

PROFESSIONAL ENGINEERS AND OTHER LEGISLATION AMENDMENT BILL 2014

Explanatory Notes

Short Title

The short title of the Bill is the Professional Engineers and Other Legislation Amendment Bill 2014.

Policy Objectives and the reasons for them

Professional Engineers

The Board of Professional Engineers of Queensland (the Board) initiated a review in late 2012 to promote compliance with the provisions of the *Professional Engineers Act 2002* (PE Act) and to ensure that the PE Act was relevant and up to date. A discussion paper was circulated to seek the views of industry, the profession and economic development organisations. In June 2013, the Department of Housing and Public Works (DHPW) conducted consultation with a select number of stakeholders in the engineering and construction industry to seek their feedback on the proposed legislative changes developed, following the review and consultation undertaken by the Board.

Following the Board's review and DHPW's consultation with stakeholders, the Professional Engineers and Other Legislation Amendment Bill 2014 (the Bill) will make amendments to clarify and improve the PE Act so that it remains relevant and best meets its objectives.

Queensland Building and Construction Commission

In May 2013, the Queensland Government's response to the recommendations of the Transport, Housing and Local Government Committee Report No. 14, *Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012* was tabled in Parliament.

The response included a *Ten Point Action Plan* to implement agreed recommendations relating to the Queensland Home Warranty Scheme, dispute resolution, building certification procedures, and licensing. DHPW established an Implementation Committee to consult with key stakeholders and make recommendations to the Minister for Housing and Public Works on implementation of the Government's response.

The first implementation stage, involving the establishment of the Queensland Building and Construction Commission (QBCC) to replace the former Queensland Building Services Authority (QBSA) and the appointment of a Commissioner, has been completed.

In the second implementation stage, the Bill will further implement the Government's *Ten Point Action Plan*.

Achievement of policy objectives

Professional Engineers

The Bill makes the following amendments to the PE Act:

- Clarify critical definitions in the Act to provide greater clarity and guidance to stakeholders.
- Provide a statement in the Act to the effect that a person carrying out professional engineering services outside of Queensland, for projects based in Queensland, must be a registered professional engineer or working under the direct supervision of a registered professional engineer.
- Introduce a new category of non-practising engineer to cater for retired engineers, and for engineers on maternity leave or other career breaks.
- Introduce a provision whereby all penalties and fees recovered by the Board under the Act are to be paid to the Board and become part of the Board's funds.
- Extend the time for which proceedings under the Act can commence from six months to one year, in some circumstances.
- Include additional provisions in the Act so that the Board has the power to reject a complaint if it reasonably considers that the complaint is unfounded or lacking in substance. This is in addition to the current reasons for the Board to reject a complaint which include frivolous, vexatious or trivial complaints.
- Expand options for the Board in deciding about unregistered engineers, such as to caution, reprimand or enter into undertakings, so that lengthy and expensive prosecution processes may be avoided in some circumstances.
- Permit the delegation of decisions in relation to the renewal process to a Board member, a committee of members, the registrar or an appropriately qualified Board staff member to alleviate difficulties experienced in processing the large increase in the number of registrants.

Queensland Building and Construction Commission

The Bill also implements the second implementation stage of the Government's *Ten Point Action Plan*.

The Bill will:

- Amend the *Queensland Building and Construction Commission Act 1991* (QBCC Act) to enable a dissatisfied person to apply for internal review of QBCC decisions that have the potential to go to the Queensland Civil and Administrative Tribunal (the Tribunal). This applies to decisions about insurance, homeowner complaints, and licensing.
- More clearly identify that a licensee ought not to be categorised as a 'permanently excluded individual' as a result of a 'relevant bankruptcy event' and a 'relevant company event' arising out of the same incident.
- Amend the QBCC Act, *Building Act 1975* (BA) and *Plumbing and Drainage Act 2002* (PDA) to transfer functions for licensing, compliance and disciplinary action relating to pool safety inspectors and plumbers and drainers to the QBCC and disband the Pool Safety Council (PSC) and the Plumbing Industry Council (PIC), whose functions will be undertaken by the QBCC.

Alternative ways of achieving policy objectives

As the current structure of the QBCC and the regulation of professional engineers in Queensland are set out in legislation, the only way of achieving the policy objectives is to amend the primary legislation.

Estimated cost for government implementation

The Board of Professional Engineers of Queensland will continue to be self-funded under the proposed amendments to the PE Act.

Any costs that may be incurred by the QBCC in implementing these legislative amendments will be met through the existing resources of the QBCC.

Consistency with fundamental legislative principles

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, potential breaches of fundamental legislative principles (FLP) are addressed below.

Public disclosure of convictions

Clause 13 of the Bill will insert a new section 75B into the PE Act allowing the Board of Professional Engineers of Queensland to publicise on its website the fact that a person other than a registered professional engineer has been found guilty of an offence under part 7 of the PE Act, whether or not a conviction has been recorded.

The possible FLP issue relates to whether this provision has sufficient regard to the rights and liberties of individuals. It is considered that the provision is justified on the basis that such publication will only occur if it is in the public interest of ensuring the consumers are aware of illegal practices in the industry. Publication will also be restricted to findings of guilt of an offence against part 7 of the PE Act which relate to unregistered persons:

- making claims about being a registered professional engineer;
- using titles or names set out in section 114 on the PE Act in a way which suggests that the person is a registered professional engineer; or
- carrying out professional engineering services in contravention of the PE Act.

