

Queensland



**QUEENSLAND BUILDING  
SERVICES AUTHORITY AND  
OTHER LEGISLATION  
AMENDMENT BILL 2002**



# Queensland



## QUEENSLAND BUILDING SERVICES AUTHORITY AND OTHER LEGISLATION AMENDMENT BILL 2002

### TABLE OF PROVISIONS

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title . . . . .	8
2	Commencement . . . . .	8
<b>PART 2—AMENDMENT OF QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991</b>		
3	Act amended in pt 2 . . . . .	8
4	Insertion of new s 4AA . . . . .	8
	4AA Note in text . . . . .	8
5	Replacement of s 4C (Certain building contractors not bound) . . . . .	9
	4C Certain building contractors not bound . . . . .	9
6	Replacement of s 9A (Board's policies) . . . . .	9
	9A Board's policies . . . . .	9
7	Amendment of s 25 (General Statutory Fund) . . . . .	9
8	Amendment of s 26 (Insurance Fund) . . . . .	10
9	Amendment of s 30 (Classes of licences) . . . . .	10
10	Amendment of s 31 (Entitlement to contractor's licence) . . . . .	11
11	Insertion of new s 31A . . . . .	11
	31A No entitlement to contractor's licence if particular partners . . . . .	11
12	Insertion of new s 32A . . . . .	12
	32A Exception for s 30(4) licences . . . . .	12
13	Amendment of s 35 (Imposition of conditions etc. on grant of licence) . . . . .	12
14	Amendment of s 36 (Subsequent imposition of conditions etc.) . . . . .	12

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

15	Amendment of s 39 (Register) . . . . .	13
16	Amendment of s 42 (Unlawful carrying out of building work) . . . . .	14
17	Amendment of s 43 (Supervision of building work). . . . .	14
18	Amendment of s 44 (Permits for owner-builders). . . . .	15
19	Amendment of s 48 (Cancellation or suspension of licence) . . . . .	15
20	Replacement of pt 3, div 9A, hdg (Monitoring continued satisfaction of financial requirements) . . . . .	16
21	Amendment of s 50A (Approved audit program) . . . . .	16
22	Amendment of s 50C (Supply of financial information under approved audit program or for other reason). . . . .	16
23	Insertion of new s 51B. . . . .	18
	51B Licensed contractor must not contract with unlicensed person . . . . .	18
24	Amendment of s 55 (Notification of nominated supervisor). . . . .	18
25	Amendment of s 56 (Partnerships) . . . . .	19
26	Omission of s 56AA (Definitions for pt 3A). . . . .	19
27	Amendment of s 56AD (Becoming a permitted individual) . . . . .	20
28	Amendment of s 56AE (Exclusion from contractor’s licence) . . . . .	20
29	Amendment of s 56AF (Procedure if licensee is excluded individual). . . . .	20
30	Amendment of s 56AG (Procedure if licensee is excluded company) . . . . .	20
31	Insertion of new pt 3B . . . . .	21
	<b>PART 3B—PERMANENTLY EXCLUDED INDIVIDUALS</b>	
	<i>Division 1—Preliminary</i>	
	57 Operation of pt 3B . . . . .	21
	58 Meaning of “permanently excluded individual” . . . . .	21
	<i>Division 2—Licence exclusion</i>	
	59 Exclusion from licence . . . . .	23
	60 Permanently excluded individual not fit and proper . . . . .	24
	61 When individual no longer permanently excluded individual. . . . .	24
32	Insertion of new pt 3C. . . . .	24
	<b>PART 3C—CONVICTED COMPANY OFFICERS</b>	
	<i>Division 1—Preliminary</i>	
	62 Operation of pt 3C . . . . .	24

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

<i>Division 2—Licence exclusion and cancellation</i>	
63	Exclusion from licence . . . . . 24
64	Procedure if authority considers individual a convicted company officer . . . . . 25
65	Ending procedure without further action . . . . . 25
66	Notice of cancellation and that not a fit and proper person to individual who is a licensee . . . . . 25
67	Notice that not a fit and proper person to individual who is not a licensee . . . . . 26
67AA	Notice by authority to company for which a convicted company officer is a director, secretary, influential person or nominee . . . . . 27
33	Insertion of new pt 3D . . . . . 28
<b>PART 3D—BANNED INDIVIDUALS</b>	
<i>Division 1—Preliminary</i>	
67AB	Meaning of “tier 1 defective work” and “carry out tier 1 defective work” . . . . . 28
67AC	Banned individual . . . . . 29
67AD	Operation of pt 3D . . . . . 29
<i>Division 2—Licence exclusion and cancellation</i>	
67AE	Exclusion from licence . . . . . 29
67AF	Procedure if authority considers individual has carried out tier 1 defective work . . . . . 29
67AG	Ending procedure without further action . . . . . 30
67AH	Notice of cancellation and that not a fit and proper person to individual who is a licensee . . . . . 31
67AI	Notice that not a fit and proper person to individual who is not a licensee . . . . . 32
67AJ	Notice by authority to director, secretary, influential person or nominee about tier 1 defective work . . . . . 33
67AK	Ending procedure without further action . . . . . 34
67AL	Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee . . . . . 34
67AM	Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee . . . . . 36
67AN	Notice by authority to company for which a banned individual is a director, secretary, influential person or nominee . . . . . 38

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

	67AO Terms of bans . . . . .	38
	67AP Relationship of this part with Tribunal Act, pt 5, div 3 . . . . .	40
34	Insertion of new pt 3E . . . . .	41
	<b>PART 3E—DISQUALIFIED INDIVIDUALS</b>	
	<i>Division 1—Preliminary</i>	
	67AQ Definitions for pt 3E . . . . .	41
	67AR Meaning of “demerit offence” . . . . .	42
	67AS Meaning of “judgment debt” . . . . .	43
	67AT Meaning of “unsatisfied” judgment debt . . . . .	43
	67AU Disqualified individual . . . . .	43
	67AV Operation of pt 3E . . . . .	44
	<i>Division 2—Calculation of demerit points and notification of unsatisfied judgment debts</i>	
	67AW Demerit points for demerit matters . . . . .	44
	67AX When demerit points allocated for demerit offences . . . . .	44
	67AY When demerit points allocated for unsatisfied judgment debts . . . . .	45
	67AZ Judgment debtor must notify unsatisfied judgment debt . . . . .	46
	67AZA Authority must notify person about demerit points . . . . .	46
	67AZB Limit on demerit points from single audit or investigation . . . . .	46
	<i>Division 3—Licence exclusion and cancellation</i>	
	67AZC Exclusion from licence . . . . .	47
	67AZD Procedure if authority considers individual has accumulated 30 demerit points . . . . .	47
	67AZE Ending procedure without further action . . . . .	48
	67AZF Notice of cancellation and that not a fit and proper person to individual who is a licensee . . . . .	48
	67AZG Notice that not a fit and proper person to individual who is not a licensee . . . . .	49
	67AZH Notice by authority to director, secretary, influential person or nominee about demerit points . . . . .	50
	67AZI Ending procedure without further action . . . . .	51
	67AZJ Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee . . . . .	51

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

	67AZK Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee . . . . .	53
	67AZL Notice by authority to company for which a disqualified individual is a director, secretary, influential person or nominee . . .	54
	67AZM Terms of disqualifications . . . . .	55
35	Amendment of s 67V (Offence of not warning that contract is construction management trade contract) . . . . .	57
36	Amendment of s 69 (Insurance of building work) . . . . .	57
37	Insertion of new s 71A . . . . .	57
	71A Dispute resolution before rectification of building work ordered . . .	57
38	Insertion of new ss 106A–106C . . . . .	58
	106A Power to require production of documents . . . . .	58
	106B Failure to produce document . . . . .	58
	106C Failure to certify copy of document. . . . .	59
39	Amendment of s 107 (Power to enter and inspect building site). . . . .	59
40	Amendment of s 108 (Obligation of assessment manager). . . . .	59
41	Amendment of s 114 (Protection) . . . . .	60
42	Amendment of s 116 (Regulations). . . . .	60
43	Amendment of sch 1 (Transitional and validating provisions) . . . . .	60
44	Amendment of sch 2 (Dictionary). . . . .	64
	<b>PART 3—AMENDMENT OF DOMESTIC BUILDING CONTRACTS ACT 2000</b>	
45	Act amended in pt 3. . . . .	68
46	Insertion of new s 17A . . . . .	68
	17A Multiple contracts for the same domestic building work. . . . .	68
	<b>PART 4—AMENDMENT OF QUEENSLAND BUILDING TRIBUNAL ACT 2000</b>	
47	Act amended in pt 4. . . . .	68
48	Amendment of s 104 (Reviewable decisions). . . . .	69
49	Amendment of s 111 (Orders for disciplinary action) . . . . .	70
	<b>PART 5—AMENDMENT OF STATE HOUSING ACT 1945</b>	
50	Act amended in pt 5. . . . .	70
51	Amendment of s 22B (Provision of land for industry, trade or business) . . .	70
52	Insertion of new s 51 . . . . .	71

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

51	Validation of annual rental charged for s 22B .....	71
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**2002**

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**A BILL**

**FOR**

**An Act to amend the *Queensland Building Services Authority Act 1991*,  
and for other purposes**

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*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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**The Parliament of Queensland enacts—** 1

**PART 1—PRELIMINARY** 2

**Clause 1 Short title** 3

This Act may be cited as the *Queensland Building Services Authority  
and Other Legislation Amendment Act 2002*. 4  
5

**Clause 2 Commencement** 6

This Act, other than sections 3, 41 and 43 and part 5, commences on a  
day to be fixed by proclamation. 7  
8

**PART 2—AMENDMENT OF QUEENSLAND BUILDING  
SERVICES AUTHORITY ACT 1991** 9  
10

**Clause 3 Act amended in pt 2** 11

This part amends the *Queensland Building Services Authority Act 1991*. 12

**Clause 4 Insertion of new s 4AA** 13

After section 4— 14

*insert—* 15

**‘4AA Note in text** 16

‘A note in the text of this Act is part of the Act.’. 17

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 5</b>	<b>Replacement of s 4C (Certain building contractors not bound)</b>	1
	Section 4C—	2
	<i>omit, insert—</i>	3
	<b>‘4C Certain building contractors not bound</b>	4
	‘Parts 5 and 6 do not bind a building contractor to the extent that the business carried on by the building contractor consists of or includes—	5
		6
	(a) carrying out completed building inspections; or	7
	(b) contract administration carried out in relation to building work designed by the building contractor.’.	8
		9
 <b>Clause 6</b>	 <b>Replacement of s 9A (Board’s policies)</b>	 10
	Section 9A—	11
	<i>omit, insert—</i>	12
	<b>‘9A Board’s policies</b>	13
	‘(1) To have effect, a policy of the board must be approved by regulation and published in the gazette.	14
		15
	‘(2) The general manager must—	16
	(a) keep copies of the board’s policies available for inspection, without charge, at the authority’s office at any time that office is open to the public; and	17
		18
		19
	(b) if asked, advise where copies of the board’s policies may be obtained.’.	20
		21
 <b>Clause 7</b>	 <b>Amendment of s 25 (General Statutory Fund)</b>	 22
	Section 25(3)—	23
	<i>omit, insert—</i>	24
	‘(3) The following amounts are to be paid from the fund—	25
	(a) costs of administering this Act, apart from the costs of administering the statutory insurance scheme;	26
		27
	(b) amounts mentioned in subsection (4A).	28

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

‘(4) A regulation may state a single amount that is to be transferred from the fund to the Insurance Fund. 1  
2

‘(4A) The authority must, at times decided by the authority, transfer 3  
amounts from the fund to the Insurance Fund in payment of the single 4  
amount stated in the regulation made under subsection (4).’. 5

**Clause 8 Amendment of s 26 (Insurance Fund) 6**

(1) Section 26(2)— 7

*insert—* 8

‘(c) all amounts transferred from the General Statutory Fund under 9  
section 25.’. 10

