at the building site.

Clause 45(5) renumbers subsections (3) to (7) as subsections 38(5) to (9).

Clause 45(6) inserts new subsections (3) and (4) to provide that entry by the BSA must not include a part of a building in which a person resides. Subsection (4) provides the auditor with the power to enter the building site to the extent that it is reasonable to ask the person in control of the site for consent to enter.

46 Insertion of new section 38A

Clause 46 inserts new section 38A (Procedure before entry) after section 38.

New section 38A (Procedure before entry)

Section 38A sets out procedures the auditor is to follow if the auditor is intending to enter a building site under section 38, other than for the purpose in section 38(4).

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

Clause 47 amends section 40 to replace written notice with information notice as defined in the dictionary to mean a notice stating the decision and the reasons for it and appeal rights against the decision under the Building Act.

Clause 47(2) substitutes subsection (3) to provide that if the BSA is aware that the building certifier is employed or has been appointed by someone else to perform building or private certifying functions, it must give the

employer or appointer a copy of the notice about the decision following the investigation.

Clause 47(4) omits subsection (7) because the requirements for a notice are included in the definition of information notice in the dictionary.

Clause 47(6) refers the user to IPA schedule 10 dictionary for the meaning of ‘assessable development’.

48 Amendment of s 41B (Representations and decision)

Clause 48 amends section 41B to replace the term ‘written notice’ with the term ‘notice’ as defined in the dictionary to mean a written notice.

49 Amendment of pt 6, hdg (General provisions)

Clause 49 amends part 6 heading by replacing part 6 with chapter 10 as a result of clause 5 inserting new chapters 1 to 6.

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

Clause 50 omits section 47 as the provisions for an approvals for removal and or rebuilding have been relocated to section 7L (When demolition, removal and rebuilding must start and finish).

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

Clause 51 amends section 48 by replacing ‘the *Integrated Planning Act 1997*’ with ‘IPA’.

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

Clause 52 omits section 49 as the provisions have been replaced elsewhere.

53 Amendment of s 50 (Prosecution of offences)

Clause 53(1) amends subsection (1) to remove the reference to the SBR as the Building Act now covers those matters once dealt with in the SBR.

Clause 53(2) substitutes subsection (2) to provide that the person who may make a complaint for an offence against this Act is:

- For chapter 6 (Provisions about private certifiers and other building certifiers), the general manager;

- And for another offence, the local government or a person authorised by the local government.

54 Insertion of new ss 51A to 51C

Clause 54 inserts new sections 51A to 51C after section 51.

New section 51A Guidelines

Section 51A provides that the chief executive of the department that administers the Building Act, may make guidelines for matters within the scope of this Act to help compliance with this Act.

New section 51B Access to guidelines

Section 51B provides that the chief executive must make any guidelines under section 12D (Guidelines for fire safety standard) or 51A available for inspection and purchase as if they were a document under IPA chapter 5 part 7(Public access to planning and development information).

New section 51C Evidentiary aids

Section 51C provides that in a proceeding under, or in relation to, the Building Act or the *Queensland Building Services Authority Act 1991* a certificate purporting to be signed by the general manager of the BSA stating that the following matters are evidence of the matters.

- A stated document is a copy of, or an extract from or part of a licence, the register, the BCA, the QDC or another document kept or made under this Act;
- An edition of the BCA was the current edition of the BCA at a stated time or during a stated period;
- A particular version of the QDC was in force at the stated time or during the stated period;
- A particular part of the QDC was in force at the stated time or during the stated period;
- On a stated day, or during a stated period, a licence was or was not in force, was or was not subject to a stated condition or was or was not cancelled or suspended.

55 Amendment of s 52 (Regulation-making power)

Clause 55 amends section 52 by renumbering subparagraphs 52(2)(a) to (c) with 52(2)(e) to (h) and inserting new subparagraphs (a) to (d). The new subparagraphs add to the existing provisions by allowing a regulation may make provision for building work, the occupation of buildings, the performance of building certifying functions and private certifying functions and the licensing of building certifiers.

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

Clause 56 omits section 53 as a redundant provision.

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

Clause 57 amends part 7 heading by replacing the term ‘part 7’ with ‘chapter 11’ as a result of the reformatting of the Building Act and the insertion of chapters 1 to 6 by clause 5.

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

Clause 58 amends part 7 division 1 heading by replacing division 1 with part 1.

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

Clause 59 amends part 7 division 2 heading by replacing division 2 with part 2.

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

Clause 60 amends section 55 to omit the reference to Standard Building Law and replace it with a reference to Standard Building Law or the repealed *Standard Building Regulation 1993* is a reference to the Building Act.

61 Amendment of s 56 (Existing referees)

Clause 61 amends section 56 by replacing ‘the *Integrated Planning Act 1997*’ with ‘IPA’.

62 Amendment of s 57 (Existing registrar)

Clause 62 amends section 57 by replacing ‘the *Integrated Planning Act 1997*’ with ‘IPA’.