Additionally, in cases where a conviction is recorded, those convictions may only be published for up to five years after the date the finding of guilt is made.

Extension of limitation period for prosecutions under the PE Act

Proceedings for offences under the PE Act are summary proceedings. Currently, under section 139, a proceeding must start within the later of 1 year after the commission of the offence, or 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

Clause 20 of the Bill will amend section 139 to increase the six month period to 1 year. The potential FLP issue relates to whether that increase has sufficient regard to the rights of a person who may be subject to prosecution, on the general basis that a person's liability for prosecution should end at a reasonable point.

The increased time limit is justified as the existing time limit of six months after knowledge of the offence has proved very difficult in circumstances where the Board uses an investigator to conduct an investigation and then has to meet to make a decision about prosecution based on the investigator's report.

Consultation

Extensive consultation was undertaken with stakeholders regarding the proposed amendments to the PE Act through both the discussion paper issued by the Board and DHPW's consultation.

When inquiring into the operation and performance of the former QBSA, the Transport, Housing and Local Government Committee consulted with key industry groups including home builders and building contractors, industry participants and relevant experts. The Committee widely advertised its inquiry and received and considered 109 submissions, received a public briefing from eight witnesses representing industry and government organisations, and held a public hearing at which it heard from 34 witnesses that included home owners and their representatives, builders, tradespeople and their representatives, academics, lawyers and officers from the former QBSA.

To assist with informing the Minister's response to Parliament, KPMG was engaged to undertake consultation with industry, licensees/builders, consumer groups and individual consumers in Brisbane, Gold Coast, Townsville and Rockhampton.

Consultation on the content of the Bill was undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.

Consistency with legislation of other jurisdictions

Although Queensland is currently the only Australian State that comprehensively registers engineers, New South Wales, Victoria and Tasmania all register engineers under their respective building practitioner's boards in areas such as mechanical, hydraulic, structural, fire, geotechnical, civil and building services. There are also many international jurisdictions which register engineers including New Zealand, the United Kingdom, United States of America and some jurisdictions within Canada.

The building industry is regulated in all States and Territories in Australia. The provisions regulating building work vary from State to State. The form of the regulator varies depending on the jurisdiction. In some States the regulator is a department of Government, while in others there is a statutory authority and/or commission.

Notes on provisions

CHAPTER 1 PRELIMINARY

Clause 1 provides that the short title of the Act is *the Professional Engineers and Other Legislation Amendment Act 2014*.

Clause 2 provides that the Act commences on a date to be fixed by proclamation.

CHAPTER 2 AMENDMENT OF PROFESSIONAL ENGINEERS ACT 2002

Clause 3 provides that Part 2 amends the *Professional Engineers Act 2002*.

Clause 4 provides for the extraterritorial application of the Act. The clause provides that the Act applies both within and outside of Queensland. This provision clarifies that engineers who provide professional engineering services outside of Queensland for Queensland projects must be registered under the Act or directly supervised by a registered professional engineer.

Clause 5 provides for the types of registration as professional engineer which includes practising professional engineer and non-practising professional engineer.

Clause 6 requires applicant to state the type of registration for which they are applying. This amendment allows for the new category of non-practising professional engineer.

Clause 7 inserts new subclause which provides that an applicant for registration as a non-practising professional engineer is eligible for registration only if the Board is satisfied that the applicant will not carry out, or be responsible for carrying out of, professional engineering services within the registration period to which the application for registration relates.

Clause 8 inserts a new subsection into section 20 that provides that an application for renewal of registration as a non-practising professional engineer, the Board must be satisfied the applicant will not carry out, or be responsible for the carrying out of, professional engineering services within the registration period to which the application relates.

Clause 9 inserts new subsection into section 24 which provides that for an application for restoration of registration as a non-practising professional engineer, the Board must be satisfied the applicant will not carry out, or be responsible for the carrying out of, professional engineering services within the registration period to which the application relates.

Clause 10 inserts a new sub-section into section 34 which provides that a certificate of registration is to now include details of whether the registered professional engineer is a practising professional engineer or a non-practising professional engineer.

Clause 11 amends section 39 to extend the grounds for which the Board may dismiss a complaint to include complaints that are misconceived or lacking in substance.

Clause 12 amends section 75 to provide the Board with further options such as to caution, reprimand or obtain an undertaking.

Clause 13 inserts a new section 75A which provides that if the Board makes a decision about a person under Section 75 and the person later becomes a registered professional engineer then the Board may include particulars of its decision with other particulars relevant to the person's registration in the register.

The clause also inserts a new section 75B which provides that the Board may notify the finding of guilt on the Board's website if a person other than a practising professional engineer is found guilty of an offence against the Act, whether or not a conviction is recorded.

Clause 14 makes a minor consequential amendment to section 76.

Clause 15 inserts a new subsection 101A which provides that the Registrar may delegate the Registrar's functions under this Act to an appropriately qualified employee of the Board.

Clause 16 inserts new subsection 107A which provides that the Board may delegate the Board's functions under the Act to a Board member, a committee of Board members, the Registrar or an appropriately qualified employee of the Board.