(2) Section 26(3)(c), (4), (5) and (6)— 11

*omit.* 12

**Clause 9 Amendment of s 30 (Classes of licences) 13**

(1) Section 30(2)(a)— 14

*omit.* 15

(2) Section 30(2)(b) and (c)— 16

*renumber* as section 30(2)(a) and (b). 17

(3) Section 30— 18

*insert—* 19

‘(3) A contractor’s licence or supervisor’s licence may be issued for any 20  
class of licence. 21

‘(4) However, a regulation may specify a class of licence to be a class 22  
that may be held and renewed by a person who held that class immediately 23  
before the commencement of the regulation specifying the class but may 24  
not, after the commencement of that regulation, be applied for by, or issued 25  
to, another person.’. 26

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

<b>Clause 10</b>	<b>Amendment of s 31 (Entitlement to contractor's licence)</b>	1
	(1) Section 31(2)(b), 'nominated supervisor'—	2
	<i>omit, insert—</i>	3
	'nominee'.	4
	(2) Section 31(2)(b), 'the supervisor'—	5
	<i>omit, insert—</i>	6
	'the nominee'.	7
	(3) Section 31(3)(c)—	8
	<i>renumber</i> as section 31(3)(d).	9
	(4) Section 31(3)—	10
	<i>insert—</i>	11
	'(c) tier 1 defective work carried out by the person, whether or not the person received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and'.	12
		13
		14
<b>Clause 11</b>	<b>Insertion of new s 31A</b>	15
	After section 31—	16
	<i>insert—</i>	17
	<b>'31A No entitlement to contractor's licence if particular partners</b>	18
	'A person (whether an individual or a company) is not entitled to a contractor's licence if the person carries on, or intends to carry on, business under the licence in partnership with another person who is—	19
		20
		21
	(a) an excluded individual; or	22
	(b) a permanently excluded individual; or	23
	(c) a convicted company officer; or	24
	(d) a banned individual; or	25
	(e) a disqualified individual; or	26
	(f) an excluded company; or	27
	(g) a company for which a permanently excluded individual is a director, secretary, influential person or nominee; or	28
		29

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- (h) a company for which a convicted company officer is a director, secretary, influential person or nominee; or 1  
2
- (i) a company for which a banned individual is a director, secretary, influential person or nominee; or 3  
4
- (j) a company for which a disqualified individual is a director, secretary, influential person or nominee.’. 5  
6

<b>Clause 12</b>	<b>Insertion of new s 32A</b>	7
	Part 3, division 2, after section 32—	8
	<i>insert—</i>	9
	<b>‘32A Exception for s 30(4) licences</b>	10
	‘This division is subject to section 30(4).’.	11
<b>Clause 13</b>	<b>Amendment of s 35 (Imposition of conditions etc. on grant of licence)</b>	12 13
	(1) Section 35(2)—	14
	<i>renumber</i> as section 35(3).	15
	(2) Section 35—	16
	<i>insert—</i>	17
	‘(2) Without limiting subsection (1), a licence for which an occupational licence is required is taken to be subject to the condition that the licensee hold, and continue to hold, for the term of the licence, the occupational licence.’.	18 19 20 21
<b>Clause 14</b>	<b>Amendment of s 36 (Subsequent imposition of conditions etc.)</b>	22
	Section 36—	23
	<i>insert—</i>	24
	‘(3B) A condition may be imposed requiring the licensee to give to the authority specified documents that relate to the licensee’s obligations under part 4A or the <i>Domestic Building Contracts Act 2000</i> .	25 26 27
	‘(3C) Subsections (3), (3A) and (3B) do not limit the power to impose conditions under subsection (2).’.	28 29

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

<b>Clause 15</b>	<b>Amendment of s 39 (Register)</b>	1
	(1) Section 39(2)(b), ‘nominated supervisor’—	2
	<i>omit, insert—</i>	3
	‘nominee’.	4
	(2) Section 39(3)—	5
	<i>insert—</i>	6
	(e) if the licensee has previously had a licence cancelled under section 67AH or 67AL—the details of the tier 1 defective work that led to the cancellation; and	7 8 9
	(f) if the licensee has previously had a licence cancelled under section 56AF—the details of the relevant event that caused the licensee to be an excluded individual; and	10 11 12
	(g) any demerit points allocated to the licensee, the demerit matters for which they were allocated and the dates the points took effect; and	13 14 15
	(h) if the licensee has previously had a licence cancelled under section 67AZF or 67AZJ—the details of the demerit matters and demerit points that led to the cancellation.’.	16 17 18
	(3) Section 39(7)—	19
	<i>omit, insert—</i>	20
	‘(7) A note made in the register under subsection (3) must be taken off—	21
	(a) for information mentioned in subsection (3)(e), (f) and (h), 10 years after it is made; or	22 23
	(b) for information mentioned in subsection (3)(g), 3 years after it is made; or	24 25
	(c) otherwise, 5 years after it is made.	26
	‘(7A) However, details of demerit points and the demerit matters for which points were allocated must be removed from the register—	27 28
	(a) if the points stop having effect; or	29
	(b) if the points relate to an unsatisfied judgment debt—when the authority is satisfied the judgment debt has been paid.’.	30 31

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 16</b>	<b>Amendment of s 42 (Unlawful carrying out of building work)</b>	1
	(1) Section 42—	2
	<i>insert—</i>	3
	‘(5A) An unlicensed person who, as a subcontractor, carries out, or undertakes to carry out, building work for a licensed trade contractor, does not contravene this section if the work is within the scope of the building work allowed by the class of licence held by the contractor.’	4 5 6 7
	(2) Section 42—	8
	<i>insert—</i>	9
	‘(12) In this section—	10
	“ <b>licensed trade contractor</b> ” means a licensed contractor other than a licensed contractor who holds a contractor’s licence for the following—	11 12 13
	(a) general building;	14
	(b) house building;	15
	(c) a class of building work prescribed by regulation.’	16
<b>Clause 17</b>	<b>Amendment of s 43 (Supervision of building work)</b>	17
	(1) Section 43(2), ‘contractor is’—	18
	<i>omit, insert—</i>	19
	‘contractor, and for a licensed contractor that is a company, the company and the company’s nominee are’.	20 21
	(2) Section 43(2), after ‘accordingly’—	22
	<i>insert—</i>	23
	‘the systems in place for supervision and’.	24
	(3) Section 43(3)—	25
	<i>omit, insert—</i>	26
	‘(3) In deciding whether a licensed contractor or nominee has ensured adequate supervision of building work, regard must be had to whether the work is—	27 28 29



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

(a) in accordance with the plans and specifications for the work set out in the contract between the licensed contractor and a consumer; and 1  
2  
3

(b) of a standard expected of a competent holder of a contractor's licence of the appropriate class.' 4  
5

(4) Section 43(5), after 'commits an offence'— 6

*insert*— 7

'and, if the licensed contractor is a company, the company's nominee also commits an offence'. 8  
9

**Clause 18 Amendment of s 44 (Permits for owner-builders) 10**

(1) Section 44— 11

*insert*— 12

'(3A) A regulation made under subsection (3) may, if the applicant is a company, require that a director of the company must have completed a specified course of instruction.' 13  
14  
15

(2) Section 44(5), definition "owner", 'section 4'— 16

*omit, insert*— 17

'schedule 2'. 18

**Clause 19 Amendment of s 48 (Cancellation or suspension of licence) 19**

(1) Section 48(e), 'nominated supervisor'— 20

*omit, insert*— 21

'nominee'. 22

(2) Section 48(j), after 'section 31(1)(a)'— 23

*insert*— 24

'or (2)(a)'. 25

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 20</b>	<b>Replacement of pt 3, div 9A, hdg (Monitoring continued satisfaction of financial requirements)</b>	1 2
	Part 3, division 9A, heading—	3
	<i>omit, insert—</i>	4
	<b><i>‘Division 9A—Monitoring continued satisfaction of financial requirements and compliance with part 4A and the Domestic Building Contracts Act 2000’.</i></b>	5 6 7
<b>Clause 21</b>	<b>Amendment of s 50A (Approved audit program)</b>	8
	(1) Section 50A(1)—	9
	<i>omit, insert—</i>	10
	‘(1) The Minister may approve a program (an <b>“approved audit program”</b> ) under which the authority may audit licensees for 1 of the following purposes—	11 12 13
	(a) to find out if they continue to satisfy the relevant financial requirements stated in the board’s policies;	14 15
	(b) to find out if they have been complying with part 4A;	16
	(c) to find out if they have been complying with the <i>Domestic Building Contracts Act 2000</i> .’	17 18
	(2) Section 50A(3), ‘program only’—	19
	<i>omit, insert—</i>	20
	‘program for a purpose only’.	21
	(3) Section 50A(3), ‘program within’—	22
	<i>omit, insert—</i>	23
	‘program for that purpose within’.	24
<b>Clause 22</b>	<b>Amendment of s 50C (Supply of financial information under approved audit program or for other reason)</b>	25 26
	(1) Section 50C, heading, ‘ <b>information</b> ’—	27
	<i>omit, insert—</i>	28
	‘ <b>records and other documents</b> ’.	29

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

(2) Section 50C(1)(b)—	1
<i>omit, insert—</i>	2
‘(b) the authority is satisfied, because of information received by the authority, there are reasonable grounds for concern that—	3 4
(i) the licensee does not satisfy the relevant financial requirements stated in the board’s policies; or	5 6
(ii) is not, or has not been, complying with—	7
(A) part 4A; or	8
(B) the <i>Domestic Building Contracts Act 2000</i> .’.	9
(3) Section 50C(2) and (3)—	10
<i>omit, insert—</i>	11
‘(2) The authority may give a written notice to the licensee requiring the licensee to give the authority copies of, or access to—	12 13
(a) the financial records described in the notice; or	14
(b) the documents described in the notice that relate to the licensee’s obligations—	15 16
(i) under part 4A; or	17
(ii) the <i>Domestic Building Contracts Act 2000</i> .’.	18
‘(3) The written notice may describe only—	19
(a) the financial records of the licensee the authority reasonably requires for deciding whether the licensee satisfies the relevant financial requirements stated in the board’s policies; or	20 21 22
(b) the documents the authority reasonably requires for deciding whether the licensee is, or has been, complying with—	23 24
(i) part 4A; or	25
(ii) the <i>Domestic Building Contracts Act 2000</i> .’.	26
(4) Section 50C—	27
<i>insert—</i>	28
‘(4A) It is not a reasonable excuse to fail to comply with the written notice that complying with the notice might tend to incriminate the person.’.	29 30 31

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 23</b>	<b>Insertion of new s 51B</b>	1
	After section 51A—	2
	<i>insert—</i>	3
	<b>‘51B Licensed contractor must not contract with unlicensed person</b>	4
	‘(1) This section applies to building work for which a person must hold a contractor’s licence under this Act.	5 6
	<i>Note—</i>	7
	A person mentioned in section 42(5) to (8) is not required to hold a contractor’s licence in the circumstances stated in the subsections.	8 9
	‘(2) A licensed contractor must not contract with a person for the person to carry out the building work unless the person holds a contractor’s licence of the appropriate class under this Act.	10 11 12
	Maximum penalty—	13
	(a) for a first offence—80 penalty units; and	14
	(b) for a second offence—120 penalty units; and	15
	(c) for a third or subsequent offence—160 penalty units.	16
	‘(3) In a proceeding taken against a licensed contractor for an offence against this section it is a defence for the contractor to prove the contractor took all reasonable action to ensure compliance with this section.	17 18 19
	‘(4) Subsection (3) does not limit the application of the Criminal Code, section 23 or 24. <sup>1</sup>	20 21
	‘(5) Section 42(2) also applies for this section.’	22
<b>Clause 24</b>	<b>Amendment of s 55 (Notification of nominated supervisor)</b>	23
	(1) Section 55, heading, ‘nominated supervisor’—	24
	<i>omit, insert—</i>	25
	<b>‘company’s nominee’.</b>	26

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1 Criminal Code, section 23 (Intention—motive) or 24 (Mistake of fact)

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(2) Section 55(a) and (b), ‘nominated supervisor’—	1
<i>omit, insert</i> —	2
‘nominee’.	3

