

Queensland



# QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991

**Reprinted as in force on 7 July 2000  
(includes amendments up to Act No. 24 of 2000)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 7**

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# Information about this reprint

This Act is reprinted as at 7 July 2000. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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AUTHORITY ACT 1991**

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# QUEENSLAND BUILDING SERVICES AUTHORITY ACT 1991

[as amended by all amendments that commenced on or before 7 July 2000]

## **An Act to regulate the building industry**

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Queensland Building Services Authority Act 1991*.

#### **Objects of Act**

3. The objects of this Act are—
- (a) to regulate the building industry—
    - (i) to ensure the maintenance of proper standards in the industry; and
    - (ii) to achieve a reasonable balance between the interests of building contractors and consumers; and
  - (b) to provide remedies for defective building work; and
  - (c) to provide support, education and advice for those who undertake building work and consumers.

#### **Definitions**

4. The dictionary in schedule 2 defines particular words used in this Act.

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### **Value of building work carried out in stages**

**4A.** If building work is, or is to be, carried out in stages under a series of separate contracts, a reference in this Act to the value of the building work is a reference to the aggregate value of the building work carried out, or to be carried out, under those contracts.

### **Act binds all persons**

**4B.** This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

### **Certain building contractors not bound**

**4C.** 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 carrying out completed building inspections.

## **PART 2—THE QUEENSLAND BUILDING SERVICES AUTHORITY**

### *Division 1—Establishment of authority*

#### **Establishment of authority**

**5.(1)** An authority called the Queensland Building Services Authority is established.

**(2)** The authority—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

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(3) The authority has, for or in connection with the performance of its functions, all the powers of a natural person, and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold and dispose of property; and
- (c) appoint agents and attorneys; and
- (d) engage consultants; and
- (e) make charges for services provided by it.

### **Constitution of authority**

6. The authority consists of—

- (a) the Queensland Building Services Board; and
- (b) the general manager and the organisational unit under the control of the general manager.

### ***Division 2—Ministerial direction***

#### **Ministerial direction**

7.(1) The authority is subject to direction by the Minister, but only if the direction is given under this section.

(2) If the Minister proposes to direct the authority—

- (a) the direction must be given in writing; and
- (b) a copy of the direction must be tabled in the Legislative Assembly within 7 sitting days after it is given.

(3) The authority is, on receipt of a written direction under subsection (2), bound by the direction.

(4) A direction by the Minister must be published in the annual report of the authority for the year in which the direction is given.

### ***Division 3—Queensland Building Services Board***

#### **Establishment of board**

**8.** A board called the Queensland Building Services Board is established.

#### **Role of board**

**9.** The board has the following functions—

- (a) to make and review policies governing the administration of this Act;
- (b) to provide guidance and leadership to the general manager and monitor the general manager’s management of the authority;
- (c) in conjunction with the general manager, to establish the strategic direction for the authority;
- (d) to advise the Minister on issues affecting—
  - (i) the building industry; and
  - (ii) consumers; and
  - (iii) the administration of this Act; and
  - (iv) the administration of the authority;
- (e) to give advice to the Minister about unfair or unconscionable trading practices affecting security of payments to subcontractors;
- (f) to consult with, and advance the interests of, the building industry and its consumers consistently with the objects of this Act.

#### **Board’s policies**

**9A.(1)** The board’s policies—

- (a) must be made in writing; and
- (b) are statutory instruments.

**(2)** The policies consist of—

- (a) policies made for the purposes of section 43(3) (“**supervision**

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**policies”); and**

(b) policies other than supervision policies (“**general policies**”).

**(3)** Supervision policies—

(a) are subordinate legislation; and

(b) must be given to the Minister at least 14 days before they are notified in the gazette.

**(4)** General policies—

(a) must be published in the gazette; and

(b) must be given to the Minister at least 14 days before they are published in the gazette; and

(c) do not have effect until they are gazetted.