Clause 17 makes an amendment to section 115 to clarify that a practising professional engineer is the only type of engineer who may carry out professional engineering services.

Clause 18 makes a minor consequential amendment to section 122.

Clause 19 makes an amendment to section 131 which permits the tribunal to make an order requiring a professional engineer to pay an amount to the Board as compensation for all, or part of, the reasonable costs of any investigation about the matter the subject of the proceeding, including costs of preparing for the proceeding.

Clause 20 amends section 139 to provide that proceedings must start within one year after the commission of the offence or one year after the commission of an offence comes to the knowledge of the complainant, but within two years after the commission of the offence.

Clause 21 inserts a new section 140A which provides that if a court finds a person guilty of an offence against the Act the court may make an order appointing the person paying an amount to the Board for compensation for all, or part of, the reasonable costs of any investigation by the Board about the offence, including the costs of preparing for the prosecution.

Clause 22 makes a consequential amendment to section 141.

Clause 23 inserts a new section 142A which requires a monetary penalty recovered for an offence against the Act to be paid to the Board. This section applies despite the *Acts Interpretation Act 1954* Section 43.

Clause 24 amends Schedule 2 Dictionary of the Act.

CHAPTER 3 AMENDMENT OF OTHER ACTS

PART 1 AMENDMENT OF THE BUILDING ACT 1975

Clause 25 provides that Part 1 of chapter 3 of the Bill amends the BA. The note included after clause 25 is intended to alert the reader that Schedule 1 includes additional amendments of the BA. The additional amendments are minor or consequential in nature.

Clause 26 omits section 174(3)(c) because, following the transfer of functions for licensing, compliance and disciplinary action relating to pool safety inspectors (pool safety functions) from the PSC and the chief executive of DHPW (the chief executive) to the QBCC, the provision will no longer be required.

Clause 27 omits section 205, which deals with the review of a decision made by QBCC after investigating a complaint or conducting an audit. The section will no longer be required following the transfer of pool safety functions from the PSC and

the chief executive to QBCC and the introduction of new provisions in the QBCC Act providing for internal and external review of decisions made by QBCC.

Clause 28(1) amends section 245I(1)(a) to remove a reference to the PSC and replace it with a reference to the QBCC Commissioner, ensuring the commissioner receives notice of pool immersion incidents.

Clause 28(2) omits section 245I(1)(d), because after pool safety functions are transferred from the PSC and the chief executive to QBCC, the chief executive will not need to receive notice of pool immersion incidents.

Clause 29(1) transfers the responsibility for providing access to the regulated pools register from the chief executive to the QBCC commissioner.

Clause 29(2) replaces the requirement for the chief executive to make the regulated pools register available at the department's head office and other places the chief executive considers appropriate, with a requirement to make the register available for inspection at QBCC's head office and other places the QBCC commissioner considers appropriate.

Clause 29(3) replaces current section 246AT(2) with a new provision that allows the QBCC commissioner to make the regulated pools register available for inspection on QBCC's website.

Clause 30 transfers responsibility for providing access to the code of conduct for pool safety inspectors from the chief executive to the QBCC commissioner. It does so by replacing current section 246BC with a new section that requires the QBCC commissioner to make the code of conduct available for inspection by anyone while QBCC's head office is open for business. The new section also allows the commissioner to make the code of conduct available for inspection on QBCC's website.

Clause 31 omits section 246BW(3)(b), which will be redundant following the replacement of references to the PSC in section 246BW with references to the QBCC commissioner. The replacement of those references will transfer responsibility for giving notice of an event under section 246BW from the PSC to the commissioner.

Clause 32 transfers responsibility for providing access to the pool safety inspectors register from the chief executive to the QBCC commissioner. It does so by replacing current section 246CC with a new section that requires the QBCC commissioner to make the register available for inspection by anyone while QBCC's head office is open for business. The new section also allows the commissioner to make the register available for inspection on QBCC's website.

Clause 33 omits section 246CJ, which deals with the review of particular decisions made by the PSC. As a result of amendments included in the Bill, the QBCC commissioner will make the decisions previously made by the PSC. Section 246CJ

will no longer be required following the introduction of new provisions in the QBCC Act providing for internal and external review of decisions made by the QBCC commissioner.

Clause 34 replaces Chapter 8, Part 9 which dealt with the role of the PSC with a new Part 9 which deals with QBCC's new role in relation to pool safety.

Division 1 of new Part 9 introduces new sections 246E and 246F, which deal with the new role of QBCC in relation to pool safety.

New section 246E sets out the functions for pool safety that the QBC board is required to perform. Those functions include reporting to the Minister on issues relating to pool safety, and performing any other functions relating to pool safety given to the board under the BA.

New section 246F sets out the functions for pool safety that the QBCC commissioner is required to perform, all of which are operational in nature. Those functions include licensing individuals as pool safety investigators, carrying out audits of pool safety inspectors, investigating written complaints made to the commissioner by pool safety inspectors, taking disciplinary action against such inspectors if grounds for disciplinary action are established, and approving training courses for individuals proposing to become pool safety inspectors.