<b>Clause 25 Amendment of s 56 (Partnerships)</b>	4
Section 56(1)—	5
<i>insert</i> —	6
(d) the unlicensed person must not be—	7
(i) an excluded individual; or	8
(ii) a permanently excluded individual; or	9
(iii) a convicted company officer; or	10
(iv) a banned individual; or	11
(v) a disqualified individual; or	12
(vi) an excluded company; or	13
(vii) a company for which a permanently excluded individual is a director, secretary, influential person or nominee; or	14 15
(viii) a company for which a convicted company officer is a director, secretary, influential person or nominee; or	16 17
(ix) a company for which a banned individual is a director, secretary, influential person or nominee; or	18 19
(x) a company for which a disqualified individual is a director, secretary, influential person or nominee.’.	20 21

<b>Clause 26 Omission of s 56AA (Definitions for pt 3A)</b>	22
Section 56AA—	23
<i>omit.</i>	24

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 27</b>	<b>Amendment of s 56AD (Becoming a permitted individual)</b>	1
	Section 56AD(6), ‘section 98, to have refused’—	2
	<i>omit, insert—</i>	3
	‘the Tribunal Act, section 104(1)(j) to have decided not’.	4
<b>Clause 28</b>	<b>Amendment of s 56AE (Exclusion from contractor’s licence)</b>	5
	Section 56AE, ‘contractor’s’—	6
	<i>omit.</i>	7
<b>Clause 29</b>	<b>Amendment of s 56AF (Procedure if licensee is excluded individual)</b>	8
	Section 56AF(2)(c)—	9
	<i>omit, insert—</i>	10
	‘(c) the circumstances, stated in subsection (3), in which the authority must cancel the individual’s licence.’.	11
		12
		13
<b>Clause 30</b>	<b>Amendment of s 56AG (Procedure if licensee is excluded company)</b>	14
	Section 56AG(2)(d)—	15
	<i>omit, insert—</i>	16
	‘(d) the circumstances, stated in subsections (3), (4) and (5), in which the authority must cancel the company’s licence.’.	17
		18
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*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 31</b>	<b>Insertion of new pt 3B</b>	1
	After part 3A—	2
	<i>insert—</i>	3
	<b>‘PART 3B—PERMANENTLY EXCLUDED INDIVIDUALS</b>	4 5
	<i>‘Division 1—Preliminary</i>	6
	<b>‘57 Operation of pt 3B</b>	7
	‘This part has effect despite anything in part 3.	8
	<b>‘58 Meaning of “permanently excluded individual”</b>	9
	<b>‘(1) A “permanently excluded individual” is an individual—</b>	10
	(a) who has twice been an excluded individual for a relevant event; and	11 12
	(b) who for each relevant event has been given written notice by the authority stating—	13 14
	(i) particulars identifying the relevant event; and	15
	(ii) why the authority considers the individual is an excluded individual for the relevant event; and	16 17
	(iii) that the individual has the right to apply to be categorised as a permitted individual for the relevant event within 28 days of being given notice; and	18 19 20
	(c) who for each occasion the individual has been given notice, either—	21 22
	(i) did not apply to be categorised as a permitted individual within the time stated in the notice; or	23 24
	(ii) applied to be categorised as a permitted individual within the time stated but had the application refused.	25 26
	<b>‘(2) Notice under subsection (1)(b)—</b>	27

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- (a) must be given while the individual is an excluded individual for the relevant event to which the notice relates; and 1  
2
- (b) if the notice is the second or a subsequent notice the individual has been given about being an excluded individual for a relevant event— 3  
4  
5
- (i) must state the effect of the individual becoming a permanently excluded individual; and 6  
7
- (ii) may be given at any time after an earlier notice was given. 8
- ‘(3) An excluded individual who is a licensee is taken to have been given notice under subsection (1)(b) if— 9  
10
- (a) the individual has been given notice under section 56AF(2); and 11
- (b) for a second or subsequent notice, the notice also includes the information required under subsection (2)(b)(i). 12  
13
- ‘(4) A second or subsequent notice may be given for a relevant event whether the event happened before or after another event for which the authority has already given notice under subsection (1)(b). 14  
15  
16
- ‘(5) However, subsection (1) applies only if an individual became an excluded individual for at least 1 of the relevant events after the commencement of this section, irrespective of when the circumstances resulting in the relevant event arose. 17  
18  
19  
20
- ‘(6) If a second or subsequent notice does not include the information required under subsection (2)(b)(i) another notice containing the information may be given. 21  
22  
23
- ‘(7) It is declared that in deciding whether 2 relevant events as mentioned in subsection (1) have happened, a relevant event must be counted— 24  
25  
26
- (a) whether the relevant event happened before or after the other relevant event; and 27  
28
- (b) whether or not the notices under subsection (1)(b) for the relevant events were given in the order the relevant events happened; and 29  
30  
31
- (c) regardless of the length of time between the giving of the notices under subsection (1)(b) for the relevant events; and 32  
33
- (d) whether the relevant event happened before or after the commencement of this section, subject to subsection (5). 34  
35



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<i>Example for subsection (2)(a)—</i>	1
The authority gives a licensee a notice under this section for a relevant event for which the licensee is currently an excluded individual. The authority later discovers that the licensee was, before the grant of the licensee's licence, an excluded individual for a previous relevant event. However, the licensee is not currently an excluded individual for this relevant event because 5 years have elapsed since the event happened. It may not give the licensee a notice for this event.	2 3 4 5 6 7
<i>Example for subsection (7)(a), (b) and (d)—</i>	8
The authority gives a licensee a notice under this section for a relevant event that happened after the commencement of this section. It later discovers that the licensee is an excluded individual for another relevant event that happened before the grant of the licensee's licence and before the commencement of this section. It may give the licensee a notice for this relevant event. Also, it is the later notice, about the earlier relevant event, that must state the effect of the individual becoming a permanently excluded individual.	9 10 11 12 13 14 15
<i>Examples for subsection (7)(c)—</i>	16
1. The authority becomes aware that a person who is an applicant for a contractor's licence is currently an excluded individual for 2 relevant events 1 of which happened after the commencement of this section. The authority may give the person a notice for 1 of the relevant events and immediately give a notice for the other relevant event. Also, it is the later notice that must state the effect of the individual becoming a permanently excluded individual.	17 18 19 20 21 22
2. A licensee becomes an excluded individual for a relevant event. The individual's licence is cancelled under section 56AF and the individual is given notice complying with this section for the relevant event. More than 5 years later the licensee applies for and is granted a contractor's licence. Ten years after this, the licensee becomes an excluded individual for another relevant event. The authority gives a notice complying with this section for the latest relevant event. This notice includes the information required for a second or subsequent notice under subsection (2)(b)(i) and the individual becomes a permanently excluded individual.	23 24 25 26 27 28 29 30 31
<b><i>'Division 2—Licence exclusion</i></b>	32
<b>'59 Exclusion from licence</b>	33
'The authority must not grant a person a licence if the person is—	34
(a) a permanently excluded individual; or	35
(b) a company for which a permanently excluded individual is a director, secretary, influential person or nominee.	36 37

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

<b>‘60 Permanently excluded individual not fit and proper</b>	1
‘A permanently excluded individual is taken not to be a fit and proper person for part 3, division 2.	2 3
<b>‘61 When individual no longer permanently excluded individual</b>	4
‘In deciding whether an individual is, or continues to be, a permanently excluded individual, a relevant event for which the individual has been given notice under section 58(1)(b) must not be counted if the individual—	5 6 7
(a) applies to the tribunal under the Tribunal Act, section 104(1)(j) for a review of the authority’s decision not to categorise the individual as a permitted individual for the relevant event, and the tribunal reverses or annuls the authority’s decision; or	8 9 10 11
(b) applies to the tribunal under the Tribunal Act, section 104(1)(k) for a review of the authority’s decision under section 56AF that a person is an excluded individual, and the tribunal reverses or annuls the authority’s decision.’.	12 13 14 15
<b>Clause 32 Insertion of new pt 3C</b>	16
After part 3B, as inserted by this Act—	17
<i>insert—</i>	18
<b>‘PART 3C—CONVICTED COMPANY OFFICERS</b>	19
<i>‘Division 1—Preliminary</i>	20
<b>‘62 Operation of pt 3C</b>	21
‘This part has effect despite anything in part 3.	22
<i>‘Division 2—Licence exclusion and cancellation</i>	23
<b>‘63 Exclusion from licence</b>	24
‘The authority must not grant a person a licence if the person is—	25

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

---

(a) a convicted company officer; or	1
(b) a company for which a convicted company officer is a director, secretary, influential person or nominee.	2 3
<b>‘64 Procedure if authority considers individual a convicted company officer</b>	4 5
‘(1) This section applies if the authority considers that an individual is a convicted company officer.	6 7
‘(2) The authority must give the individual a written notice stating—	8
(a) details of the conviction the authority considers makes the individual a convicted company officer; and	9 10
(b) the effect of the individual being a convicted company officer; and	11 12
(c) an invitation to the individual to make written submissions, within a stated period, to satisfy the authority that the individual is not a convicted company officer.	13 14 15
‘(3) The stated period must be at least 28 days after the written notice is given to the individual.	16 17
‘(4) The authority must consider any submissions made by the individual.	18 19
<b>‘65 Ending procedure without further action</b>	20
‘(1) This section applies if, after considering submissions made by the individual, the authority is satisfied the individual is not a convicted company officer.	21 22 23
‘(2) The authority must, as soon as practicable, advise the individual in writing that no further action under this part will be taken in relation to the notice given under section 64(2).	24 25 26
<b>‘66 Notice of cancellation and that not a fit and proper person to individual who is a licensee</b>	27 28
‘(1) For an individual who is a licensee, subsection (3) applies if, after considering submissions made by the individual for the notice under	29 30

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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section 64(2), the authority still considers that the individual is a convicted company officer.	1 2
‘(2) Subsection (3) also applies if there are no submissions for the notice under section 64(2).	3 4
‘(3) The authority must, by written notice given to the individual—	5
(a) inform the individual that the authority still considers the individual is a convicted company officer; and	6 7
(b) cancel the individual’s licence; and	8
(c) inform the individual—	9
(i) that the individual is taken not to be a fit and proper person for part 3, division 2; <sup>2</sup> and	10 11
(ii) of the individual’s right to apply to the tribunal for a review of the authority’s decision. <sup>3</sup>	12 13
‘(4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.	14 15
‘(5) Section 49 does not apply to a cancellation under subsection (3).	16
<b>‘67 Notice that not a fit and proper person to individual who is not a licensee</b>	17 18
‘(1) For an individual who is not a licensee, subsection (3) applies if, after considering submissions made by the individual for the notice under section 64(2), the authority still considers that the individual is a convicted company officer.	19 20 21 22
‘(2) Subsection (3) also applies if there are no submissions for the notice under section 64(2).	23 24
‘(3) The authority must, by written notice given to the individual, inform the individual—	25 26
(a) that the authority still considers the individual is a convicted company officer; and	27 28

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2 Part 3, division 2 (Entitlement to licence)

3 An individual may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(l).

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- (b) that the individual is taken not to be a fit and proper person for part 3, division 2;<sup>4</sup> and 1  
2
- (c) of the individual’s right to apply to the tribunal for a review of the authority’s decision.<sup>5</sup> 3  
4
- ‘(4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice. 5  
6
- ‘67AA Notice by authority to company for which a convicted company officer is a director, secretary, influential person or nominee 7  
8**
- ‘(1) This section applies if the authority considers that a company that is a licensee has an individual who is a convicted company officer as a director or secretary of, or an influential person or nominee for, the company. 9  
10  
11  
12
- ‘(2) The authority must give the company a written notice stating— 13
- (a) particulars identifying the individual (the “**relevant individual**”) the authority considers is a director or secretary of, or an influential person or nominee for, the company;<sup>6</sup> and 14  
15  
16
- (b) that the relevant individual must stop being a director, secretary, influential person or nominee within 28 days after the authority gives the individual the written notice; and 17  
18  
19
- (c) the authority must cancel the licensee’s licence if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in paragraph (b). 20  
21  
22  
23
- ‘(3) The authority must cancel the company’s licence by written notice given to the company if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in subsection (2)(b). 24  
25  
26  
27
- ‘(4) Section 49 does not apply to a cancellation under subsection (3).’ 28

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4 Part 3, division 2 (Entitlement to licence)