### **Composition of board**

**10.(1)** The board consists of 8 members, of whom—

(a) 3 members are to be licensees, or directors of companies that are licensees, subject to the following conditions—

(i) at least 1 of the licensees must be a licensed builder;

(ii) at least 1 of the licensees must be a licensed contractor other than a licensed builder; and

(b) 2 members are to be appointed as representatives of consumers; and

(c) 1 member is to be appointed as a representative of either or both of the following—

(i) the general insurance industry;

(ii) the accounting profession; and

(d) 1 member is to be appointed as a representative of building and construction unions; and

(e) 1 member is a public service officer (the “**public service member**”).

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(2) All members of the board, other than the public service member, are voting members.

(3) The public service member's place at a meeting of the board may be filled by another public service officer chosen by the public service member.

### **Appointment of members**

**10A.(1)** The Governor in Council is to appoint—

- (a) all the members of the board; and
- (b) 1 of the members to be the chairperson of the board.

(2) The appointment of a member is to be for a term, of not longer than 3 years, decided by the Governor in Council and stated in the member's instrument of appointment.

(3) The office of a member becomes vacant if—

- (a) the member resigns by signed notice of resignation given to the Minister; or
- (b) the member becomes employed by, or becomes a contractor of, the authority; or
- (c) the member's appointment is ended by the Governor in Council under subsection (4).

(4) The Governor in Council may, at any time, end the appointment of a member for any reason or without giving a reason.

(5) The Governor in Council may appoint a person to act as a member of the board—

- (a) when there is a vacancy in the office of a voting member; or
- (b) for any period, or all periods, when a voting member is absent from duty or unable for any reason to act in the office.

### **Times and places of meetings**

**11.(1)** Subject to subsection (2), meetings of the board are to be held at such times and places as the board determines.



(2) The chairperson—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when requested by at least 3 members of the board.

### **Proceedings at meetings**

**12.(1)** The chairperson or, in the absence of the chairperson, a member chosen to preside by the members present, is to preside at a meeting of the board.

(2) At a meeting of the board—

- (a) 4 voting members constitute a quorum; and
- (b) a question is to be decided by a majority of votes of the voting members present and voting; and
- (c) each voting member present has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has a casting vote.

(3) The board may regulate its proceedings as it considers appropriate.

(4) The board may permit members to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) any other means of communication.

(5) A member who participates in a meeting of the board by permission under subsection (4) is taken to be present at that meeting.

(6) The board may invite a person to attend a meeting of the board for the purpose of advising or informing it on any matter.

### **Minutes**

**13.** The board must keep minutes of its proceedings.

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### **Committees**

**14.(1)** The board, or the Minister, may appoint committees for the purpose of advising the board on a particular subject or subjects.

**(2)** Regulations may be made governing the constitution, and regulating the proceedings, of any such committee.

### **Fees and allowances**

**15.(1)** The members of the board are entitled to the fees and allowances decided by the Governor in Council for their membership of the board.

**(2)** Members of committees established under this division are entitled to the fees and allowances decided by the Governor in Council for their membership of the committees, but only if they are also members of the board.

## ***Division 4—The general manager***

### **The office of general manager**

**16.** The office of general manager of the authority is established.

### **Appointment of the general manager**

**17.(1)** The general manager is to be appointed by the Governor in Council.

**(2)** The remuneration and conditions of appointment of the general manager are to be determined by the Minister.

**(3)** The Governor in Council may appoint a person to act as general manager—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the general manager is absent from duty or is, for any other reason, unable to perform the functions of the office.

## **Role of the general manager**

**18.(1)** The general manager has—

- (a) all executive powers of the authority; and
- (b) responsibility for the overall management of the authority; and
- (c) the power to carry out any function the general manager is authorised by another Act to carry out.

**(1A)** In carrying out a function under subsection (1)(c), the general manager may adopt the procedures of this Act unless the Act authorising the function prescribes another procedure.