The new functions of the QBCC commissioner also include performing any other functions relating to pool safety given to the commissioner under the BA. Examples of other functions given to the commissioner include making a code of conduct for pool safety inspectors and approving forms for use under the BA.

The note inserted after section 246F is intended to inform the reader that the powers of the commissioner required to carry out the functions mentioned in section 246F are set out in the QBCC Act, section 20J(3).

Division 2 of new Part 9 introduces new sections 246G to 246J, which deal with a new fund known as the Pool Safety Fund.

New section 246G establishes the Pool Safety Fund. The fund replaces the fund of the same name previously established under the BA before the commencement of the Bill.

New section 246H provides that the purpose of the new fund is to provide funding to achieve the purposes of chapter 8, all of which are new related to pool safety.

New section 246I requires particular amounts to be paid into the fund. The amounts include licence fees paid to the QBCC commissioner under Chapter 8 of the BA. They also include penalties paid to the commissioner under section 256(6).

New section 246J restricts the types of payments that the QBCC commissioner may make from the fund, to payments for expenses incurred by commissioner under

chapter 8 of the BA and other payments required or permitted by the chapter to be paid out of the fund.

Clause 35 amends section 254 to provide that both the chief executive responsible for administering the Act and the QBCC Commissioner can approve forms for use under the Act. This is necessary as both the chief executive and the commissioner will have responsibility for administering processes that require the lodgement of forms under the Act.

Clause 36 replaces references in section 256 to ‘commissioner for QBCC’ with references to ‘QBCC commissioner’. These changes are required because a new definition *QBCC commissioner* has been inserted in the BA by clause 38.

The clause also replaces particular references to the chief executive in section 256 with references to the QBCC commissioner, transferring powers of the chief executive in relation to prosecution of offences relating to pool safety to the QBCC commissioner.

In addition, the clause replaces the reference in section 256 to the PSC with a reference to the QBCC commissioner, transferring powers of PSC in relation to prosecution of offences relating to pool safety to the commissioner.

Clause 36(7) replaces the current version of section 256(6) with a new provision that provides that all penalties recovered under chapter 8 as a result of proceedings for which the QBCC commissioner is the complainant must be paid to the commissioner.

Clause 37 amends section 257A, which deals with the disclosure of pool immersion information and pool safety information. The clause transfers power to authorise the disclosure of such information from the chief executive to the QBCC commissioner in particular circumstances. By amending the definition *relevant person*, the clause allows the commissioner, or an officer or employee of QBCC, to disclose pool immersion information in particular circumstances.

The clause also transfers responsibility for satisfying the reporting requirements in section 257A from the chief executive to the commissioner.

Clause 38(1) replaces a reference in section 260(1) to the *Queensland Building and Construction Commission Act 1991* with a reference to the term ‘QBCC Act’, which is defined in clause 40 to mean the *Queensland Building and Construction Commission Act 1991*.

Clause 38(2) replaces section 260(2) and (3) with a new provision.

New section 260(2) ensures a certificate purporting to be signed by the QBCC commissioner stating any of the matters listed in section 260(2) is evidence of the matter.

The clause also omits section 260(3), which is redundant following the dissolution of the PSC and renumbers the previous section 260(4).

Clause 39 inserts a new Chapter 11, Part 18 in the BA, which deals with transitional provisions for the Bill.

Division 1 of new Part 18 introduces new section 328.

New section 328 introduces definitions for the new Part. It defines *commencement* to mean the commencement of section 328.

Division 2 of the new Part introduces new section 329, which deals with the dissolution of the PSC and the transfer of matters to QBCC.

New section 329 provides, in effect, that on the commencement the PSC ceases to exist and the registrar and former members of the PSC go out of office. Section 329(2) defines *registrar* to mean the person holding the office of registrar under the unamended Act immediately before the commencement.

New section 330 provides that on the commencement any liabilities relating to the former Pool Safety fund are taken to be liabilities of the new fund of the same name to be held by QBCC (new fund). It also provides that any amounts payable to the former fund are taken to be payable to the new fund. In addition, the section requires the chief executive and QBCC to do all things necessary to enable the transfer of funds held in the former fund to the new fund.

New section 331 transfers assets, liabilities and rights held by the PSC to QBCC.

New section 332 allows the QBCC commissioner to deal with applications made to the PSC, but not finally decided or withdrawn, before the commencement. It also provides that an application made by the PSC to the Queensland Civil and Administrative Tribunal (QCAT) before the commencement is taken to be an application to QCAT made by the QBCC commissioner.

New section 333 deals with any legal proceedings potentially or actually involving the PSC before the commencement. It allows the QBCC commissioner to deal with the proceedings as though they had always involved the commissioner. Under the new section, the QBCC commissioner is taken to have acquired any knowledge of the commission of a past offence that the PSC had, at the time when the offence came to the PSC's knowledge.

New section 334 deals with any Ministerial direction given to the PSC before the commencement. It provides that any such direction is, if the context permits, taken to have been given to QBCC under the QBCC Act, section 9.

New section 335 provides that a record of the former council becomes a record of QBCC on the commencement. The definition *record* includes a register kept by the

PSC under the unamended Act. The definition captures the pool safety inspector register PSC was required to keep under section 246CB of the unamended Act.