5 An individual may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(l).

6 A company may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(m).

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 33</b>	<b>Insertion of new pt 3D</b>	1
	After part 3C, as inserted by this Act—	2
	<i>insert—</i>	3
	<b>‘PART 3D—BANNED INDIVIDUALS</b>	4
	<b><i>‘Division 1—Preliminary</i></b>	5
	<b>‘67AB Meaning of “tier 1 defective work” and “carry out tier 1 defective work”</b>	6 7
	<b>‘(1) “Tier 1 defective work”</b> means grossly defective building work that—	8 9
	(a) falls below the standard reasonably expected of a licensed contractor for the type of building work; and	10 11
	(b) either—	12
	(i) adversely affects the structural performance of a building to the extent that a person could not reasonably be expected to use the building for the purpose for which it was, or is being, erected or constructed; or	13 14 15 16
	(ii) is likely to cause the death of, or grievous bodily harm to, a person.	17 18
	<i>Example for paragraph (b)(i)—</i>	19
	A building is constructed and due to substandard building work all or a significant part of the building requires demolition or substantial reconstruction.	20 21 22
	<i>Examples for paragraph (b)(ii)—</i>	23
	A fire protection contractor installs a fire protection system that does not meet the requirements of the Building Code of Australia for the system. In the event of fire, the noncompliance is likely to result in the death of, or grievous bodily harm to, a person.	24 25 26 27
	<b>‘(2) “Carry out tier 1 defective work”</b> means—	28
	(a) carry out tier 1 defective work personally; or	29
	(b) directly or indirectly, cause tier 1 defective work to be carried out; or	30 31

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(c) provide advisory, administrative, management or supervisory services for carrying out tier 1 defective work.	1 2
<b>‘67AC Banned individual</b>	3
‘(1) An individual is a “banned individual” if the individual is given notice under this part that the individual is taken not to be a fit and proper person for part 3, division 2. <sup>7</sup>	4 5 6
‘(2) The individual continues to be a banned individual for the term calculated under this part and stated in the notice.	7 8
<b>‘67AD Operation of pt 3D</b>	9
‘This part has effect despite anything in part 3.	10
<b><i>‘Division 2—Licence exclusion and cancellation</i></b>	
<b>‘67AE Exclusion from licence</b>	12
‘The authority must not grant a person a licence if the person is—	13
(a) a banned individual; or	14
(b) a company for which a banned individual is a director, secretary, influential person or nominee.	15 16
<b>‘67AF Procedure if authority considers individual has carried out tier 1 defective work</b>	17 18
‘(1) This section applies if the authority considers that an individual has carried out tier 1 defective work after the commencement of this section.	19 20
‘(2) The authority may give the individual a written notice stating—	21
(a) details of the tier 1 defective work; and	22
(b) the effect of the individual becoming a banned individual for the tier 1 defective work; and	23 24

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7 Part 3, division 2 (Entitlement to licence)

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(c) an invitation to the individual to make written submissions, within a stated period, to satisfy the authority that—	1 2
(i) the individual did not carry out the work stated in the notice; or	3 4
(ii) the work carried out by the individual was not tier 1 defective work; or	5 6
(iii) the individual exercised reasonable diligence to ensure that the work carried out was not defective.	7 8
<i>Example for subparagraph (iii)—</i>	9
An individual carried out tier 1 defective work in relation to the footings of a house. However, the individual had reasonably relied on plans for the footings drawn by an engineer and carried out the work in accordance with the plans. It was the reliance on the plans that caused the tier 1 defective work.	10 11 12 13 14
‘(3) The stated period must be at least 28 days after the written notice is given to the individual.	15 16
‘(4) The authority must consider any submissions made by the individual.	17 18
<b>‘67AG Ending procedure without further action</b>	19
‘(1) This section applies if, after considering submissions made by the individual, the authority is satisfied that—	20 21
(a) the individual did not carry out the work stated in the notice; or	22
(b) the work carried out by the individual was not tier 1 defective work; or	23 24
(c) the individual exercised reasonable diligence to ensure that the work carried out was not defective.	25 26
‘(2) The authority must, as soon as practicable, advise the individual in writing that no further action under this part will be taken in relation to the written notice given under section 67AF(2).	27 28 29



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>‘67AH Notice of cancellation and that not a fit and proper person to individual who is a licensee</b>	1 2
<b>‘(1)</b> For an individual who is a licensee, subsection (3) applies if, after considering the submissions made by the individual for the notice under section 67AF(2), the authority—	3 4 5
(a) still considers that—	6
(i) the individual carried out the work stated in the notice; and	7
(ii) the work carried out was tier 1 defective work; and	8
(b) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective.	9 10
<b>‘(2)</b> Subsection (3) also applies if there are no submissions for the notice under section 67AF(2).	11 12
<b>‘(3)</b> The authority must, by written notice given to the individual—	13
(a) inform the individual that the authority—	14
(i) still considers—	15
(A) that the individual carried out the work stated in the notice; and	16 17
(B) the work carried out was tier 1 defective work; and	18
(ii) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective; and	19 20 21
(b) cancel the individual’s licence; and	22
(c) inform the individual—	23
(i) that the individual is taken not to be a fit and proper person for part 3, division 2, <sup>8</sup> for the term calculated under section 67AO and stated in the notice; and	24 25 26
(ii) of the individual’s right to apply to the tribunal for a review of the authority’s decision. <sup>9</sup>	27 28

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8 Part 3, division 2 (Entitlement to licence)

9 An individual who is given notice that they are taken not to be a fit and proper person (a **“banned individual”**) for a stated term may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(n).

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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‘(4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.	1 2
‘(5) Section 49 does not apply to a cancellation under subsection (3).	3
<b>‘67AI Notice that not a fit and proper person to individual who is not a licensee</b>	4 5
‘(1) For an individual who is not a licensee, subsection (3) applies if, after considering the submissions made by the individual for the notice under section 67AF(2), the authority—	6 7 8
(a) still considers that—	9
(i) the individual carried out the work stated in the notice; and	10
(ii) the work carried out was tier 1 defective work; and	11
(b) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective.	12 13
‘(2) Subsection (3) also applies if there are no submissions for the notice under section 67AF(2).	14 15
‘(3) The authority must, by written notice given to the individual, inform the individual—	16 17
(a) that the authority—	18
(i) still considers that—	19
(A) the individual carried out the work stated in the notice; and	20 21
(B) the work carried out was tier 1 defective work; and	22
(ii) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective; and	23 24 25
(b) that the individual is taken not to be a fit and proper person for part 3, division 2, <sup>10</sup> for the term calculated under section 67AO and stated in the notice; and	26 27 28

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10 Part 3, division 2 (Entitlement to licence)

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(c) of the individual’s right to apply to the tribunal for a review of the authority’s decision. <sup>11</sup>	1 2
‘(4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.	3 4
<b>‘67AJ Notice by authority to director, secretary, influential person or nominee about tier 1 defective work</b>	5 6
‘(1) This section applies if the authority considers that a company has carried out tier 1 defective work after the commencement of this section.	7 8
‘(2) The authority may give an individual who was a director or secretary of, or an influential person or nominee for, the company at the time the work was carried out, a written notice stating—	9 10 11
(a) details of the tier 1 defective work; and	12
(b) the effect of the director, secretary, influential person or nominee becoming a banned individual for the tier 1 defective work; and	13 14
(c) an invitation to the director, secretary, influential person or nominee to make written submissions, within a stated period, to satisfy the authority that—	15 16 17
(i) the company did not carry out the work stated in the notice; or	18 19
(ii) the work carried out by the company was not tier 1 defective work; or	20 21
(iii) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; or	22 23 24
(iv) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs in relation to the defective work.	25 26 27
‘(3) The stated period must be at least 28 days after the written notice is given to the director, secretary, influential person or nominee.	28 29

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11 An individual who is given notice that they are taken not to be a fit and proper person (a “**banned individual**”) for a stated term may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(n).

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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‘(4) The authority must consider any submissions made by the director, secretary, influential person or nominee.	1 2
<b>‘67AK Ending procedure without further action</b>	3
‘(1) This section applies if, after considering submissions made by the director, secretary, influential person or nominee, the authority is satisfied that—	4 5 6
(a) the company did not carry out the work stated in the notice; or	7
(b) the work carried out by the company was not tier 1 defective work; or	8 9
(c) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; or	10 11 12
(d) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs in relation to the defective work.	13 14 15
‘(2) The authority must, as soon as practicable, advise the director, secretary, influential person or nominee in writing that no further action under this part will be taken in relation to the notice given under section 67AJ(2).	16 17 18 19
<b>‘67AL Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee</b>	20 21
‘(1) For a director, secretary, influential person or nominee who is a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AJ(2), the authority—	22 23 24 25
(a) still considers—	26
(i) that the company carried out the work stated in the notice; and	27 28
(ii) that the work carried out was tier 1 defective work; and	29
(b) is not satisfied—	30

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- (i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work; or 1  
2  
3
- (ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective. 4  
5  
6
- '(2) Subsection (3) also applies if there are no submissions for the notice under section 67AJ(2). 7  
8
- '(3) The authority must, by written notice given to the director, secretary, influential person or nominee— 9  
10
- (a) inform the director, secretary, influential person or nominee that the authority— 11  
12
- (i) still considers— 13
- (A) that the company carried out the work stated in the notice; and 14  
15
- (B) that the work carried out was tier 1 defective work; and 16
- (ii) is not satisfied— 17
- (A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work; or 18  
19  
20  
21
- (B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; and 22  
23  
24
- (b) cancel the director's, secretary's, influential person's or nominee's licence; and 25  
26
- (c) inform the director, secretary, influential person or nominee— 27
- (i) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2,<sup>12</sup> for the term calculated under section 67AO and stated in the notice; and 28  
29  
30  
31

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12 Part 3, division 2 (Entitlement to licence)

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(ii) of the director's, secretary's, influential person's or nominee's right to apply to the tribunal for a review of the authority's decision. <sup>13</sup>	1 2 3
'(4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.	4 5 6
'(5) Section 49 does not apply to a cancellation under subsection (3).	7
<b>'67AM Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee</b>	8 9
'(1) For a director, secretary, influential person or nominee <sup>14</sup> who is not a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AJ(2), the authority—	10 11 12 13
(a) still considers—	14
(i) that the company carried out the work stated in the notice; and	15 16
(ii) that the work carried out was tier 1 defective work; and	17
(b) is not satisfied—	18
(i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work; or	19 20 21
(ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective.	22 23 24
'(2) Subsection (3) also applies if there are no submissions for the notice under section 67AJ(2).	25 26

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13 A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a **"banned individual"**) for a stated term may have the authority's decision reviewed by the tribunal under the Tribunal Act, section 104(1)(n).

14 A nominee is included in this provision as a person who was a licensed nominee when the company carried out the defective work may not be licensed when the notice is given.

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- ‘(3) The authority must, by written notice given to the director, secretary, influential person or nominee inform the director, secretary, influential person or nominee—
- (a) that the authority—
    - (i) still considers—
      - (A) that the company carried out the work stated in the notice; and
      - (B) that the work carried out was tier 1 defective work; and
    - (ii) is not satisfied—
      - (A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs in relation to the defective work; or
      - (B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; and
  - (b) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2,<sup>15</sup> for the term calculated under section 67AO and stated in the notice; and
  - (c) of the director’s, secretary’s, influential person’s or nominee’s right to apply to the tribunal for a review of the authority’s decision.<sup>16</sup>
- ‘(4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.

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15 Part 3, division 2 (Entitlement to licence)

16 A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a “**banned individual**”) for a stated term may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(n).