63 Amendment to section 58 (Lawfully constructed buildings and structures protected)

Clause 63 replaces a reference to the Standard Building Regulation with a reference to the Act.

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

Clause 64 amends part 7 division 3 heading by replacing division 3 with Part 3.

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

Clause 65 amends section 58A heading and section to replace the term ‘div 3’ with ‘pt 3’ and ‘division’ with ‘part’ respectively.

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

Clause 66 amends part 8 heading by replacing part 8 with part 4.

67 Amendment of s 60 (Definitions for pt 8)

Clause 67 amends section 60 by replacing pt 8 with pt 4.

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

Clause 68 amends section 61(1) by replacing ‘specified under a regulation’ with ‘was, under section 4 and schedule 2 of the repealed *Building Regulation 2003*, specified for section 13(3)(a) as in force immediately before the commencement’.

Clause 68(2) amends section 61(2) to provide that a local law is of no effect if it requires the construction of fencing around the swimming pool on the land, provided the land ‘is not land prescribed under a regulation as land to which this subsection is no longer to apply.’.

Under section 68 ‘*tourist resort complex*’ means a complex that operates as a single integrated facility providing all, or substantially all, the recreational and personal needs of guests resident at the complex and visitors at the complex.

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

Clause 69 inserts a new chapter 11 part 5 and schedule 1. Chapter 11 part 5 provides for the operation of transitional provisions as a consequence of the commencement of the Bill, i.e. the *Building and Other Legislation Amendment Act 2006*. Schedule 1, authorised by section 5H, provides a table setting out the mandatory parts of the QDC.

New Part 5 Transitional provisions for *Building and Other Legislation Amendment Act 2006*

New section 66 (Undecided building development applications)

Section 66 provides that if, immediately before the commencement of section 66, a building development application had not been decided and the application is a properly made application, the application must be decided as if the *Building and Other Legislation Amendment Act 2006* had not been enacted.

New section 66A (Consequential amendments to the QDC)

Section 66A provides that section 5H(3) does not apply to amendments to the QDC under section 5H(2) if the amendment is consequential to the *Building and Other Legislation Amendment Act 2006* or the repeal of the *Standard Building Regulation 1993*.

New section 67 (Consequential amendments to code of conduct)

Section 67 provides that section 9E(3) does not apply to an amendment of the code of conduct if the amendment is consequential to the *Building and Other Legislation Amendment Act 2006* or the repeal of the *Standard Building Regulation 1993*.

New section 68 (Local government building surveying technicians)

Section 67 provides that if a building surveying technician was, immediately before 21 October 2003, employed by a local government as a building certifier and the local government is a designated local government under section 10 C, the building surveying technician, despite section 10N(1)(a) (Role of building surveying technician), may until 20 October 2010, perform building certifying functions on the buildings and structures mentioned in section 10N(1)(a).

New section 69 (Amendment to renumber)

Section 68 provides a renumbering provision so that on commencement of section 68, the Building Act may be renumbered sequentially in the first reprint of the Building Act following commencement according to section 43 of the *Reprints Act 1992*. Each reference in the Building Act and each of the references in another Act under subsection (3), to a provision of the Building Act as renumbered is amended when the renumbering happens.

Section 68(7) inserts Schedule 1 (the QDC as at the commencement of s 5H), which lists the parts of the QDC with mandatory effect as at the commencement of section 5H under the Bill.

70 Amendment of schedule (Dictionary)

Clause 70 amends the schedule (Dictionary), by numbering the schedule as schedule 2 and omitting, replacing and making new definitions.

Clause 70(2) omits the following definitions:

accreditation standards body, assessment manager, building, building certifier, building certifying function, Building Code of Australia, building work, code of conduct, complaint, former building certifier, local government, national accreditation framework, private certifier, register, show cause notice show cause period, Standard Building Regulation and tourist resort complex..

Clause 70 (3) inserts the following definitions:

accreditation standards body under section 11Q(1) provides for the Australian Institute of Building Surveyors (AIBS) and another entity prescribed under a regulation, to be an accreditation standards body.

advice agency is an advice agency under IPA and means an entity prescribed under a regulation as an advice agency for a development application.

AIBS means the Australian Institute of Building Surveyors.

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

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

alternative solution means a material, system, method of building or other thing intended to be used by a person to comply with relevant performance requirements. However it does not include:

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

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

appropriately licensed for

- (a) a building certifying function means licensed under chapter 6 (Provisions about private certifiers and other building certifiers), part 3 (Licensing of building certifiers), division 2 (Licence levels and their roles) at a level that allows the licensee to carry out that function; or
- (b) a private certifying function means licensed as mentioned in paragraph (a) and endorsed under chapter 6, part 3, division 4 (Private certification endorsements), in a way that allows the licensee to carry out that function.