Subsections (1) and (2) of new section 336 ensure that the validity of the appointments of pool safety investigators made before the commencement is not affected by the transfer of pool safety functions from the PSC to the QBCC commissioner. The provisions also ensure the validity of any authorisations given to those investigators before the commencement remains unaffected by the transfer.

Subsections (3) and (4) of new section 336 confirm that any action taken by an investigator for an investigation continues to have effect after the commencement. In particular section 336(4) provides that where a notice is issued before the commencement requiring the production of documents the notice remains valid and the documents must be produced to the QBCC commissioner at the time specified in the notice.

In addition, the clause ensures that the validity of identity cards issued to those investigators before the commencement is not affected.

New section 337(2) ensures that if before the commencement the PSC was investigating a complaint against a pool safety inspector the complaint is taken to have been made to the QBCC commissioner. As a result, any action that the PSC could have taken in relation to the complaint can be taken by the Commissioner after the commencement.

The new section also ensures that if QCAT is conducting a disciplinary proceeding on application by the PSC before the commencement, the QBCC commissioner is taken to have made the application. This enables the proceeding to continue until it is completed, with the commissioner standing in the place of the PSC.

New section 338 ensures the validity of particular administrative decisions and actions taken by the PSC before the commencement is not affected by the transfer of pool safety functions from the PSC to the QBCC commissioner. It also ensures the validity of documents issued by the PSC, including pool safety certificates and licences, issued by the PSC is not affected by the transfer.

The new section also provides that the code of conduct for pool safety inspectors made by the chief executive before the commencement continues in effect after the commencement, as if the code of conduct had been made by the QBCC commissioner.

New Division 3 deals with the transfer of matters from the chief executive to QBCC. It introduces new sections 339 and 340.

New section 339 deals with applications made before the commencement to the chief executive for approval of a pool safety management plan. It allows the QBCC

commissioner to deal with the applications as if they had been made to the commissioner.

New section 340 continues the effect of actions taken by the chief executive under the unamended Act in relation to a pool safety management plan before the commencement. Such actions could include the cancellation of approval for a plan and the amendment of a plan under chapter 8, part 2, division 6, subdivision 3.

Division 4 of new Part 18 deals with the review of particular decisions. The division introduces new section 341.

New section 341 applies if, before the commencement, an application for review of a relevant decision had been made but not decided or otherwise finally dealt with. It also applies if the period in which a person was entitled to apply under the unamended Act for review of a relevant decision had started but not ended.

The section allows the review to be completed, or started and completed, as if the unamended Act continued to apply and the QBCC Act, part 7, division 3 did not apply for the review of the decision.

The definition *relevant decision* in section 338(3) captures any decision made under the BA for which a person may apply to QCAT. For example, the definition captures a decision made by QBCC to decide to refuse to license an applicant under section 157. It also captures a decision made by PSC to refuse to license an applicant, or to impose conditions on a licence issued to an applicant, under section 246BJ.

Division 5 deals with other matters. It introduces sections 342 to 343.

New section 342 provides that in an Act or document a reference to the PSC may, if the context permits, be taken to be a reference to the QBCC commissioner. The clause ensures that a reference in an Act or document to PSC can be read as a reference to the QBCC commissioner in appropriate circumstances.

New section 343 ensures that nothing done under amendments to the BA has effect on existing legal relationships, except as provided for in the amendments in the Bill. For example an existing contract between the PSC and a supplier will not be able to be terminated by the supplier merely as a result of the changes brought into effect by the Bill. Instead the purpose of this provision is ensure existing legal relationships remain unaffected such that the QBCC will be able to assume all rights, liabilities and responsibilities under a contract that previously accrued to the PSC. Equally, the QBCC commissioner will be able to enforce any disciplinary action against licensees as if the commissioner, and not the PSC, had made the orders.

New section 344 allows a regulation to make provision of a saving or transitional nature that is necessary to allow or facilitate the doing of anything to achieve the transition from the operation of the BA as in force before the commencement to the operation of the BA as in force after the commencement. It allows such a regulation

to be made only if new part 18 is insufficient for the transition. Any such regulation may have retrospective effect, and will expire 1 year after the day of the commencement of the new section.

Clause 40 amends schedule 2 to the BA, which includes the dictionary for the Act.

Clause 40(1) omits definitions in the dictionary that, following the transfer of pool safety functions from the PSC and the chief executive to the QBCC, will no longer be required. Clause 40(2) inserts in the dictionary new definitions required for the amendments providing for the transfer of those functions.

Clause 40(3) replaces the reference to section 246FB, which established the Pool Safety Fund before the commencement, with a reference to section 246G, which establishes a new Pool Safety Fund to be held and managed by the QBCC commissioner.

Clause 40(4) replaces paragraph (b) of the definition of *information notice* with a new paragraph. The new paragraph defines an information notice for particular decisions of the QBCC commissioner. A person who receives such a notice may apply to QBCC for internal review of the decision under the QBCC Act, or apply to QCAT for external review of the decision under the QBCC Act.

Clause 40(5) amends the definition *QBCC* so it refers to the defined term ‘QBCC Act’, introduced by clause 40(2), rather than the full title of the Act, *Queensland Building and Construction Commission Act 1991*.