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>‘67AN Notice by authority to company for which a banned individual is a director, secretary, influential person or nominee</b>	1 2
‘(1) This section applies if the authority considers that a company that is a licensee has an individual who is a banned individual as a director or secretary of, or an influential person or nominee for, the company.	3 4 5
‘(2) The authority must give the company a written notice stating—	6
(a) particulars identifying the individual (the <b>“relevant individual”</b> ) the authority considers is a director or secretary of, or an influential person or nominee for, the company; <sup>17</sup> and	7 8 9
(b) that the relevant individual must stop being a director, secretary, influential person or nominee within 28 days after the authority gives the company the written notice; and	10 11 12
(c) the authority must cancel the company’s licence if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in paragraph (b).	13 14 15 16
‘(3) The authority must cancel the company’s licence by written notice given to the company if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in subsection (2)(b).	17 18 19 20
‘(4) Section 49 does not apply to a cancellation under subsection (3).	21
 <b>‘67AO Terms of bans</b>	 22
‘(1) This section states the term for which an individual given a notice under section 67AH, 67AI, 67AL or 67AM is taken not to be a fit and proper person for part 3, division 2 (the <b>“term of ban”</b> ).	23 24 25
‘(2) Only tier 1 defective work carried out after the commencement of this section may be taken into account in calculating the term of ban.	26 27
‘(3) The term of ban for an individual given a notice for tier 1 defective work for the first time is 3 years.	28 29
‘(4) The term of ban for an individual given a notice for tier 1 defective work a second time or subsequent time is the life of the individual.	30 31

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17 A company may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(o).



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- ‘(5) A notice may be given to an individual a second time or subsequent time under section 67AH, 67AI, 67AL or 67AM if—
- (a) a notice for tier 1 defective work has been given under 1 of the sections stating a ban of 3 years; and
  - (b) the second or subsequent notice relates to tier 1 defective work carried out after the notice stating a ban of 3 years is given.
- ‘(6) It is declared that, in deciding whether a notice for tier 1 defective work has been given to an individual a second time or subsequent time, a notice given to an individual for the first time under section 67AH, 67AI, 67AL or 67AM stating a ban of 3 years must be counted whether or not the individual has served the term of the ban.
- Example for subsections (5) and (6)—*
- An individual who is a licensee is given a notice under section 67AH for tier 1 defective work carried out by the individual. The notice informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for 3 years. After the notice under section 67AH is given, the individual carries out other tier 1 defective work. The authority may give the individual a second notice under section 67AH for the other tier 1 defective work whether or not the 3 years have passed. Also, it is the second notice under section 67AH that informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for the life of the individual.
- ‘(7) However, in deciding whether a notice for tier 1 defective work is given to an individual a second time or subsequent time, an earlier notice given to an individual under section 67AH, 67AI, 67AL or 67AM must not be counted if—
- (a) the earlier notice was given more than 10 years before the second or subsequent notice; or
  - (b) the authority’s decision under the earlier notice was reversed or annulled on review by the tribunal.
- ‘(8) In this section a reference to tier 1 defective work carried out is—
- (a) for an individual given notice under section 67AH(3) or 67AI(3)—a reference to tier 1 defective work carried out by the individual; or
  - (b) for an individual given notice under section 67AL(3) or 67AM(3)—a reference to tier 1 defective work carried out by the company for which the individual was a director, secretary, influential person or nominee.

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>‘67AP Relationship of this part with Tribunal Act, pt 5, div 3</b>	1
‘(1) Subsection (2) applies if the authority has applied under the Tribunal Act, section 108 for disciplinary action relating to defective building work on a ground mentioned in section 109(i) or 110(d) <sup>18</sup> of that Act and the tribunal has decided the proceeding.	2 3 4 5
‘(2) The authority must not give a notice under section 67AF or 67AJ in relation to the building work mentioned in subsection (1).	6 7
‘(3) Nothing in subsection (1) or (2) prevents the authority from—	8
(a) withdrawing an application mentioned in subsection (1) relating to defective building work that has not been decided by the tribunal; and	9 10 11
(b) giving a notice under section 67AF or 67AJ for the same building work. <sup>19</sup>	12 13
‘(4) Subsection (5) applies if the authority has given a notice to an individual under section 67AF or 67AJ and is proceeding under this part.	14 15
‘(5) The authority may apply under the Tribunal Act, section 108 in relation to defective work stated in a notice to an individual under section 67AF or 67AJ only if the authority has not given the individual notice under section 67AH, 67AI, 67AL or 67AM.	16 17 18 19
‘(6) Subsection (7) applies if—	20
(a) an individual has applied under the Tribunal Act, section 104(1)(n) for a review of the authority’s decision under section 67AH, 67AI, 67AL or 67AM; and	21 22 23
(b) the tribunal reverses or annuls the authority’s decision.	24
‘(7) The tribunal must, in the same proceeding, decide whether proper grounds exist for taking disciplinary action against—	25 26
(a) the individual, in relation to the building work stated in a notice under section 67AF; or	27 28

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18 The authority may apply under the Tribunal Act, section 108 for a decision under the Tribunal Act, section 109(i) or 110(d) that a person has been negligent or incompetent in carrying out building work.

19 Under the Tribunal Act, section 52, the authority may withdraw an application under the Tribunal Act, section 108. Under the Tribunal Act, section 55, the tribunal may make an order for costs against an applicant that withdraws an application.

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(b) the company for which the individual is a director, secretary, influential person or nominee, in relation to the building work stated in a notice under section 67AJ. 1  
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‘(8) For subsection (7), the authority is taken to have applied under the Tribunal Act, section 108 and the tribunal must consider whether proper grounds exist under the Tribunal Act, section 109(i) or 110(d).’. 4  
5  
6

**Clause 34 Insertion of new pt 3E** 7

After part 3D, as inserted by this Act— 8

*insert—* 9

**‘PART 3E—DISQUALIFIED INDIVIDUALS** 10

*‘Division 1—Preliminary* 11

**‘67AQ Definitions for pt 3E** 12

‘In this part— 13

**“accumulate”**— 14

A person accumulates a demerit point when the demerit point takes effect if it is subsequently allocated to the person. 15  
16

**“administering authority”** see the *State Penalties Enforcement Act 1999*, schedule 2. 17  
18

**“conviction”**, of a person for a demerit offence, includes the following in relation to the offence— 19  
20

(a) a court finding the person guilty or accepting the person’s plea of guilty, whether or not a conviction is recorded; 21  
22

(b) the person paying a fine under an infringement notice, in full; 23

(c) the person paying the first instalment of a fine under an infringement notice; 24  
25

(d) the registration by the registrar of a default certificate for an infringement notice given to the person; 26  
27

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(e) a decision of the tribunal under the Tribunal Act that proper grounds exist for taking disciplinary action against the person for a contravention mentioned in section 67AR(b). <sup>20</sup>	1 2 3
<b>“default certificate”</b> see the <i>State Penalties Enforcement Act 1999</i> , schedule 2.	4 5
<b>“demerit matter”</b> means—	6
(a) a conviction for a demerit offence; or	7
(b) an unsatisfied judgment debt.	8
<b>“demerit offence”</b> see section 67AR.	9
<b>“demerit points”</b> means demerit points allocated by the authority under this part for a demerit matter.	10 11
<b>“disqualified individual”</b> see section 67AU.	12
<b>“infringement notice”</b> see the <i>State Penalties Enforcement Act 1999</i> , schedule 2.	13 14
<b>“judgment debt”</b> see section 67AS.	15
<b>“period of 3 years”</b> , in relation to the accumulation of demerit points, means a period of 3 years or less.	16 17
<b>“registrar”</b> see the <i>State Penalties Enforcement Act 1999</i> , schedule 2.	18
<b>“SPER”</b> see the <i>State Penalties Enforcement Act 1999</i> , schedule 2.	19
<b>“unsatisfied”</b> , in relation to a judgment debt, see section 67AT.	20
 <b>‘67AR Meaning of “demerit offence”</b>	 21
‘A <b>“demerit offence”</b> is—	22
(a) an offence, committed after the commencement of this section, against—	23 24
(i) section 67G, 67H, 67I or 67V; or	25
(ii) the <i>Domestic Building Contracts Act 2000</i> , section 64, 65, 66 or 67; or	26 27

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20 See Tribunal Act, sections 109(a) and 111.

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(b) a contravention, after the commencement of this section, by a licensee, of a requirement imposed under a section mentioned in paragraph (a).	1 2 3
<b>‘67AS Meaning of “judgment debt”</b>	4
‘(1) A <b>“judgment debt”</b> is the amount, for which judgment has been entered in a court of competent jurisdiction, owing by a building contractor—	5 6 7
(a) in relation to a building contract or a domestic building contract; or	8 9
(b) for goods or services supplied for—	10
(i) building work to be carried out under a building contract; or	11
(ii) domestic building work to be carried out under a domestic building contract; or	12 13
(c) to the authority for a claim under the statutory insurance scheme.	14
‘(2) Judgment must be entered after the commencement of this section.	15
‘(3) However, the circumstances giving rise to the judgment debt may have arisen before the commencement of this section.	16 17
<b>‘67AT Meaning of “unsatisfied” judgment debt</b>	18
‘(1) A judgment debt is <b>“unsatisfied”</b> if it has not been paid in full within—	19 20
(a) 28 days after judgment is entered; or	21
(b) if a longer period is allowed by the court for payment—the longer period.	22 23
‘(2) A judgment debt is not unsatisfied if the judgment creditor has accepted and been paid an amount in full and final settlement within the relevant period mentioned in subsection (1).	24 25 26
<b>‘67AU Disqualified individual</b>	27
‘(1) An individual is a <b>“disqualified individual”</b> if the individual is given notice under this part that the individual is taken not to be a fit and proper person for part 3, division 2. <sup>21</sup>	28 29 30

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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‘(2) The individual continues to be a disqualified individual for the term calculated under this part and stated in the notice.	1 2
<b>‘67AV Operation of pt 3E</b>	3
‘This part has effect despite anything in part 3.	4
<b><i>‘Division 2—Calculation of demerit points and notification of unsatisfied judgment debts</i></b>	5 6
<b>‘67AW Demerit points for demerit matters</b>	7
‘(1) This section applies to a person who—	8
(a) has a conviction for a demerit offence; or	9
(b) is a judgment debtor for an unsatisfied judgment debt.	10
‘(2) The authority must allocate demerit points under this part to the person as follows—	11 12
(a) for a conviction for a demerit offence—2 points;	13
(b) for an unsatisfied judgment debt—10 points.	14
‘(3) This section is subject to section 67AZB.	15
<b>‘67AX When demerit points allocated for demerit offences</b>	16
‘(1) The authority must allocate demerit points to a person for a conviction for a demerit offence as soon as practicable after the points take effect.	17 18 19
‘(2) Demerit points for a conviction for a demerit offence take effect—	20
(a) if a court finds a person guilty—on the day after the last day on which the person may appeal the finding; or	21 22
(b) if a court accepts a person’s plea of guilty—on the day the plea is accepted; or	23 24

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- (c) if a person pays the fine under an infringement notice, in full—on the day the fine is paid; or 1  
2
- (d) if a person applies to the administering authority to pay the fine under an infringement notice, by instalments—on the day the administering authority receives the first instalment; or 3  
4  
5
- (e) if the administering authority gives a default certificate to SPER for registration—on the day the default certificate is registered; or 6  
7  
8
- (f) if the tribunal decides that proper grounds exist for taking disciplinary action against a person for a contravention mentioned in section 67AR(b)—on the day after the last day on which the person may appeal the tribunal’s decision. 9  
10  
11  
12
- ‘(3) However, if a conviction for a demerit offence is appealed, demerit points for the conviction must not be allocated until the appeal is finally dealt with or withdrawn. 13  
14  
15
- ‘(4) Also, if a conviction for a demerit offence is appealed and after the appeal there is no conviction, demerit points stop having effect. 16  
17
- ‘67AY When demerit points allocated for unsatisfied judgment debts 18**
- ‘(1) The authority must allocate demerit points to a person for an unsatisfied judgment debt as soon as practicable after the points take effect. 19  
20
- ‘(2) Demerit points take effect when the judgment debt becomes an unsatisfied judgment debt. 21  
22
- ‘(3) However, if a decision relating to a judgment is appealed or an application is made to set the judgment aside, demerit points must not be allocated for the unsatisfied judgment debt until the appeal or application is finally dealt with or withdrawn. 23  
24  
25  
26
- ‘(4) Also, if a decision relating to a judgment is appealed or an application is made to set the judgment aside and after the appeal or application there is no unsatisfied judgment debt, demerit points stop having effect. 27  
28  
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*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>‘67AZ Judgment debtor must notify unsatisfied judgment debt</b>	1
‘(1) A judgment debtor for a judgment debt must notify the authority within 14 days after the judgment debt becomes an unsatisfied judgment debt.	2 3 4
Maximum penalty—40 penalty units.	5
‘(2) Notification under subsection (1) must include the following—	6
(a) particulars of the debt;	7
(b) the name and address of the judgment debtor;	8
(c) the name and address of the judgment creditor;	9
(d) the date judgment was entered and the amount for which it was entered;	10 11
(e) the court in which it was entered;	12
(f) the number of the proceeding for which it was entered sufficient to allow a search of the court registry;	13 14
(g) details of any payments made to reduce the judgment debt.	15
<b>‘67AZA Authority must notify person about demerit points</b>	16
‘(1) Subsection (2) applies if the authority allocates demerit points to a person.	17 18
‘(2) The authority must, as soon as practicable after the demerit points are allocated, notify the person in writing of—	19 20
(a) the demerit points allocated; and	21
(b) the demerit matters for which they were allocated; and	22
(c) the date the points took effect.	23
<b>‘67AZB Limit on demerit points from single audit or investigation</b>	24
‘(1) This section applies if a licensee is convicted of demerit offences discovered by the authority as a result of a written notice given to a licensee under section 50C(2).	25 26 27
‘(2) The maximum demerit points that may be allocated to the licensee for the convictions for the demerit offences is 6.	28 29