**(2)** Without limiting subsection (1), the general manager's functions and responsibilities include the following—

- (a) administration of the licensing system established by this Act;
- (b) administration of a system of inspection;
- (c) issuing directions for rectification of building work under this Act;
- (d) taking disciplinary and other proceedings under this Act;
- (e) assessing and approving payment of insurance claims;
- (ea) undertaking strategic planning, having regard especially to cyclical industry conditions, to ensure that the authority's available revenue base, and its assets and reserves, are enough to allow the authority to maintain the services it is required to provide;
- (f) issuing warnings to the public or any section of the public;
- (g) providing and promoting consumer education;
- (h) providing an advisory service to consumers about—
  - (i) their statutory rights and obligations; and
  - (iii) insurance claims that may arise about building work; and
  - (iv) the authority's role, functions and operating procedures; and
  - (v) any incidental matters;
- (i) providing courses of instruction for—

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- (i) persons seeking to obtain licences; and
- (ii) licensees; and
- (iii) persons proposing to carry out building work as owner-builders; and
- (iv) other persons seeking to acquire knowledge or expertise in subjects related to the building industry.

(3) The general manager must report regularly to the board on the administration of this Act and, at the request of the board, must provide the board with a special report on a particular subject.

### **Relationship between general manager and board**

**19.(1)** The general manager is independent of the board's control in performing the functions and responsibilities mentioned in section 18(2).

(2) However, the general manager must give effect to the board's policies.

### **Delegation**

**20.** The general manager may delegate powers under this Act to any officer or employee of the authority.

## ***Division 5—The insurance manager***

### **Appointment of insurance manager**

**21.(1)** The authority must appoint an individual to be the insurance manager of the authority.

(2) The remuneration and conditions of appointment of the insurance manager are to be decided by the authority.

(3) The authority may appoint a person to act as insurance manager of the authority—

- (a) when there is a vacancy in the position of insurance manager of

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the authority; or

- (b) for any period, or all periods, when the insurance manager is absent from duty or, for any other reason, can not perform the functions of the position.

### **Role of insurance manager**

**22.(1)** The insurance manager must report regularly to the board on the administration of the statutory insurance scheme and, if asked by the board, must give the board a special report on a particular subject.

**(2)** The insurance manager is independent of the general manager's direction in reporting under subsection (1), but is otherwise subject to the general manager's direction.

## ***Division 6—Financial provisions***

### **General Statutory Fund**

**25.(1)** A fund called the General Statutory Fund is established.

**(2)** The fund consists of—

- (a) the balance of the Builders' Registration Board General Fund as at the commencement of this section; and
- (b) any money received or recovered by the authority except in connection with the insurance scheme; and
- (c) all amounts transferred from the Insurance Fund under section 26.

**(3)** The costs of administering this Act (apart from the costs of administering the statutory insurance scheme) and the Tribunal Act are to be paid out of the fund.

**(5)** The authority may apply any amount surplus to the authority's budgetary requirements for a particular financial year to encourage or assist education or research related to the building industry.

## **Insurance Fund**

**26.(1)** A fund called the Insurance Fund is established.

**(2)** The fund consists of—

- (a) the balance of the Builders' Registration Board Insurance Fund as at the commencement of this section; and
- (b) all money received or recovered by the authority in connection with the statutory insurance scheme.

**(3)** The following amounts are to be paid from the fund—

- (a) the costs of administering the statutory insurance scheme;
- (b) the costs of paying out claims under the statutory insurance scheme;
- (c) if a regulation is in force under subsection (4), the amounts decided by the authority from time to time under subsection (5).

**(4)** A regulation may state a maximum amount that may, within any period stated in the regulation, be transferred from the fund to the General Statutory Fund for use by the authority in administering this Act, other than in administering the statutory insurance scheme.

**(5)** The authority may, from time to time, transfer amounts from the fund to the General Statutory Fund if, each time an amount is transferred, the transfer is consistent with the requirements of the regulation in force under subsection (4).