PART 2 AMENDMENT OF THE PLUMBING AND DRAINAGE ACT 2002

Clause 41 provides that Part 2 of Chapter 3 of the Bill amends the PDA. The note included after clause 41 is intended to alert the reader that Schedule 1 includes additional amendments of the PDA. The additional amendments are minor or consequential in nature.

Clause 42 replaces the heading for Part 2 of the PDA with a new heading that refers to the new role of QBCC for plumbing and drainage.

Clause 43 replaces Part 2, Divisions 1 to 7 of the PDA with new Divisions 1 and 2.

New division 1 deals with QBCC’s new functions for plumbing and drainage. It introduces new sections 5 and 6 of the PDA.

New section 5 sets out the functions for plumbing and drainage that the QBC board is required to perform. Those functions include conferring on national policy development and implementation for the trade, reporting to the Minister on issues relating to plumbing and drainage and performing any other functions relating to plumbing and drainage given to the board under the PDA.

New section 6 sets out the functions for plumbing and drainage that the QBCC commissioner is required to perform, all of which are operational in nature. Those functions include administering the licensing scheme for plumbing and drainage, and approving audit programs and auditing licensees to monitor and enforce compliance with part 4.

The new functions of the QBCC commissioner also include performing any other functions relating to plumbing and drainage given to the commissioner under the PDA. This includes the power given to the commissioner to approve forms for use under the PDA.

The note inserted after section 6 is intended to inform the reader that the powers of the commissioner required to carry out the functions mentioned in section 6 are set out in the QBCC Act, section 20J(3).

Clause 44 replaces the heading for part 2, division 8 of the PDA. The new heading refers to investigators appointed by the QBCC commissioner.

Clause 45 replaces section 33A of the PDA, which deals with the appointment of investigators, with a new section. The new section allows the QBCC commissioner to appoint a relevant officer as an investigator if the commissioner is satisfied the officer is qualified for appointment because the officer has the necessary expertise or experience.

Clause 46(1) amends section 33TB of the PDA. The amendment allows the QBCC commissioner to prepare and approve an audit program under which the commissioner may audit licensees to find out if they have been complying with part 4 of the PDA.

Clause 46(2) omits section 33TB(2) and (3). Those provisions will no longer be required following the transfer of functions for licensing, compliance and disciplinary action relating plumbers and drainers from the council and the chief executive of DHPW to QBCC.

Clause 46(3) replaces section 33TB(5) with a new provision requiring the QBCC commissioner to ensure a copy of an approved audit program is available for inspection at QBCC's heads office.

Clause 47 inserts new Part 2, Division 3.

New Division 3 introduces new section 33X.

New section 33X provides that fees payable under the PDA must be paid to QBCC unless a regulation provides otherwise. It requires all revenue received to be used for the administration of the PDA, including monitoring and enforcing compliance with the PDA. It also allows funds that are not immediately required for the administration of the Act to be used to advance the principles, standards or trade of plumbing and

drainage. This could include funding educational and training activities directed at improving understanding of relevant codes and standards by members of plumbing industry.

Clause 48 removes part 7 of the PDA, which deals with reviews of decisions about plumbing and drainage licences. The section will no longer be required following the transfer of functions from the council and the chief executive to QBCC and the introduction of new provisions in the QBCC Act providing for internal and external review of decisions made by QBCC.

Clause 49 replaces section 135 of the PDA with a new section. Under the new section it is not necessary to provide evidence in a legal proceeding proving the appointment of the chief executive, the QBCC commissioner or an inspector. The same applies in relation to the authority of the chief executive, the commissioner or an inspector to do anything under the PDA.

Clause 50 amends section 136 of the PDA so it provides that a signature purporting to be the signature of the Minister, the chief executive, the QBCC commissioner or an inspector is evidence of the signature it purports to be. Section 136 makes legal proceedings more efficient.

Clause 51 amends section 137 of the PDA so it provides that a certificate purporting to be signed by the chief executive or the QBCC commissioner and stating a matter mentioned in section 137 is evidence of the matter. Section 137 makes legal proceedings more efficient.

Clause 52 inserts new section 138 which specifically provides who can commence prosecutions for offences against the PDA. The provision aligns with section 89 of the PDA which outlines when local governments and entities are responsible for administration of the Standard Plumbing and Drainage Regulation. The section also provides that the chief executive and the QBCC commissioner can commence proceedings for offences against the PDA.

Clause 53 expands section 141 of the PDA so it provides that both the chief executive and the QBCC commissioner may approve forms for use under the PDA.

Clause 54 replaces section 144 of the PDA with a new section. The new section allows the chief executive to publish information about plumbing and drainage work, including information about legislation and technical standards for the work. It is intended that the section will allow the chief executive to publish information that will provide guidance to the plumbing industry on technical matters about the application of legislation and standards that apply to plumbing and drainage work.

Clause 55 amends section 148, which is a transitional provision. The clause inserts a note to inform a person reading the provision after the commencement that the council was disestablished under the amendments. The note assumes the reader will read the note when the Bill has become an Act.

Clause 56 amends section 179 of the PDA, which is a transitional provision. The clause inserts a note to inform a person reading the provision after the commencement that the council and the office of the registrar of the council were disestablished under the amendments. The note assumes the reader will read the note when the Bill has become an Act.

Clause 57 inserts a new Part 10, Division 11 in the PDA.