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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‘(3) Nothing in this section prevents another 6 demerit points being allocated to the licensee for convictions for demerit offences discovered by the authority as a result of a later written notice given under section 50C(2).	1 2 3
‘(4) However other demerit points must not be allocated—	4
(a) if the earlier notice and the later notice relate to—	5
(i) the same audit under an approved audit program; or	6
(ii) information received by the authority from the same source; or	7 8
(b) for convictions for demerit offences discovered by the authority as a result of a later notice if the offences—	9 10
(i) were committed before an earlier notice; and	11
(ii) demerit offences were discovered as a result of the earlier notice and resulted in the allocation of demerit points.	12 13
 <i>‘Division 3—Licence exclusion and cancellation</i>	 14
 <b>‘67AZC Exclusion from licence</b>	 15
‘The authority must not grant a person a licence if the person is—	16
(a) a disqualified individual; or	17
(b) a company for which a disqualified individual is a director, secretary, influential person or nominee.	18 19
 <b>‘67AZD Procedure if authority considers individual has accumulated 30 demerit points</b>	 20 21
‘(1) This section applies if the authority considers that an individual has accumulated 30 demerit points in a period of 3 years.	22 23
‘(2) The authority must give the individual a written notice stating—	24
(a) details of the demerit matters for which the demerit points have accumulated and the dates the points took effect; and	25 26
(b) the effect of the individual becoming a disqualified individual for accumulating 30 demerit points in a period of 3 years; and	27 28

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- (c) an invitation to the individual to make written submissions, within a stated period, to satisfy the authority that the individual has not accumulated 30 demerit points in a period of 3 years. 1  
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- ‘(3) The stated period must be at least 28 days after the written notice is given to the individual. 4  
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- ‘(4) The authority must consider any submissions made by the individual. 6  
7
- ‘(5) In deciding whether an individual has accumulated 30 demerit points in a period of 3 years, demerit points must not be counted for an unsatisfied judgment debt paid in full before the end of the stated period. 8  
9  
10
- ‘67AZE Ending procedure without further action 11**
- ‘(1) This section applies if, after considering submissions made by the individual, the authority is satisfied the individual has not accumulated 30 demerit points in a period of 3 years. 12  
13  
14
- ‘(2) The authority must, as soon as practicable, advise the individual in writing that no further action under this part will be taken in relation to the notice given under section 67AZD(2). 15  
16  
17
- ‘67AZF Notice of cancellation and that not a fit and proper person to individual who is a licensee 18  
19**
- ‘(1) For an individual who is a licensee, subsection (3) applies if, after considering submissions made by the individual for the notice under section 67AZD(2), the authority still considers that the individual has accumulated 30 demerit points in a period of 3 years. 20  
21  
22  
23
- ‘(2) Subsection (3) also applies if there are no submissions for the notice under section 67AZD(2). 24  
25
- ‘(3) The authority must, by written notice given to the individual— 26
- (a) inform the individual that the authority still considers the individual has accumulated 30 demerit points in a period of 3 years; and 27  
28  
29
- (b) cancel the individual’s licence; and 30
- (c) inform the individual— 31

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(i) that the individual is taken not to be a fit and proper person for part 3, division 2 for the term calculated under section 67AZM and stated in the notice; <sup>22</sup> and	1 2 3
(ii) of the individual’s right to apply to the tribunal for a review of the authority’s decision. <sup>23</sup>	4 5
‘(4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.	6 7
‘(5) Section 49 does not apply to a cancellation under subsection (3).	8
<b>‘67AZG Notice that not a fit and proper person to individual who is not a licensee</b>	9 10
‘(1) For an individual who is not a licensee, subsection (3) applies if, after considering submissions made by the individual for the notice under section 67AZD(2), the authority still considers that the individual has accumulated 30 demerit points in a period of 3 years.	11 12 13 14
‘(2) Subsection (3) also applies if there are no submissions for the notice under section 67AZD(2).	15 16
‘(3) The authority must, by written notice given to the individual, inform the individual—	17 18
(a) that the authority still considers the individual has accumulated 30 demerit points in a period of 3 years; and	19 20
(b) that the individual is taken not to be a fit and proper person for part 3, division 2 for the term calculated under section 67AZM and stated in the notice; <sup>24</sup> and	21 22 23

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22 Part 3, division 2 (Entitlement to licence)

23 An individual who is given notice that they are taken not to be a fit and proper person (a “**disqualified individual**”) for a stated term may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(p).

24 Part 3, division 2 (Entitlement to licence)

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(c) of the individual’s right to apply to the tribunal for a review of the authority’s decision. <sup>25</sup>	1 2
‘(4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.	3 4
<b>‘67AZH Notice by authority to director, secretary, influential person or nominee about demerit points</b>	5 6
‘(1) This section applies if the authority considers that a company has accumulated 30 demerit points in a period of 3 years.	7 8
‘(2) The authority may give an individual who was a director or secretary of, or an influential person or nominee for, the company at the times the 30 demerit points were accumulated, a written notice stating—	9 10 11
(a) details of the demerit matters for which the demerit points have accumulated and the dates the points took effect; and	12 13
(b) the effect of the director, secretary, influential person or nominee becoming a disqualified individual because the company has accumulated 30 demerit points in a period of 3 years; and	14 15 16
(c) an invitation to the director, secretary, influential person or nominee to make written submissions, within a stated period, to satisfy the authority that—	17 18 19
(i) the company has not accumulated 30 demerit points in a period of 3 years; or	20 21
(ii) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that some or all of the matters for which the demerit points accumulated did not happen; or	22 23 24 25
(iii) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs in relation to some or all of the matters for which the demerit points accumulated.	26 27 28 29
‘(3) The stated period must be at least 28 days after the written notice is given to the director, secretary, influential person or nominee.	30 31

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<sup>25</sup> An individual who is given notice that they are taken not to be a fit and proper person (a “**disqualified individual**”) for a stated term may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(p).

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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‘(4) The authority must consider any submissions made by the director, secretary, influential person or nominee.	1 2
‘(5) In deciding whether a company has accumulated 30 demerit points in a period of 3 years, demerit points must not be counted for an unsatisfied judgment debt paid in full before the end of the stated period.	3 4 5
<b>‘67AZI Ending procedure without further action</b>	6
‘(1) This section applies if, after considering submissions made by the director, secretary, influential person or nominee, the authority is satisfied that—	7 8 9
(a) the company has not accumulated 30 demerit points in a period of 3 years; or	10 11
(b) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that some or all of the demerit matters for which the demerit points accumulated did not happen; or	12 13 14 15
(c) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs in relation to some or all of the demerit matters for which the demerit points accumulated.	16 17 18 19
‘(2) The authority must, as soon as practicable, advise the director, secretary, influential person or nominee in writing that no further action under this part will be taken in relation to the notice given under section 67AZH(2).	20 21 22 23
‘(3) However, subsection (2) does not apply if at least 30 demerit points remain after taking into account the demerit matters mentioned in subsection (1)(b) and (c).	24 25 26
<b>‘67AZJ Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee</b>	27 28
‘(1) For a director, secretary, influential person or nominee who is a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AZH(2), the authority—	29 30 31 32

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(a) still considers that the company has accumulated 30 demerit points in a period of 3 years; and	1 2
(b) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—	3 4
(i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs; or	5 6 7
(ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen.	8 9 10
‘(2) Subsection (3) also applies if there are no submissions for the notice under section 67AZH(2).	11 12
‘(3) The authority must, by written notice given to the director, secretary, influential person or nominee—	13 14
(a) inform the director, secretary, influential person or nominee that the authority—	15 16
(i) still considers that the company has accumulated 30 demerit points in a period of 3 years; and	17 18
(ii) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—	19 20
(A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs; or	21 22 23
(B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen; and	24 25 26
(b) cancel the director’s, secretary’s, influential person’s or nominee’s licence; and	27 28
(c) inform the director, secretary, influential person or nominee—	29
(i) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2, <sup>26</sup> for the term calculated under section 67AZM and stated in the notice; and	30 31 32 33

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26 Part 3, division 2 (Entitlement to licence)

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(ii) of the director's, secretary's, influential person's or nominee's right to apply to the tribunal for a review of the authority's decision. <sup>27</sup>	1 2 3
'(4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.	4 5 6
'(5) Section 49 does not apply to a cancellation under subsection (3).	7
<b>'67AZK Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee</b>	8 9
'(1) For a director, secretary, influential person or nominee <sup>28</sup> who is not a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AZH(2), the authority—	10 11 12 13
(a) still considers that the company has accumulated 30 demerit points in a period of 3 years; and	14 15
(b) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—	16 17
(i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs; or	18 19 20
(ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen.	21 22 23
'(2) Subsection (3) also applies if there are no submissions for the notice under section 67AZH(2).	24 25

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27 A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a **"disqualified individual"**) for a stated term may have the authority's decision reviewed by the tribunal under the Tribunal Act, section 104(1)(p).

28 A nominee is included in this provision as a person who was a licensed nominee when the company carried out the defective work may not be licensed when the notice is given.

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- ‘(3) The authority must, by written notice given to the director, secretary, influential person or nominee inform the director, secretary, influential person or nominee—
- (a) that the authority—
- (i) still considers that the company has accumulated 30 demerit points in a period of 3 years; and
- (ii) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—
- (A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company’s affairs; or
- (B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen; and
- (b) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2,<sup>29</sup> for the term calculated under section 67AZM and stated in the notice; and
- (c) of the director’s, secretary’s, influential person’s or nominee’s right to apply to the tribunal for a review of the authority’s decision.<sup>30</sup>
- ‘(4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.

**‘67AZL Notice by authority to company for which a disqualified individual is a director, secretary, influential person or nominee**

- ‘(1) This section applies if the authority considers that a company that is a licensee has an individual who is a disqualified individual as a director or secretary of, or an influential person or nominee for, the company.

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29 Part 3, division 2 (Entitlement to licence)

30 A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a “**disqualified individual**”) for a stated term may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(p).