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

- (a) the decision notice or negotiated decision notice for the application;
- (b) a copy of the plans, drawings and specifications and other documents and information lodged by the applicant, stamped approved or otherwise endorsed by the assessment manager;
- (c) a list of required fire safety installations and required special fire services applying to the building work;
- (d) certificates relied on to decide the application;
- (e) a list, in the approved form, of any of the following information relied on by the private certifier to decide the application—
 - (i) the physical characteristics and location of infrastructure related to the application;
 - (ii) local government easements, encumbrances or estates or interests in land likely to be relevant to the application;
 - (iii) site characteristic information likely to affect the assessment of the application (examples include information about proposed road or footway works, stormwater connections, vehicle crossings, heritage listed buildings, discharge of swimming pool backwash water, flood levels, driveway gradients, the capacity of sewerage, stormwater and water supply services, erosion control districts, contaminated land, land-slip and mine subsidence areas);
- (f) if the application relates to building work that uses an alternative solution a notice of reasons for any approval.

assessment manager for a building development application under section 5F (Who is the assessment manager for a building development application) means generally the assessment manager for the application, as defined under IPA, section 3.1.7. However, if under section 6R, a private certifier (class A) is performing functions for the application, the certifier is the assessment manager for the application.

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

BCA (Building Code of Australia) is defined in 5G as the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian

Building Codes Board. It includes the edition as amended from time to time by amendments published by the board.

BCA classification for a building, means its classification under BCA. The BCA classifications are contained in part A3 of the BCA.

BCA classification change for a building under section 8W is:

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

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

budget accommodation building is defined for chapter 7 (Fire safety for budget accommodation buildings) in section 12B.

building is a fixed structure that is wholly or partly enclosed by walls and is roofed and includes a floating building and any part of a building.

building assessment provisions under section 5Y(1) refers to the following laws and other documents (subject to how they apply under Chapter 4, division 1 and subject to any variation under division 2), that must be complied with for building assessment work:

- (a) IDAS;
- (b) chapters 3 and 4 of the Act;
- (c) the fire safety standard;
- (d) regulations made under the Act relating to building assessment work or self-assessable building work;
- (e) any relevant local laws, planning scheme provisions or resolutions made under section 6 (Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions) and section 6A (Alternative planning scheme provisions to QDC boundary clearances and site cover provisions for particular buildings);
- (f) the BCA;
- (g) the QDC.

building assessment work under section 5B refers to the assessment under the building assessment provisions, of a building development application for compliance with those provisions.

building certifier under section 5C means an individual who is licensed as a building certifier under chapter 6, part 3. The term includes a reference to a private certifier and a former building certifier.

building certifying function under section 5E means doing any of the following:

- Carrying out building assessment work, other than those for which a concurrence agency has jurisdiction under section 6N;
- The giving of a compliance certificate stating that the building work complies with the building assessment provisions;
- Inspecting the building work for a building development approval for the purpose of certifying the work;
- The giving of final inspection certificates or certificates of classification.

These functions stop being building certifying functions on the giving of the final inspection certificate or the certificate of classification for the building.

Building Code of Australia (BCA) is defined in 5G as the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board. It includes the edition as amended from time to time by amendments published by the board.

building development application under section 5A is an application for development approval under IPA to the extent it is for building work.

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

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

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

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

building work is defined in section 5 as:

1. building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure:
2. excavating or filling that is for, or incidental to, building work outlined under 1, or any other excavation or filling that could adversely affect the stability of a building or other structure on the same or adjoining land;
3. supporting (whether vertically or laterally) land for building activities mentioned in 1; or
4. other work regulated under the building assessment provisions (other than IDAS).

Building work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure. An example would be a management procedure under the fire safety standard relating to a budget accommodation building.

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

certificate requirements is defined under section 8P(2) as the requirement that a building certifier must, as soon as practicable, ensure the owner of the building is given a certificate of classification by a building certifier that complies with the requirements under section 8H for a certificate of classification.

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

class of a building or structure is its particular BCA classification.

client of a private certifier is defined under section 9Y(5) as the person for whom private certifying functions are agreed to be performed under an engagement of a private certifier.

code of conduct is defined under section 9P(1) as the document called 'Code of Conduct for Building Certifiers' that was made by the chief executive on 20 October 2003 and tabled in the Legislative Assembly on 14 November 2003, as amended or replaced from time to time under that section.

complaint is a complaint made under chapter 6 (Provisions about private certifiers and other building certifiers), about a building certifier or former building certifier.

compliance certificate is a certificate under section 5E(b) stating that work, except for work that must be assessed by a compliance agency, complies with the building assessment provisions. The giving of a compliance certificate is a building certifying function.

complies, with the BCA or QDC, under section 5I means complying with the BCA or QDC (the Code) for all relevant performance requirements under the code. Building work complies with a relevant performance requirement only if it achieves a relevant building solution under the code for the requirement. A relevant building solution is achieved for a performance requirement only by complying with the **relevant requirement**.

If the code is the BCA, complying is to be with the relevant deemed-to-satisfy provisions under the BCA for the performance requirement.