**(6)** The fixing, under a regulation, of the amounts payable as insurance premiums in relation to building work must take into account any requirement for the transfer from time to time under subsection (5) of amounts from the fund to the General Statutory Fund.

## **Authority is statutory body**

**27.(1)** Under the *Statutory Bodies Financial Arrangements Act 1982*, the authority is a statutory body.

**(2)** The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the authority's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

### **Authority's obligation to report suspected offence**

**28.** If the authority has reason to suspect that an offence resulting in loss of money, or loss or damage to other property has been committed, the matter must be reported to the auditor-general and the police.

## **PART 3—LICENSING**

### *Division 1—Classes of licences*

#### **Classes of licences**

**30.(1)** A licence may be issued authorising the licensee—

- (a) to carry out, and to supervise, all classes of building work; or
- (b) to supervise (but not to carry out) all classes of building work; or
- (c) to carry out, and to supervise, building work of 1 or more classes specified in the licence; or
- (d) to supervise (but not to carry out) building work of 1 or more classes specified in the licence.

**(2)** Licences are to be divided into classes by regulation—

- (a) according to whether the licence is a contractor's licence or a supervisor's licence; and
- (b) according to whether the licence relates to all classes of building work or is limited to a specified class or specified classes of building work; and
- (c) if the licence is limited to a specified class, or specified classes, of building work—according to the class or classes of building work to which it relates.

***Division 2—Entitlement to licence***

**Entitlement to contractor's licence**

**31.(1)** A person (not being a company) is entitled to a contractor's licence if the authority is, on application by that person, satisfied that—

- (a) the applicant is a fit and proper person to hold the licence; and
- (b) the applicant has the qualifications and experience required by regulation in relation to a licence of the relevant class; and
- (c) the applicant satisfies the relevant financial requirements stated in the board's policies.

**(2)** A company is entitled to a contractor's licence if the authority is satisfied, on application by that company for a licence, that—

- (a) the directors and any other persons who are in a position to control or substantially influence the conduct of the company's affairs (including, for example, shareholders with a significant shareholding, financiers and senior employees) are fit and proper persons to exercise such control or influence over a company that holds a contractor's licence; and
- (b) the company's nominated supervisor holds a licence specifically identifying, as a class of building work that the supervisor may supervise, the same class of building work for which the licence is sought by the company; and
- (c) the applicant satisfies the relevant financial requirements stated in the board's policies.

**(3)** In deciding whether a particular person is a fit and proper person to hold a contractor's licence or to exercise control or influence over a company that holds a contractor's licence, the authority may have regard to—

- (a) commercial and other dealings in which that person has been involved and the standard of honesty and integrity demonstrated in those dealings; and



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- (b) any failure by that person to carry out commercial or statutory obligations and the reasons for the failure; and
- (c) any other relevant factor.

### **Entitlement to supervisor's licence**

**32.** A person (not being a company) is entitled to a supervisor's licence if the authority is, on application by that person, satisfied—

- (a) that the applicant is a fit and proper person to hold the licence; and
- (b) that the applicant has the qualifications and experience required by regulation in relation to a licence of the relevant class.

### *Division 3—Grant of licence*

#### **Application for licence**

**33.(1)** An application for a licence—

- (a) must be made in accordance with the regulations; and
- (b) must be accompanied by the appropriate application fee fixed by regulation.

**(2)** An applicant for a licence must at the request of the authority provide any further information or evidence that the authority may require to decide the application.

**(3)** In deciding whether to give a licence, the authority may make inquiries and investigations that are reasonable and appropriate in the circumstances, including for example by—

- (a) seeking confirmation about the experience of applicants through site inspections and referee checks; and
- (b) carrying out checks with the Australian Securities and Investment Commission, bankruptcy registers and credit bureaus.