New Division 11 introduces Subdivisions 1 to 4.

New Subdivision 1 deals with preliminary matters. It introduces section 191.

New section 191 sets out definitions for the new division. It defines *commencement* to mean the commencement of section 191.

New Subdivision 2 of the new division introduces new section 192, which deals with the dissolution of the former council.

New section 192 provides that, on the commencement, the former council ceases to exist and provides that the registrar and members of the council go out of office on commencement. Section 192(2) defines *registrar* to mean the person holding the office of registrar under the unamended Act immediately before the commencement.

New Subdivision 3 of the new division introduces new sections 193 to 200, which deal with transitional issues related to the transfer of matters from the former council and the chief executive to QBCC.

New section 193 transfers assets, liabilities and rights held by the former council immediately before the commencement to QBCC. It also provides that QBCC is substituted for the former council in all agreements to which the former council was a party immediately before the commencement.

New section 194 allows the QBCC commissioner to deal with applications made to the former council but not finally decided or withdrawn before the commencement as though the applications had been made to the QBCC commissioner. It also provides that an application made by the former council to QCAT before the commencement is taken to be an application to QCAT made by the QBCC commissioner.

New section 195 deals with any legal proceedings potentially or actually involving the former council before the commencement. The section allows the QBCC commissioner to deal with the proceeding after the commencement as though the proceedings had always involved the commissioner.

New section 196 deals with any Ministerial direction given to the former council before the commencement. It provides that any such direction is, if the context permits, taken to have been given to QBCC under the QBCC Act, section 9.

New section 197 provides that a record of the former council becomes a record of QBCC on the commencement. The definition *record* includes a register kept by the former council under the unamended Act. The definition captures the register of licences the former council was required to keep under section 77 of the unamended Act.

New section 198 ensures the validity of the appointments of investigators made by the chief executive under section 33A of the unamended Act is not affected by the transfer of functions from the chief executive to the QBCC commissioner. The clause also ensures the validity of authorisations given to those investigators before the commencement remains unaffected by the transfer. The provision also ensures any action taken for an investigation prior to the commencement continues to have effect after the commencement. In addition, the clause ensures the validity of identity cards issued to those investigators before the commencement is not affected.

New section 199 deals with pending disciplinary matters. It provides that if, before the commencement, the former council had given a licensee a show cause notice about a disciplinary matter but had not made a decision about the matter, after the commencement that show cause notice is taken to have been given by the QBCC commissioner. The provision allows the QBCC commissioner to deal with disciplinary matters that remain incomplete on the commencement.

The new section also deals with a matter referred to QCAT by the former council before the commencement if the matter was not finally decided or withdrawn before the commencement. The section provides that such a matter is taken to have been referred by the QBCC commissioner.

New section 200 deals with other administrative matters. It ensures the validity of particular administrative decisions and actions taken by the former council under the unamended Act is not affected by the transfer of functions from the former council to the QBCC commissioner. It also ensures the validity of documents issued by the PIC, including notices and licences issued by the former council, is not affected by the transfer. The section preserves the effect of an audit program prepared and approved by the former council despite the transfer of functions.

New Subdivision 4 deals with the review of particular decisions. The new subdivision introduces section 201.

New section 201 deals with pending reviews of particular decisions. It applies if, before the commencement, an application for review of a relevant decision had been made but not decided or otherwise finally dealt with. It also applies if the period in which a person was entitled to apply under the unamended Act for review of a relevant decision had started but not ended.

The new section allows the review to be completed, or started and completed, as if the unamended Act continued to apply and the QBCC Act, part 7, division 3 did not

apply for the review of the decision. The definition *relevant decision* extends to any decision made under the PDA for which a person may apply to QCAT. For example, the definition captures a decision made by the former council to decide to refuse to license an applicant under the unamended Act. It also captures a decision made by the former council to impose conditions on a licence under the unamended Act.

New Subdivision 5 deals with other matters. It introduces sections 202 to 204.

New section 202 provides that in an Act or document a reference to the former council may, if the context permits, be taken to be a reference to the QBCC commissioner. The clause ensures that a reference in an Act or document to the former council can be read as a reference to the QBCC commissioner in appropriate circumstances.

New section 203 ensures that nothing done under amendments to the PDA has effect on existing legal relationships, except as provided for in the amendments in the Bill. For example an existing contract between the former council and a supplier will not be able to be terminated by the supplier merely as a result of the changes brought into effect by the Bill. Instead the purpose of this provision is ensure existing legal relationships remain unaffected such that the QBCC will be able to assume all rights, liabilities and responsibilities under a contact that previously accrued to the council. Equally, the QBCC commissioner will be able to enforce any disciplinary action against licensees as if the commissioner, and not the council, had made the orders.

New section 204 allows a regulation to make provision of a saving or transitional nature that is necessary to allow or facilitate the doing of anything to achieve the transition from the operation of the PDA as in force before the commencement to the operation of the PDA as in force after the commencement. It allows such a regulation to be made only if new division 11 is insufficient for the transition. Any such regulation may have retrospective effect, and will expire 1 year after the day of the commencement of the section.

Clause 58 amends the schedule to the PDA, which includes the dictionary for the Act.