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- ‘(2) The authority must give the company a written notice stating— 1
- (a) particulars identifying the individual (the “**relevant individual**”) 2  
the authority considers is a director or secretary of, or an 3  
influential person or nominee for, the company;<sup>31</sup> and 4
  - (b) that the relevant individual must stop being a director, secretary, 5  
influential person or nominee within 28 days after the authority 6  
gives the individual the written notice; and 7
  - (c) the authority must cancel the licensee’s licence if the relevant 8  
individual does not stop being a director, secretary, influential 9  
person or nominee within the 28 days mentioned in 10  
paragraph (b). 11
- ‘(3) The authority must cancel the company’s licence by written notice 12  
given to the company if the relevant individual does not stop being a 13  
director, secretary, influential person or nominee within the 28 days 14  
mentioned in subsection (2)(b). 15
- ‘(4) Section 49 does not apply to a cancellation under subsection (3). 16
- ‘67AZM Terms of disqualifications 17**
- ‘(1) This section states the term for which an individual given a notice 18  
under section 67AZF, 67AZG, 67AZJ or 67AZK is taken not to be a fit and 19  
proper person for part 3, division 2 (the “**term of disqualification**”). 20
- ‘(2) Only demerit points accumulated after the commencement of this 21  
section may be taken into account in calculating the term of 22  
disqualification. 23
- ‘(3) The term of disqualification for an individual given a notice for 24  
accumulating 30 demerit points in a period of 3 years for the first time is 25  
3 years. 26
- ‘(4) The term of disqualification for an individual given a notice for 27  
accumulating 30 demerit points in a period of 3 years a second time or 28  
subsequent time is the life of the individual. 29
- ‘(5) A notice may be given to an individual a second time or subsequent 30  
time under section 67AZF, 67AZG, 67AZJ or 67AZK if— 31

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31 A company may have the authority’s decision reviewed by the tribunal under the Tribunal Act, section 104(1)(q).

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- (a) a notice for accumulating 30 demerit points in a period of 3 years has been given under 1 of the sections stating a disqualification of 3 years; and
- (b) the second or subsequent notice relates to 30 demerit points accumulated in a period of 3 years after the notice stating a disqualification of 3 years is given.
- ‘(6) It is declared that, in deciding whether a notice for accumulating 30 demerit points in a period of 3 years has been given to an individual a second time or subsequent time, a notice given to an individual for the first time under section 67AZF, 67AZG, 67AZJ or 67AZK stating a disqualification of 3 years must be counted whether or not the individual has served the term of the disqualification.
- Example for subsections (5) and (6)—*
- An individual who is a licensee is given a notice under section 67AZF for accumulating 30 demerit points in a period of 3 years. The notice informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for 3 years. After the notice under section 67AZF is given, the individual accumulates a further 30 demerit points in a period of 3 years that may include part of the term of disqualification. The authority may give the individual a second notice under section 67AZF for the further 30 demerit points whether or not the term of disqualification has ended. Also, it is the second notice under section 67AZF that informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for the life of the individual.
- ‘(7) However, in deciding whether a notice for accumulating 30 demerit points in a period of 3 years is given to an individual a second time or subsequent time, an earlier notice given to an individual under section 67AZF, 67AZG, 67AZJ or 67AZK must not be counted if—
- (a) the earlier notice was given more than 10 years before the second or subsequent notice; or
- (b) the authority’s decision under the earlier notice was reversed or annulled on review by the tribunal.
- ‘(8) In this section a reference to accumulating 30 demerit points in a period of 3 years is—
- (a) for an individual given notice under section 67AZF(3) or 67AZG(3)—a reference to the individual accumulating 30 demerit points in a period of 3 years; or
- (b) for an individual given notice under section 67AZJ(3) or 67AZK(3)—a reference to the company for which the individual

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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was a director, secretary, influential person or nominee 1  
accumulating 30 demerit points in a period of 3 years.’. 2

<b>Clause 35</b>	<b>Amendment of s 67V (Offence of not warning that contract is construction management trade contract)</b>	3 4
	Section 67V(2)(a), ‘approved by the board’—	5
	<i>omit, insert</i> —	6
	‘prescribed by regulation’.	7
<b>Clause 36</b>	<b>Amendment of s 69 (Insurance of building work)</b>	8
	Section 69(2), ‘prescribed by regulation’—	9
	<i>omit, insert</i> —	10
	‘stated in the board’s policies for the purpose’.	11
<b>Clause 37</b>	<b>Insertion of new s 71A</b>	12
	Part 6, before section 72—	13
	<i>insert</i> —	14
	<b>‘71A Dispute resolution before rectification of building work ordered</b>	15
	‘(1) This section applies to a consumer who wants the authority to consider whether to direct rectification of building work under section 72.	16 17
	‘(2) The consumer must apply in writing to the authority stating—	18
	(a) the name of the person who carried out the building work; and	19
	(b) details of the building work the consumer considers is defective or incomplete; and	20 21
	(c) other details the authority reasonably requires to consider the matter.	22 23
	‘(3) The application must be accompanied by the fee prescribed under a regulation.	24 25
	‘(4) Before it considers whether building work is defective or incomplete, the authority may require the consumer to comply with a	26 27

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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process established by the authority to attempt to resolve the matter with the person who carried out the building work. 1  
2

‘(5) For this section, the person who carried out the building work is taken to include a person mentioned in section 72(5).’ 3  
4

**Clause 38 Insertion of new ss 106A–106C** 5

After section 106— 6

*insert—* 7

**‘106A Power to require production of documents** 8

‘(1) An inspector may require a person who has obligations under this Act or the *Domestic Building Contracts Act 2000* to make available, or produce, for inspection by the inspector at a reasonable time and place nominated by the inspector, a document to which the person has access that relates to the person’s obligations under this Act or the *Domestic Building Contracts Act 2000*. 9  
10  
11  
12  
13  
14

‘(2) The inspector may keep the document to copy it. 15

‘(3) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry. 16  
17  
18

‘(4) The inspector must return the document to the person as soon as practicable after copying it. 19  
20

‘(5) However, if a requirement (a **“document certification requirement”**) is made of a person under subsection (3), the inspector may keep the document until the person complies with the requirement. 21  
22  
23

‘(6) A requirement under subsection (1) is a **“document production requirement”**. 24  
25

**‘106B Failure to produce document** 26

‘(1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse. 27  
28  
29

Maximum penalty—200 penalty units. 30

‘(2) It is not a reasonable excuse to fail to produce the document that producing the document might tend to incriminate the person. 31  
32

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>'106C Failure to certify copy of document</b>	1
<b>'(1)</b> A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.	2 3 4
Maximum penalty—100 penalty units.	5
<b>'(2)</b> It is not a reasonable excuse to fail to certify the document or an entry in the document that certifying the document or entry might tend to incriminate the person.'	6 7 8
<b>Clause 39 Amendment of s 107 (Power to enter and inspect building site)</b>	9
<b>(1)</b> Section 107(2)(b)—	10
<i>renumber</i> as section 107(2)(c).	11
<b>(2)</b> Section 107(2)—	12
<i>insert</i> —	13
'(b) during times building work is being carried out on the site; or'	14
<b>(3)</b> Section 107—	15
<i>insert</i> —	16
<b>'(2A)</b> For the purpose of asking the person in control of the site for consent to enter, an inspector may, without the person's consent or a warrant enter the site to the extent that is reasonable to contact the person.	17 18 19
<b>'(2B)</b> Neither subsection (2)(b) or (2A) authorises entry to a place where a person resides.'	20 21
<b>Clause 40 Amendment of s 108 (Obligation of assessment manager)</b>	22
Section 108, 'local authority'—	23
<i>omit, insert</i> —	24
'local government'.	25

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 41</b>	<b>Amendment of s 114 (Protection)</b>	1
	Section 114(1), after ‘this Act’—	2
	<i>insert—</i>	3
	‘or the <i>Building Act 1975</i> ’.	4
<b>Clause 42</b>	<b>Amendment of s 116 (Regulations)</b>	5
	Section 116—	6
	<i>insert—</i>	7
	‘(2) Without limiting subsection (1), a regulation may—	8
	(a) set fees payable under this Act and the matters for which the fees are payable; and	9 10
	(b) provide for the refunding of fees in stated circumstances; and	11
	(c) impose a penalty of not more than 20 penalty units for a contravention of a provision of the regulation.’.	12 13
<b>Clause 43</b>	<b>Amendment of sch 1 (Transitional and validating provisions)</b>	14
	Schedule 1—	15
	<i>insert—</i>	16
	<b>‘PART 5—VALIDATING AND TRANSITIONAL PROVISIONS FOR QUEENSLAND BUILDING SERVICES AUTHORITY AND OTHER LEGISLATION AMENDMENT ACT 2002</b>	17 18 19 20
	<i>‘Division 1—Interpretation</i>	21
	<b>‘17 Definition for pt 5</b>	22
	‘In this part—	23
	<b>“the regulation”</b> means the <i>Queensland Building Services Authority Regulation 1992</i> .	24 25

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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***‘Division 2—Provision about financial requirements*** 1

**‘18 Validation of provisions about financial requirements** 2

‘(1) This section applies to section 7 of the regulation as in force, or purporting to be in force, before 1 October 1999 and section 7A of the regulation as in force, or purporting to be in force, before 19 November 1993 so far as the sections related to financial requirements. 3  
4  
5  
6

‘(2) The sections are taken to have been valid at all times and to have imposed financial requirements under section 31 of the Act as in force at a time mentioned in subsection (1). 7  
8  
9

‘(3) Without limiting subsection (2), the authority and board are taken to have had the power to make the determinations and policies mentioned in the sections of the regulation. 10  
11  
12

***‘Division 3—Terms of insurance policies*** 13

**‘19 Validation of provision about terms of insurance policy** 14

‘(1) This section applies to section 24 of the regulation as in force, or purporting to be in force, before the commencement of this section. 15  
16

‘(2) The section is taken to have been valid at all times including for the purpose of prescribing the terms of a policy of insurance under section 69(2) of the Act as in force at a time mentioned in subsection (1). 17  
18  
19

‘(3) Without limiting subsection (2), the board is taken to have had the power to make the policies mentioned in the section of the regulation. 20  
21

**‘20 Existing policies apply for amended s 69(2)** 22

‘(1) Board policies in force, or purporting to be in force, immediately before the commencement of this section for the purpose of section 24 of the regulation continue in force for the purpose of section 69(2) of the Act as amended by the *Queensland Building Services Authority and Other Legislation Amendment Act 2002*. 23  
24  
25  
26  
27

‘(2) Subsection (1) does not prevent the board amending or repealing the policies. 28  
29

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>‘Division 4—Licence classes and qualifications and experience</b>	1
<b>‘21 Validation of sch 2, pt 25 of the regulation etc.</b>	2
‘(1) This section applies to schedule 2, part 25 of the regulation as in force, or purporting to be in force, before the commencement of the <i>Queensland Building Services Authority Amendment Regulation (No. 2) 2002</i> .	3 4 5 6
‘(2) The part is taken to have been valid at all times before the commencement of the <i>Queensland Building Services Authority Amendment Regulation (No. 2) 2002</i> for the purpose of specifying a class of building work by regulation under section 30(2) of the Act and having stated the qualifications and experience required by regulation under section 31(1)(b) or 32(b) of the Act.	7 8 9 10 11 12
‘(3) Without limiting subsection (2), the authority is taken to have had the power to give the directions mentioned in the part and to make decisions for deciding qualifications and experience requirements for the part.	13 14 15 16
‘(4) A board policy, or purported board policy, giving a direction or containing a decision about scope of work, qualifications or experience requirements is taken, for this section, to have been a direction or decision of the authority given for the part.	17 18 19 20
<b>‘22 Transitional provision for licences valid</b>	21
‘Section 35 of the regulation as inserted by the <i>Queensland Building Services Authority Amendment Regulation (No. 2) 2002</i> is taken to have been valid for the purpose mentioned in the section.	22 23 24
<b>‘Division 5—Non-trading licences</b>	25
<b>‘23 Definition for div 5</b>	26
‘In this division—	27
“ <b>non-trading licence</b> ” means an instrument purporting to be a contractor’s licence issued or renewed by the authority, in the period starting on 19 November 1999 and ending immediately before 27 August 2001,	28 29 30