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### **Grant of licence**

**34.(1)** If the authority is satisfied, on an application under this division, that the applicant is entitled to a licence, the authority must issue a licence of the appropriate class.

**(2)** A contractor's licence is to be in the form of a card stating—

- (a) the licensee's name and licence number; and
- (b) the class of building work the licensee is licensed to carry out.

**(3)** The authority may also issue a licence certificate in a form determined by the authority.

**(4)** If, on application by a licensee and payment of the fee required by regulation, the authority is satisfied that a licence card or a licence certificate has been lost, damaged or destroyed, the authority may issue a new licence card or licence certificate.

### *Division 3A—Issue of PINs to licensees*

### **PINs**

**34A.(1)** The authority may give a licensee a confidential personal identification number (a “PIN”) for use by the licensee in the licensee's dealings with the authority.

**(2)** When the authority gives a PIN to a licensee, the authority must also advise the licensee of the authority's requirements for the licensee's keeping and use of the PIN.

### *Division 4—Conditions of licence*

### **Imposition of conditions etc. on grant of licence**

**35.(1)** A licence may be granted subject to such conditions as the authority considers appropriate.

**(2)** Without limiting subsection (1), a contractor's licence is subject to the condition that—

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- (a) the licensee's financial circumstances must at all times satisfy the relevant financial requirements stated in the board's policies; and
- (b) variations of the contractor's turnover and assets must be notified, or notified and approved, in accordance with the relevant financial requirements stated in the board's policies.

**Subsequent imposition of conditions etc.**

**36.(1)** If the authority has reason to believe—

- (a) that a licensee may have insufficient financial resources to meet possible liabilities in relation to building work; or
- (b) that there is some other proper ground for imposing a condition on the licence;

the authority may notify the licensee of the proposed condition and invite the licensee, within a period specified in the notice, to make written representations on the proposal.

**(2)** After considering the written representations (if any) made by the licensee, the authority, if satisfied that the condition is appropriate, may, by notice to the licensee, impose the condition.

**(3)** A condition may be imposed preventing the licensee from continuing to carry on business until the licensee has lodged with the authority appropriate security against possible liabilities in relation to building work.

**(3A)** A condition may be imposed requiring the licensee to complete a course module included in technical or managerial national competency standards relevant to the building industry.

**(4)** The authority may, by subsequent notice to the licensee, vary or revoke a condition imposed under this section.

**(5)** A notice imposing or varying a condition must inform the licensee of the licensee's right to apply for a review of the authority's decision to impose or vary the condition.

### ***Division 5—Annual licence fee***

#### **Annual licence fee**

**37.** A licensee must pay the licence fee appropriate to a licence of the class held by the licensee in accordance with the regulations.

#### **Suspension for non-payment of fee**

**38.(1)** If a licensee fails to pay the appropriate licence fee within the time allowed under the regulations, the authority may, by notice to the licensee, suspend the licence.

**(2)** A suspension imposed under this section terminates on payment of the appropriate fee.

**(3)** If a licence has remained in suspension under this section for more than 3 months, the authority may, by notice to the licensee, cancel the licence.

#### **Receipt of fee does not revive licence**

**38A.(1)** This section applies if, despite the cancellation or suspension of a licence under this Act, other than a suspension under section 38(1), the authority accepts the payment of an amount purporting to be the licence fee for the licence.

**(2)** The licence does not stop being cancelled or suspended merely because of the authority's acceptance of the payment.

**(3)** Subsection (2) applies whether or not the authority gives a receipt for the payment.

### ***Division 6—The register***

#### **Register**

**39.(1)** A register of licensees must be kept by the authority.

**(2)** The register must include the following particulars in relation to each

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licensee—

- (a) the licensee's full name, business address and licence number;
- (b) if the licensee is a company—the full name and business address of the nominated supervisor and each director;
- (c) the class of licence held by the licensee and any special conditions to which the licence is subject;
- (d) any particulars required by regulation.