If the code is the QDC, complying is to be with the relevant acceptable solution under the QDC for the performance requirement, or formulating an alternative solution that complies with the performance requirement, or is shown to be at least equivalent to the relevant requirement; or a combination of both.

concurrency agency means a concurrence agency under IPA. A concurrence agency for a development application, means an entity prescribed under a regulation as a concurrence agency for the application, or if the functions of the entity in relation to the application have been devolved or delegated to another entity, the other entity.

condition time is defined in section 8H(1) for chapter 4, part 7, division 2 as the time set under a condition of a building development approval within which the development or aspect of a development must be completed.

convicted of a relevant offence means a conviction, other than a spent conviction, for an offence—

- (a) under this Act or another relevant Act, or
- (b) involving fraud or dishonesty; or
- (c) against a law of another State if the act or omission that constitutes the offence would, if it happens in Queensland, be an offence under this Act or another relevant Act; or

- (d) committed anywhere in Australia before this section commenced that, apart from the non-commencement of this section, would have been an offence mentioned in paragraph (a) or (b).

A conviction includes a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded. A spent conviction is a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and not been revived under section 11 of that Act.

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

demolition or removal completion condition under section 7L(4) provides that within 6 months of giving the approval the building work must be completed.

development approval endorsement under section 10T(b) means if the licence has a private certification endorsement - perform the function under section 6R of issuing building development approvals.

enforcement action means the giving, under chapter 6, of a show cause notice and enforcement notice and taking action under IPA, chapter 4, part 3, divisions 2 and 3.

engagement, of a private certifier, under section 9Y(4) means a contract entered into by a private certifier or **private certifier employer** is an engagement of the private certifier or certifiers who under the contract are to perform private certifying functions.

final inspection certificate under section 5E(d)(ii) means a certificate given by the building certifier in the approved form for the final stage of building work. If a building certifier is satisfied, on an inspection carried out under best industry practice, that the work complies with the building development approval, the certifier must ensure the owner of the building is, within the required period, given the certificate.

fire safety installation for a building or structure, means any of the following items for the building or structure:

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

- (b) fire protection systems (including air-handling systems, fire detection and alarm systems, smoke and heat venting systems, smoke exhaust systems, special automatic fire suppression systems, sprinklers, and stairwell pressurisation systems)
- (c) fire fighting equipment (including fire extinguishers, fire hose reels, fire hydrants, and fire mains);
- (d) occupant safety features (including emergency lifts, emergency lighting, emergency power supply, emergency warning and intercommunication systems, exit door hardware, exit signs, fire doors, smoke proof doors, and solid core doors); and
- (e) other features (including services provided under conditions imposed under section 7T, services required under BCA, clause E1.10, and vehicular access for large isolated buildings).

However this term does not include interconnected alarms in budget accommodation buildings to which chapter 7, part 3 applies.

fire safety standard, for chapter 7 (Fire safety for budget accommodation buildings), is defined in section 12C as part 14 of the QDC and any other standard prescribed under a regulation.

fire safety system, for chapter 7 (Fire safety for budget accommodation buildings), is defined in section 12A. A fire safety system for a building means the building's features, and procedures established for the building, providing for all or any warning to the building's occupants about a fire emergency, the safe evacuation of the building's occupants and extinguishing or restricting the spread of fire in the building.

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

former building certifier means an individual who was a building certifier when a building certifying function that is now the subject of a complaint, was performed. However this individual is not licensed when the complaint, or the decision taken about the complaint under section 40(1), is made; or when the Commercial and Consumer Tribunal makes an order under section 45A.

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

imposed condition is defined under section 7J(4) as the conditions imposed under Chapter 4, part 5, division 1 on particular building development

approvals. These imposed conditions are taken to have been imposed on the approval and be relevant and reasonable for IPA, section 3.5.30.

information notice, about a decision, means a notice stating the decision, and the reasons for it, all rights of appeal against the decision under this Act or IPA, and how the rights are to be exercised.

inspection documentation, refers to the following documents relating to inspection of building work that are given for the building work:

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

IPA means the *Integrated Planning Act 1997*.

IPA Regulation means the *Integrated Planning Regulation 1998*.

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

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

local government building certifier means a building certifier appointed or employed by the local government for the building, for a building development application or for a development approval.

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

notice means a written notice.

performance requirements means any of the following:

- the performance requirements under the BCA;
- the performance criteria under in the QDC; or
- a requirement for the assessment of building work for which a discretion may need to exercised under this Act.

planning scheme under IPA section 2.1.1. means an instrument made by a local government under division 3 (Making, amending and consolidating planning schemes).

private certification endorsement is defined under section 10T(a). A private certification endorsement may be made only if the applicant has the insurance for private certification prescribed under a regulation, is a building surveyor or assistant building surveyor and has development approval endorsement which may only be made if the applicant has satisfactorily completed the course prescribed under regulation.

private certifier under section 5D(1) means an individual who is a building certifier who has private certification endorsement which enables the private certifier to perform building certifying functions as a private certifier.

private certifier (class A) under section 5D(2) means a private certifier whose licence has development approval endorsement.

private certifier (class B) under section 5D(3) means a private certifier whose licence does not have development approval endorsement.

private certifier employer under section 9Y (1)(b) means a person or public sector entity who employs private certifiers and may enter into a contract to provide the services of any of the private certifiers to perform private certifying functions for others.

private certifying functions under section 6O(3) means functions that are in addition to the building certifying functions.

properly made application, for a building development application, means a building development application that is a properly made application under IPA, and complies with any relevant additional requirements under chapter 3 for building development applications.