Clause 58(1) omits definitions in the dictionary that, following the transfer of functions from the former council and the chief executive to the QBCC, will no longer be required. Clause 58(2) inserts in the dictionary new definitions required for the amendments providing for the transfer of those functions.

Clause 58 (3) expands the definition *approved form* so it refers to a form approved by either the chief executive or the QBCC commissioner under section 141. The amendment is required as a result of an amendment of section 141.

Clause 58(4) amends paragraph (a) of the definition *information notice* so it refers to a decision made by the QBCC commissioner rather than the council.

Clause 58 renumbers paragraph (a)(i) to (iv) and introduces new paragraph (a)(i) to (iv) into their place. The new provisions require an information notice to state that the person to whom the notice is given may apply to QBCC for internal review of the decision under the QBCC Act, or apply to QCAT for external review of the decision, under the QBCC Act.

PART 3 AMENDMENT TO THE QUEENSLAND AND BUILDING CONSTRUCTION COMMISSION ACT 1991

Clause 59 provides that this Part amends the *Queensland and Building Construction Commission Act 1991*.

Clause 60 amends Section 56AC to include a provision that provides an excluded individual for a relevant event does not also become an excluded individual for another relevant event if the Commission is satisfied that both events are consequences resulting from what is, in substance, the one set of circumstances.

Clause 61 amends Section 56AD subsection 8 to refer to new sub-section 56AC subsection 5.

Clause 62 inserts a new heading and definitions for a new sub-division relating to internal review.

Clause 63 amends Section 86 which relates to reviewable decisions.

Clause 64 inserts new Sections 86A to 86F.

New section 86A sets out who may apply for an internal review. A person may not apply for an internal review if they have applied to the tribunal for the review of a reviewable decision under sub-division 2.

New section 86B requires that an internal review application must be lodged at an office of the Commission and be made within either 28 days after the applicant is given the notice of the reviewable decision to which the application relates or otherwise becomes aware of the decision or a longer period allowed by the Commission.

New section 86C sets out the process for the Commission to make an internal review decision. The Commissioner must, as soon as practicable but within 28 days after the internal review application is made or a longer period agreed by the applicant make a new decision as if the reviewable decision the subject of the application had not been made. If the Commission does not decide the application within the required period the Commission is taken to have made a reviewable decision at the end of the required period that is the same as the reviewable decision.

New section 86D requires that as soon as is practicable or after an internal review decision is made or is taken to have been made under section 86C, the Commission

must give the applicant and any other person affected by the decision written notice of the decision.

New section 86E provides the definition of reviewable decision for the sub-division.

New section 86F sets out the decisions of the Commissioner under the Act which are not reviewable decisions under the sub-division.

Clause 65 inserts new section 87A which relates to the decision of the tribunal on review of particular reviewable decisions.

Clause 66 inserts a new Part into the *Queensland Building and Construction Act 1991* to facilitate the transfer of assets and staff from a relevant entity to the Queensland Building and Construction Commission. The part provides a head of power to make regulations to facilitate an orderly transfer of functions, roles and responsibilities to the Commission from relevant entities and imposes certain restrictions on the transfer of employees from a relevant entity to the Commission.

New section 108AA provides a definition for the term relevant entity. This definition restricts the operation of the regulation making power to transfers to the Commission from government departments, entities established under an Act or entities that are ultimately owned by the State.

New section 108AB provides a head of power to make a regulation. Under subsection (1) the regulation will:

- allow for the transfer of assets, liabilities and associated consideration
- clarify whether the Queensland Building and Construction Commission is the successor in law of a relevant entity
- legal proceedings to be taken over by the Commission
- allow for the transfer of employees from a relevant entity to the Commission and about the application of particular industrial instruments to the employees.

Section 108AB(2) provides that a transfer regulation may transfer fixtures to land – without transferring ownership in land and applies despite the operation of any other law or instrument.

Section 108AB(3) provides that a transfer regulation may be inconsistent with the *Industrial Relations Act 1999* and any industrial instrument.

Section 108AB(4) provides that a transfer regulation may provide how the transfer of assets are to be accounted for when they are transferred to the Commission.

New section 108AC makes specific provision to protect the rights of employees who are transferred from relevant entities to the Queensland Building and Construction Commission.

Section 108AC(2) introduces a no-detriment principle for relevant entity employees who are transferred to the Commission. It does so by preserving key entitlements including, total remuneration, rights to superannuation, sick leave, long service and other leave. It also makes clear that the change of employment will not affect continuity or constitute a termination, retrenchment or redundancy for the purpose of calculating an employee's entitlements. The provision also makes clear that the transfer of an employee to the Commission does not give rise to any rights to be paid out for accumulated recreation, sick, long service leave or other leave.

This is consistent with the purpose of the provision which is to ensure a transferred employee is in the same position as if they were still working for the relevant entity.

Section 108AC(3) provides that the transfer of employment to the Commission will take effect despite any contract, law or instrument.

Section 180AC(4) provides that if the transfer regulation calls up a particular industrial instrument for an employee, there will be no reduction in the employee's total remuneration.

Clause 67 amends the Dictionary in Schedule 2.

PART 4 MINOR AND CONSEQUENTIAL AMENDMENTS

Clause 68 provides that Schedule 1 amends the Acts mentioned in it.