(3) The register must also contain against the name of each licensee a note of—

- (a) each direction of the authority requiring the licensee to rectify building work; and
- (b) each order made against the licensee by the tribunal under section 111<sup>1</sup> of the Tribunal Act; and
- (c) any decision of the tribunal under section 101<sup>2</sup> of the Tribunal Act that it would have been appropriate for the authority to issue a direction requiring the licensee to rectify or complete building work; and
- (d) each time the licensee is convicted of an offence against this Act, the Tribunal Act or the *Domestic Building Contracts Act 2000* and the provision of the Act that was contravened.

(4) No information may be included in the register under subsection (3)(a) until—

- (a) all periods for seeking a review of the direction, and for making any appeal arising out of review of the direction, have ended; and
- (b) any review or appeal about the direction is finally decided or is not proceeded with.

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<sup>1</sup> *Queensland Building Tribunal Act 1999*, section 111 (Orders for disciplinary action)

<sup>2</sup> *Queensland Building Tribunal Act 1999*, section 101 (Tribunal to decide about rectification or completion work)

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(5) No information may be included in the register under subsection (3)(b) or (c) until—

- (a) all periods for making an appeal arising out of the tribunal's order or decision have ended; and
- (b) any appeal about the order or decision is finally decided or is not proceeded with.

(6) No information may be included in the register under subsection (3)(d) until—

- (a) all periods for making an appeal arising out of the conviction have ended; and
- (b) any appeal about the conviction is finally decided or is not proceeded with.

(7) A note made in the register under subsection (3) must be taken off the register 5 years after it is made.

(8) If circumstances change so that the particulars recorded in the register in relation to a particular licensee no longer reflect the current position, the licensee must, within 14 days after the date of the change, give the authority particulars of the change.

(9) Particulars may be given under subsection (8)—

- (a) by written notice; or
- (b) in another way approved by the authority, and advised generally to licensees, as a suitable way for advising particulars to the authority.

(10) A person may, on payment of the fee, and subject to the conditions, prescribed by regulation, inspect the register at the authority's office at any time that office is open to the public.

## **Certificates**

**41.(1)** The authority may, on application by any person and payment of the fee fixed by regulation, issue a certificate—

- (a) certifying that a particular person was or was not licensed under this Act as at a particular date or over a particular period; or

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- (b) certifying the class or conditions of a particular licence; or
- (c) certifying the cancellation or suspension of a licence; or
- (d) certifying as to any other matter contained in the register.

(2) A certificate under this section is admissible in legal proceedings as evidence of any matter stated in the certificate.

***Division 7—Requirement to be licensed***

**Unlawful carrying out of building work**

**42.(1)** A person must not carry out, or undertake to carry out, building work unless that person holds a contractor's licence of the appropriate class under this Act.

(2) For the purposes of this section—

- (a) a person carries out building work whether that person carries it out personally, or directly or indirectly causes it to be carried out; and
- (b) a person is taken to carry out building work if that person provides advisory services, administration services, management services or supervisory services in relation to the building work; and
- (c) a person undertakes to carry out building work if that person enters into a contract to carry it out or submits a tender or makes an offer to carry it out.

(3) Subject to subsection (4), a person who carries out building work in contravention of this section is not entitled to any monetary or other consideration for doing so.

(4) A person is not stopped under subsection (3) from claiming reasonable remuneration for carrying out building work, but only if the amount claimed—

- (a) is not more than the amount paid by the person in supplying materials and labour for carrying out the building work; and

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- (b) does not include allowance for any of the following—
  - (i) the supply of the person's own labour;
  - (ii) the making of a profit by the person for carrying out the building work;
  - (iii) costs incurred by the person in supplying materials and labour if, in the circumstances, the costs were not reasonably incurred; and
- (c) is not more than any amount agreed to, or purportedly agreed to, as the price for carrying out the building work; and
- (d) does not include any amount paid by the person that may fairly be characterised as being, in substance, an amount paid for the person's own direct or indirect benefit.