QDC (Queensland Development Code) under section 5H is the mandatory parts of the QDC as listed in Schedule 1 to the Act, or as amended and prescribed under a regulation, ie the proposed *Building Regulation 2006*.

QDC boundary clearance and site cover provisions are defined under section 5H(1)(a) as the aspects of parts 11 and 12 of the QDC that relate to boundary clearances and site cover and are part of the mandatory provisions of the QDC.

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

Queensland Development Code (QDC) under section 5H is the mandatory parts of the QDC as listed in the Schedule to the Act, or as amended and prescribed under a regulation, ie the proposed *Building Regulation 2006*.

referral agency means a referral agency as defined under IPA, schedule 10 dictionary, and includes a concurrence agency and an advice agency.

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

self - assessable building work under section 5P(1) is building work that is declared to be self-assessable for IPA, schedule 8, part 2, table 1 if it is prescribed under a regulation. It must also generally comply with the BCA and QDC. If any alternative provisions under section 6A apply to the building work, it must comply with the alternative provisions and the provisions of the BCA and QDC, other than the QDC boundary clearance and site cover provisions.

show cause notice is defined for chapter 6, part 3 in section 11H(1), and for chapter 9 in section 21(1).

show cause period is defined for chapter 6, part 4 in section 11H(2)(f), and for chapter 6, part 5 in section 41A(2)(c).

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

special fire service includes:

- (a) fire mains (other than fire mains that connect only fire hose reels;
- (b) fire hydrants;
- (c) sprinklers (including wall-wetting sprinklers);
- (d) special automatic fire suppression systems (including foam, deluge and gas flooding systems);
- (e) fire detection and alarm systems (other than stand-alone smoke alarms not required to be interconnected or connected to a fire indicator panel);
- (f) fire control centres;
- (g) stairwell pressurisation systems;
- (h) air-handling systems used for smoke control;
- (i) smoke and heat venting systems;

- (j) smoke exhaust systems;
- (k) emergency warning and intercommunication systems;
- (l) emergency lifts;
- (m) vehicular access for large isolated buildings;
- (n) services provided under conditions imposed under section 7T; and
- (o) services required under the BCA, clause E1.10.

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

State includes territory.

substantially completed for a building means that it meets all the recruitments under section 8O which contains a list of items, that when completed will mean that the building is substantially completed. Building includes alterations to all or part of a building.

supporting documents under section 5R refers to the documents required under part 1 of Chapter 3, that are needed for the purposes of section 3.2.1(2)(b) of IPA, to support a building development application.

variation application under section 6F(1) refers to where building work is proposed to be carried out, is being carried out or has been carried out and the building work will not, or does not, comply with a provision of any of the building assessment provisions, other than IDAS. In these circumstances, a person may apply (the variation application) to the chief executive to vary how the provision applies to the building work.

Clause 70(4) amends the following definitions to omit the term ‘the *Integrated Planning Act 1997*’ and replace it with ‘*IPA*’; ***building and development tribunal, development application, development approval, development permit*** and ***local planning instrument***.

Clause 70(5) omits from the definition ***residential land*** the reference to the Standard Building Regulation.

Clause 70(6) amends the definition ***unsatisfactory conduct*** in paragraph (a) by replacing the words ‘building certifying functions’ with the words ‘building or private certifying functions’.

Clause 70(7) updates an incorrect cross reference from the definitions ***construct, fencing standards*** and ***pool owner***.

Part 3 Amendment of Integrated Planning Act 1997

71 Act amended in pt 3

Clause 71 provides for the amendment of the *Integrated Planning Act 1997* in part 3.

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

Clause 72 amends section 1.3.5, definition of *building work*, paragraph 1(b) to include work that is regulated under the building assessment provisions set out in section 5Y of the Act. The definition *operational work*, item 2, paragraph (a) has also been amended to clarify that it applies to items (a) to (f) and (j) where any element that is building work, other than building work for the reconfiguration of a lot, drainage work or plumbing work.

Clause 72 also inserts section 1.3.5(2) that provides for the definition of *building work* in subsection (1), paragraph (b), work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure. This amendment is intended to cover matters that are management procedures under the fire safety standard, relating to a budget accommodation building.