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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stating that it was a non-trading licence or containing an expression indicating that it was a non-trading licence.	1 2
<i>Example of contractor’s licence containing an expression indicating the licence was a non-trading licence—</i>	3 4
A contractor’s licence containing the expression ‘NTL’.	5
<b>‘24 Non-trading licence taken to be valid</b>	6
‘(1) A non-trading licence is taken to have been and to be a valid contractors licence subject to a valid condition under section 35 or 36 of the Act that the licensee must not carry out, undertake to carry out or supervise the carrying out of building work.	7 8 9 10
‘(2) If the authority removed or removes the statement or expression on the licence stating or indicating that it was a non-trading licence, the authority is taken to have validly revoked the condition.	11 12 13
<i>‘Division 6—Courses of instruction for owner-builders</i>	14
<b>‘25 Validation of provision about courses of instruction for owner-builders</b>	15 16
‘(1) This section applies to section 13(4) and (5) of the regulation as in force, or purporting to be in force, before the commencement of this section.	17 18 19
‘(2) Section 13(4) and (5) are taken to have been, and to be, valid at all times including for the purpose of specifying a course of instruction under section 44(3) of the Act.	20 21 22
‘(3) Without limiting subsection (2), the board is taken to have had the power to make the policies mentioned in section 13(4) and (5) of the regulation.	23 24 25
<i>‘Division 7—Board’s policies</i>	26
<b>‘26 Certain board’s policies continue in force</b>	27
‘(1) The board’s policies that are general policies in force under the Act before amendment—	28 29

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(a) continue in force as board's policies under the Act after amendment; and 1  
2

(b) may be reviewed by the board and amended or repealed as if they were made under section 9A of the Act after amendment. 3  
4

'(2) The board's policies that are supervision policies continue in force only until the commencement of section 17 of the amendment Act. 5  
6

'(3) In this section— 7

**"Act after amendment"** means the *Queensland Building Services Authority Act 1991* as in force immediately after the commencement of section 6 of the amendment Act. 8  
9  
10

**"Act before amendment"** means the *Queensland Building Services Authority Act 1991* as in force immediately before the commencement of section 6 of the amendment Act. 11  
12  
13

**"amendment Act"** means the *Queensland Building Services Authority and Other Legislation Amendment Act 2002*.'. 14  
15

**Clause 44 Amendment of sch 2 (Dictionary)** 16

(1) Schedule 2, definitions "completed building inspection", "excluded company", "excluded individual", "influential person", "nominated supervisor", "permitted individual", "relevant bankruptcy event", "relevant company event" and "relevant event"— 17  
18  
19  
20

*omit.* 21

(2) Schedule 2— 22

*insert—* 23

' **"accumulate"**, for part 3E, see section 67AQ. 24

**"administering authority"**, for part 3E, see section 67AQ. 25

**"banned individual"** see section 67AC. 26

**"Building Code of Australia"** see the *Building Act 1975*, section 3. 27

**"carry out tier 1 defective work"** see section 67AB(2). 28

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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- “completed building inspection”** means the inspection or investigation of, and the provision of advice or a report about, the following class 1a<sup>32</sup> or 10<sup>33</sup> buildings under the Building Code of Australia—
- (a) a building for which there is no current contract between a building contractor and a consumer because the contract has been completed;
- Example—*
- An existing detached house that has previously been occupied or that has recently been built.
- (b) a building on which work is not being carried out because the contract under which it was being carried out has been terminated;
- Example—*
- A detached house on which a building contractor has stopped building work in breach of the terms of a contract with a consumer and the consumer has terminated the contract.
- (c) a building on which work is being, or was, carried out but not under a contract between a building contractor and a consumer.
- Example—*
- A detached house being built by, or that was built by, a building contractor but not under a contract with a particular consumer. This is known in the building industry as “a specy”.
- “contract administration”**, in relation to building work designed by a person, includes the following—
- (a) preparing tender documentation and calling and selecting tenders;
- (b) preparing, or helping the person’s clients with the preparation of, contracts;
- (c) preparing additional documentation for the person’s clients or building contractors;
- (d) arranging and conducting on-site meetings and inspections;

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32 Class 1a includes a detached house, a row house, a terrace house, a town house and a villa unit.

33 Class 10 includes non-habitable buildings such as private garages, carports and sheds.

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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(e) arranging progress payments;	1
(f) arranging for certificates, including certificates from a local government, to be issued;	2 3
(g) providing advice and help to the person's clients including during the maintenance period allowed under a contract.	4 5
<b>“convicted company officer”</b> means a person who has been convicted of an offence under the Corporations Act 2001 (Cwlth), section 596(b) or (c). <sup>34</sup>	6 7 8
<b>“conviction”</b> , for part 3E, see section 67AQ.	9
<b>“default certificate”</b> , for part 3E, see section 67AQ.	10
<b>“demerit matter”</b> see section 67AQ.	11
<b>“demerit offence”</b> , for part 3E, see section 67AR.	12
<b>“demerit points”</b> see section 67AQ.	13
<b>“disqualified individual”</b> see section 67AU.	14
<b>“document certification requirement”</b> see section 106A(5).	15
<b>“document production requirement”</b> see section 106A(6).	16
<b>“domestic building work”</b> see the <i>Domestic Building Contracts Act 2000</i> , schedule 2.	17 18
<b>“excluded company”</b> see section 56AC(7).	19
<b>“excluded individual”</b> , for a relevant event, see section 56AC(3) and (4).	20
<b>“influential person”</b> , for a company, means an individual, other than a director or secretary of the company, who is in a position to control or substantially influence the conduct of the company's affairs, including, for example, a shareholder with a significant shareholding, a financier or a senior employee.	21 22 23 24 25
<b>“infringement notice”</b> , for part 3E, see section 67AQ.	26
<b>“judgment debt”</b> see section 67AS.	27
<b>“nominee”</b> , in relation to a company, means an officer or employee of the company nominated by the company to have the general supervision of building work to be carried out under a licence.	28 29 30

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34 *Corporations Act 2001* (Cwlth), section 596 (Frauds by officers)

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>“occupational licence”</b> means a licence or registration for an occupation that is—	1 2
(a) issued to a person by an entity other than the authority; and	3
(b) required by the person to carry out the occupation.	4
<b>“period of 3 years”</b> , for part 3E, see section 67AQ.	5
<b>“permanently excluded individual”</b> see section 58.	6
<b>“permitted individual”</b> , for a relevant event, means an individual who, under part 3A, is categorised as a permitted individual for the relevant event.	7 8 9
<b>“registrar”</b> , for part 3E, see section 67AQ.	10
<b>“relevant bankruptcy event”</b> see section 56AC(1)(a).	11
<b>“relevant company event”</b> see section 56AC(2)(b).	12
<b>“relevant event”</b> means a relevant bankruptcy event or a relevant company event.	13 14
<b>“SPER”</b> , for part 3E, see section 67AQ.	15
<b>“term of ban”</b> see section 67AO.	16
<b>“term of disqualification”</b> , for part 3E, see section 67AZM.	17
<b>“tier 1 defective work”</b> see section 67AB(1).	18
<b>“unsatisfied”</b> , in relation to a judgment debt, see section 67AT.’.	19
(3) Schedule 2, definition “building work”—	20
<i>insert—</i>	21
(fa) contract administration carried out by a person in relation to the construction of a building designed by the person; or	22 23
(j) the inspection or investigation of a building, and the provision of advice or a report, for the following—	24 25
(i) termite management systems for the building;	26
(ii) termite infestation in the building;’.	27

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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**PART 3—AMENDMENT OF DOMESTIC BUILDING  
CONTRACTS ACT 2000**

		1
		2
<b>Clause 45</b>	<b>Act amended in pt 3</b>	3
	This part amends the <i>Domestic Building Contracts Act 2000</i> .	4
<b>Clause 46</b>	<b>Insertion of new s 17A</b>	5
	After section 17—	6
	<i>insert—</i>	7
	<b>‘17A Multiple contracts for the same domestic building work</b>	8
	‘(1) This section applies if a building contractor and building owner enter into 2 or more separate contracts that—	9 10
	(a) could be the subject of a single contract for carrying out domestic building work; and	11 12
	(b) if they were the subject of a single contract, would be a contract for carrying out domestic building work.	13 14
	‘(2) The separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.	15 16
	<i>Example for this section—</i>	17
	A building contractor that manufactures and installs kitchens enters into one contract with a building owner for the manufacture of a kitchen and a second contract for its installation.’.	18 19 20

**PART 4—AMENDMENT OF QUEENSLAND BUILDING  
TRIBUNAL ACT 2000**

<b>Clause 47</b>	<b>Act amended in pt 4</b>	23
	This part amends the <i>Queensland Building Tribunal Act 2000</i> .	24

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 48</b>	<b>Amendment of s 104 (Reviewable decisions)</b>	1
	(1) Section 104(1), after paragraph (k)—	2
	<i>insert—</i>	3
	‘(l) a decision under the <i>Queensland Building Services Authority Act 1991</i> , section 66 or 67 that a person is a convicted company officer;	4 5 6
	(m) a decision under the <i>Queensland Building Services Authority Act 1991</i> , section 67AA that a company that is a licensee has an individual who is a convicted company officer as a director or secretary of, or an influential person or nominee for, the company;	7 8 9 10 11
	(n) a decision under the <i>Queensland Building Services Authority Act 1991</i> , section 67AH, 67AI, 67AL or 67AM that an individual is a banned individual for a stated term;	12 13 14
	(o) a decision under the <i>Queensland Building Services Authority Act 1991</i> , section 67AN that a company that is a licensee has an individual who is a banned individual as a director or secretary of, or an influential person or nominee for, the company;	15 16 17 18
	(p) a decision under the <i>Queensland Building Services Authority Act 1991</i> , section 67AZF, 67AZG, 67AZJ or 67AZK that an individual is a disqualified individual for a stated term;	19 20 21
	(q) a decision under the <i>Queensland Building Services Authority Act 1991</i> , section 67AZL that a company that is a licensee has an individual who is a disqualified individual as a director or secretary of, or an influential person or nominee for, the company.’.	22 23 24 25 26
	(2) Section 104—	27
	<i>insert—</i>	28
	‘(3) For subsection (1)(n), if the tribunal, after reviewing the matters mentioned in the <i>Queensland Building Services Authority Act 1991</i> , section 67AH(1)(a) to (c), 67AI(1)(a) to (c), 67AL(1)(a) and (b) or 67AM(1)(a) and (b), is satisfied that an individual is a banned individual, it may not vary the term of ban applying to the individual if it has been correctly calculated under the <i>Queensland Building Services Authority Act 1991</i> , section 67AO.	29 30 31 32 33 34 35

*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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‘(4) For subsection (1)(p), if the tribunal, after reviewing the matters mentioned in the *Queensland Building Services Authority Act 1991*, section 67AZF(1), 67AZG(1), 67AZJ(1)(a) and (b) or 67AZK(1)(a) and (b), is satisfied that an individual is a disqualified individual, it may not vary the term of disqualification applying to the individual if it has been correctly calculated under the *Queensland Building Services Authority Act 1991*, section 67AZM.’.

- Clause 49 Amendment of s 111 (Orders for disciplinary action)** 8
- (1) Section 111(2)(a), ‘200 penalty units’— 9  
*omit, insert—* 10  
‘400 penalty units’. 11
- (2) Section 111(2)(b), ‘1 000 penalty units’— 12  
*omit, insert—* 13  
‘2 000 penalty units’. 14

**PART 5—AMENDMENT OF STATE HOUSING ACT 1945** 15

- Clause 50 Act amended in pt 5** 16  
This part amends the *State Housing Act 1945*. 17
- Clause 51 Amendment of s 22B (Provision of land for industry, trade or business)** 18  
19
- Section 22B(5), definition “prescribed percentage”— 20  
*omit, insert—* 21
- ‘“**prescribed percentage**” means— 22
- (a) if a percentage is prescribed under a regulation for this definition 23  
and is effective at the date of commencement of the relevant 24  
rental period—that percentage; or 25
- (b) otherwise—10%.’. 26



*Queensland Building Services Authority and Other  
Legislation Amendment Bill 2002*

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<b>Clause 52</b>	<b>Insertion of new s 51</b>	1
	After section 50—	2
	<i>insert—</i>	3
	<b>‘51 Validation of annual rental charged for s 22B</b>	4
	‘(1) This section applies despite section 22B as in force before the commencement of this section.	5 6
	‘(2) For a rental period of 1 year commencing on 1 July 1998 or a later 1 July happening before the commencement of this section, the prescribed percentage for section 22B(4) always was and is 10%.	7 8 9
	‘(3) Without limiting subsection (2), in relation to a rental period mentioned in that subsection, annual rental charged and collected for the purpose of section 22B(4) based on 10% of the unimproved value of land the subject of a lease at the commencement of the rental period is taken to have been validly charged and collected.’.	10 11 12 13 14