73 Insertion of new s 3.2.2B (Approved operational works for retaining walls required for certain developments)

Clause 73 inserts a new section 3.2.2B after section 3.2.2A to specify that retaining walls that are part of an application for a reconfiguration of a lot are to be considered as an application for operational works. This is intended to ensure that the construction of the retaining walls are considered at the same time as the application for the reconfiguring of the lot and are assessed for structural adequacy. This amendment is further intended to remove the confusion about when an application for a retaining wall is required in relation to an application for building development approval for a building on the lot. An assessment manager will also be able to access and rely on any certification for the retaining wall at the time a development application for building work is made. The ability will also exist for an assessment manager to establish if the building work proposed

under a development application will impact on the structural adequacy of the retaining wall.

74 Amendment of s 3.3.15 (Referral agency assesses application)

Clause 74 amends section 3.3.15(2)(b) by replacing ‘Standard Building Regulation’ with ‘building assessment provisions’.

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

Clause 75 amends section 3.3.16 to replace ‘referral agency’ with ‘concurrence agency’.

Clause 75 also inserts a new subsection (4) into section 3.3.16 to specify that if a response under subsection (1) is not provided for certain matters relating to a building development application, it is deemed to be refused. The matters relating to the building development application include decisions by the local government as a concurrence agency except for amenity and aesthetics matters.

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

Clause 76 amends section 3.3.17 by inserting a reference to ‘section 3.3.16’ as a whole. This amendment clarifies that all of the provisions of 3.3.16 are excluded instead of only subsection (1).

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

Clause 77 amends section 3.3.18 by renumbering Section 3.3.18(6) and (7) with section 3.3.18(7) and (8).

Clause 77 also amends section 3.3.18 by inserting subsection (6) about the extent of a local government’s concurrence agency’s jurisdiction about assessing the amenity and aesthetic impact of a building or structure. The amendment clarifies the concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency considers the following:

- That the building or structure, when built, will have an extremely adverse effect on the amenity; or

- The likely amenity of its neighbourhood or the aesthetics of the building or structure, when built, will be in extreme conflict with the character of its neighbourhood.

These provisions were originally in section 51 of the SBR and have been moved to IPA to avoid duplication, under another Act, of the concurrence agency's role in respect to amenity and aesthetics.

Section 3.3.18(8) has also been amended to reflect renumbering and to include a reference to the new subsection (4) under the provisions of section 3.3.16(4).

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

Clause 78 amends section 3.5.13(4) and removes the provision subsection (a) relating to an assessment manager's decision about building work that must not conflict with the *Building Act 1975*.

79 Amendment of s 3.5.15 (Decision notice)

Clause 79 amends section 3.5.15 to clarify that the assessment manager must give designated persons written notice of the decision. The amendment also includes a new section 2B which requires approved drawings to be included in the decision notice if it is for building development approval. The term '*designated person*' is also defined for the purposes of applying the section.

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

Clause 80 amends section 4.2.1(4) to remove the reference to the *Standard Building Regulation 1993*.

81 Amendment of s 4.2.7 (Jurisdiction of tribunals)

Clause 81 amends section 4.2.7 (2)(a) to clarify that appeals under the provisions of the *Building Act 1975* do not extend to those matters that may or must be decided by the Building Services Authority. Matters decided by the Building Services Authority are generally dealt with by the Commercial and Consumer Tribunal set up under the *Commercial and Consumer Tribunal Act 2003*.

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

Clause 82 replaces section 4.2.12A (Appeals for building and plumbing and drainage matters), and enables a person to appeal to a building and development tribunal established under section 4.2.1 of IPA. The grounds for appeal for building, plumbing and drainage matters include:

- If a person has been given or is entitled to be given an information notice under the *Building Act 1975* about a decision other than a decision under that Act made by the BSA; or
- If a person has been given or is entitled to be given an information notice under the *Plumbing and Drainage Act 2002* about a decision under part 4 or 5 of that Act; or
- If a person was an applicant for a building development approval and is dissatisfied with a decision under the *Building Act 1975* by a building certifier or referral agency about an inspection of building work the subject of the approval.
- The lack of a decision by the local government within the decision period for certain application under the *Building Act 1975*.

The appeal to the tribunal must be started within 20 days after the day the person is given the notice of the decision.

Section 4.2.12A consolidates various existing appeal rights under the *Building Act 1975* and the SBR to give a right of appeal to a person against a building certifier's adverse decision about an inspection. Depending on the stage of inspection, adverse decisions are required to be given either by notice or an information notice.

An information notice about a decision is defined in the *Building Act 1975* to include a notice stating the decision and the reasons for it, all rights of appeal against the decision and how those rights are to be exercised. Information notices are required to be given by a building certifier for an adverse final inspection decision. For all other inspection decisions, certifiers are required to give written notice. Because of the number, timing and place of decisions made about building inspections, it would be unrealistic to require certifiers to give information notices for every adverse decision. A person may appeal any building certifier decision regardless of whether the decision is given by an information notice or written notice.

83 Amendment of s 4.3.18 (Proceedings for offences)

Clause 83 amends section 4.3.18 by deleting the reference to the *Standard Building Regulation 1993* in section 4.3.18(3)(a) and replacing it with the term ‘building assessment provisions’.

84 Amendment of s 4.3.22 (Proceeding for orders)

Clause 84 amends section 4.3.22 by deleting the reference to the *Standard Building Regulation 1993* in section 4.3.22(2) and replacing it with the term ‘building assessment provisions’.

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

Clause 85 omits chapter 5 part 3 from IPA as its provisions have been incorporated into the Building Act. This part principally deals with the way a private certifier operates in terms of approving building development work, being engaged for certification services and other function relating to their obligations.

The *Building Act 1975* is the principal Act that covers the licensing and operating parameters for private certifiers. The relocation of these provisions from IPA to the *Building Act 1975* has removed any confusion about the application of building legislation to private certification. Furthermore the relocation provides a logical application of the technical and administrative functions about building development approvals as carried out by private certifiers.

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

Clause 86 amends section 5.7.2 (1) to clarify the type of copy of a document that a local government must keep available for inspection or purchase. The term ‘certified copy’ has been replaced with the term ‘designated type of copy’. This new term specifies that a copy of a document for specific matters must be certified or it may otherwise be an ordinary copy.

Section 5.7.2(1) has also been amended to include other documents such as planning scheme maps for bush fire prone areas, register of resolutions for land liable to flooding, particular records the local government must keep under the *Building Act 1975* and development information about building development applications. To avoid duplication local governments are not

required to keep information about development applications if that information can be purchased elsewhere.

The amendments to this section also clarify that for items (t) to (y) a local government does not have to make the documents available under certain circumstances. The circumstances include matters about the security of information in the documentation and if there are any issues of privacy contained within them. A local government only has to be reasonably satisfied that either of these circumstances is present for it to choose to not make the documents available.

87 Replacement of s 5.7.3 (Documents local government must keep available for inspection only)

Clause 87 replaces section 5.7.3 to include the *Building Act 1975* and Building Code of Australia as documents the local government must keep available to the public for inspection. This amendment is intended to have local governments make available documents that are related to building developments that are generally difficult for the public to access easily. The BCA is subject to annual amendments and it is therefore not reasonable to expect members of the public to have to purchase it on any regular basis.

88 Amendment of s 5.7.4 (Documents assessment manager must keep available for inspection and purchase)

Clause 88 amends section 5.7.4 by adding new items to subsection (2). This item provides that a local government must keep documents relating to a building development application made to a private certifier (class A) or the local government itself. The documents include the approval documents and inspection documents defined under the Act.

Amendments to this section also provide that local governments are not obliged to make documents available if they contain information that is sensitive to the security or privacy of an individual. Local governments must be reasonably satisfied the information would be detrimental to the rights and security of individuals. An example of the information that is sensitive to the security and privacy of an individual could be someone's residential address or credit details etc.

Amendments to this section also provide that local governments are obliged to keep building approval documents and inspection documents for a specific period of time. Local governments must keep building approval documents and inspection documents for all class 10 buildings and

structures, except for swimming pool fences, for a period of 10 years or until they are demolished. For all other classes of buildings and swimming pool fences the documents must be kept until the buildings are either demolished or removed.

The intent of this amendment is to ensure building approval and inspection documents are available to the public throughout the life of a building. The availability of these documents will provide comprehensive details of a building's approval and inspection history. This will help identify any work on a property that has not been approved or has not been properly inspected and is available for all future purchasers or owners of a property.

89 Amendment of s 5.7.6 (Documents chief executive must keep available for inspection and purchase)

Clause 84 amends section 5.7.6 and clarifies that the chief executive must keep available for inspection and purchase a copy of the Queensland Development Code. The amendment further clarifies that the chief executive must not charge a fee for a copy of the Queensland Development Code.

90 Amendment of s 6.1.1 (Definitions for pt 1)

Clause 90 amends section 6.1.1 by replacing the term 'Standard Building Regulation' with the term 'building assessment provisions'.

91 Amendment of s 6.1.29 (Assessing applications (other than against the Standard Building Regulation))

Clause 91 amends section 6.1.29 to replace the term 'Standard Building Regulation' in the heading with 'building assessment provisions'.

92 Amendment of s 6.1.30 (Deciding applications (other than under the Standard Building Regulation))

Clause 92 amends section 6.1.30 to replace the term 'Standard Building Regulation' in the heading with 'building assessment provisions'.

93 Amendment of sch 8 (Assessable development and self-assessable development)

Clause 93 amends schedule 8 by replacing references to 'Standard Building Regulation' with 'Building Act 1975'.

94 Amendment of sch 8A (Assessment manager for development applications)

Clause 94 amends schedule 8A to clarify that in table 1 item 1(a)(ii) assessable building work under the *Building Act 1975* is assessable against the building assessment provisions.

95 Amendment of sch 10 (Dictionary)

Clause 95 amends schedule 10 (Dictionary)

Clause 95(1) omits the following definitions:

building referral agency, private certifier, replacement private certifier and *Standard Building Regulation*.

Clause 95(2) inserts the following definitions:

building assessment provisions see the *Building Act 1975*, section 5Y(1).

building certifier means an individual who is licensed as a building certifier under the *Building Act 1975*. The term includes a reference to a private certifier and a former building certifier.

Building Code of Australia (BCA) is the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board. It includes the edition as amended from time to time by amendments published by the board.

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

private certifier means a building certifier whose license under the *Building Act 1975* has private certification endorsement under that Act.

private certifier (class A) means a private certifier whose license under the *Building Act 1975* has development approval endorsement under that Act.

Clause 95(3) amends the definition of *assessing authority* to provide that if a private certifier (class A) has been engaged to perform private certifying functions under the *Building Act 1975* the private certifier is an assessing authority.

Part 4 Amendment of Plumbing and Drainage Act 2002

96 Act amended in pt 4

Clause 96 provides that this part and schedule 2 amend the *Plumbing and Drainage Act 2002*.

97 Amendment of s 91 (Applying for chief executive approval)

Clause 97 provides that a person can not apply for a chief executive approval for a chemical, composting or incinerating toilet. However the requirements of the compliance assessment process under Part 4 do apply to chemical, composting and incinerating toilets.

98 Amendment of s 125 (Restriction on building or installing particular on-site sewerage treatment plant)

Clause 98 clarifies that it is not an offence to build or install an on-site sewerage treatment plant that consists only of a chemical, composting or incinerating toilet without a chief executive approval. No application can be made for chief executive approval for these types of toilets.

99 Amendment of s 128E (Restrictions on operating particular on-site sewerage treatment plant)

Clause 99 provides that it is not an offence for failure to comply with conditions of a chief executive approval for a chemical composting or incinerating toilet. No application can be made for chief executive approval for these types of toilets.

100 Insertion of new pt 10, div 4

Clause 100 inserts new part 10 division 4 after section 171.

New Division 4 - Transitional provisions for Building and Other Legislation Amendment Act 2006

New section 172 (Provisions for chemical, composting or incinerating toilets)

Section 172 provides that an application for chief executive approval for a chemical, composting and incinerating toilet made before the commencement of this section is, on the commencement, taken to be a withdrawn application.

The section also provides that section 125, in force from 1 March 2006 to the commencement of this section, never applied to an on-site sewerage treatment plant that consists only of a chemical, composting or incinerating toilet.

Part 5 Amendment of other Acts

Clause 101 is the authorising section for the schedule that makes consequential amendment of other Acts.

Schedule Consequential and minor amendments of other Acts

Brisbane Markets Act 2002

1. In the definition *building work* in the schedule, paragraph (b) is substituted to provide for work regulated under the building assessment provisions under the *Building Act 1975*, other than IDAS.

Fire and Rescue Service Act 1990

2. In section 104A, in the definitions *Building Code of Australia* and *fire safety installation*, the reference to the 'Standard Building Regulation' is replaced with '*Building Act 1975*'.
3. In section 104A, the definition *Standard Building Regulation 1993* is omitted.

4. In section 104FB(1), ‘section 12Q(2)’ is replaced with ‘section 5V’(Application for building work for budget accommodation building).

Local Government Act 1993

5. In Section 761, in the definition of *building certifying function*, the reference to ‘section 3(1)’ is replaced with ‘section 5C’.
6. In section 807(2), in the definition of *building certifier*, the reference to ‘section 3(1)’ is replaced with ‘section 5C’.
7. In section 1071A(1)(e), the term ‘, the *Integrated Planning Act 1997*, chapter 5, part 3’ is omitted.
8. In sections 1096(1)(d) and 1101(2)(a), the term ‘part 2A’ is replaced with ‘chapter 7’

Plumbing and Drainage Act 2002

9. In section 62(1), the term ‘section 57’ is replaced with ‘section 56’.
10. In the schedule, the definition *chief executive approval* is amended by replacing “section 91” with “section 91(1)”.
11. In the schedule, the definition *testing approval* is amended by replacing “section 91(e)” with “section 91(1)(e)”.

Private Health Facilities Act 1999

12. In schedule 3, in the definition certificate of classification, the term ‘*Standard Building Regulation 1993*, part 9.’ is omitted and replaced with ‘*Building Act 1975*, section 5H’.

Public Health (Infection Control for Personal Appearance Services) Act 2003

13. In the schedule 2, in the definition *Queensland Development Code*, the term ‘*Standard Building Regulation 1993*, section 6A’ is replaced with ‘*Building Act 1975*, section 5H’.

Queensland Building Services Authority Act 1991

14. In Schedule 2, in the definition of *Building Code of Australia*, the term ‘section 3’ is replaced with ‘section 5G’.

**Southern Moreton Bay Islands Development Entitlements
Protection Act 2004**

15. In sections 4(a) and 7(2), the reference to '*Standard Building Regulation 1993*' is replaced with '*Building Act 1975*'.