**(5)** An unlicensed person who carries out, in the course of employment, building work for which that person's employer holds a licence of the appropriate class under this Act does not contravene this section.

**(6)** An unlicensed person who holds an owner-builder permit does not contravene this section by carrying out building work permitted by the permit.

**(7)** An unlicensed person who carries out, or undertakes to carry out, building work in partnership with a person who is licensed to carry out building work of the relevant class does not contravene this section.

**(8)** An unlicensed person who carries out, or undertakes to carry out, design work does not contravene this section if—

- (a) the person carries on business as a landscape architect; and
- (b) the person carries out the design work, or undertakes to carry it out, as part of the person's work as a landscape architect; and
- (c) the design work is of a type ordinarily carried out as an appropriate or necessary component of a landscape architect's work.

**(9)** A person who contravenes this section commits an offence.

Maximum penalty—

- (a) for an individual—80 penalty units for a first offence, 120 penalty



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units for a second offence and 160 penalty units for a third or subsequent offence; and

- (b) for a company—160 penalty units for a first offence, 240 penalty units for a second offence and 320 penalty units for a third or subsequent offence.

**(10)** Subsection (4) applies to building work carried out on or after 1 July 1992, unless the entitlement to payment for the carrying out of the building work was—

- (a) before the commencement of this section, decided by—
  - (i) a court; or
  - (ii) the tribunal; or
  - (iii) an arbitrator or another entity authorised to make a binding decision about the entitlement; or
- (b) before 2 March 1999, the subject of—
  - (i) a claim or counter claim filed in a court; or
  - (ii) an application made to the tribunal; or
  - (iii) a reference to an arbitrator or another entity authorised to make a binding decision about the entitlement; or
- (c) provided for as a term of a binding agreement entered into before the commencement of this subsection, but only if the binding agreement—
  - (i) is between—
    - (A) 1 or more consumers and 1 or more building contractors; or
    - (B) 1 or more building contractors and 1 or more other building contractors; and
  - (ii) was entered into to resolve a dispute between some or all of the parties to the binding agreement; and
  - (iii) is not the contract for the carrying out of the building work as originally entered into, or as originally entered into and as subsequently varied.

(11) In subsection (10)—

“**tribunal**” means the Queensland Building Tribunal under this Act before the commencement of this subsection.

### **Exemption from s 42 for up to 6 months**

**42A.(1)** This section applies if—

- (a) on or after 1 July 2000, a class of licence (the “**new class of licence**”) is established under this Act; and
- (b) immediately before the establishment of the new class of licence a person (the “**relevant person**”) was carrying on a business that included carrying out work (“**relevant work**”) within the scope of work for the new class of licence; and
- (c) either of the following applied immediately before the establishment of the new class of licence—
  - (i) no relevant work was building work;
  - (ii) some relevant work was building work, but its carrying out was incidental to the carrying out of all other relevant work.

(2) The relevant person does not contravene section 42(1) in carrying out, or undertaking to carry out, relevant work unless—

- (a) an application by the relevant person for the new class of licence is granted or refused; or
- (b) 6 months have elapsed since the new class of licence was established.

### **Supervision of building work**

**43.(1)** Any building work carried out by a licensed contractor must be carried out—

- (a) if the licensee is a company—under the personal supervision of an officer or employee of the company who holds a licence authorising supervision of building work of the relevant class; or

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- (b) if the licensee is an individual—under the personal supervision of the licensee or an employee of the licensee who holds a licence authorising supervision of building work of the relevant class.

(2) A licensed contractor is obliged to ensure adequate supervision of all building work carried out under the licence and accordingly the number of licensed supervisors engaged in supervision must be adequate having regard to—

- (a) the nature and amount of the building work being carried out at any one time; and
- (b) the number of sites at which the building work is being carried out; and
- (c) the geographical location of the sites.

(3) The principles for determining the adequacy of supervision are to be laid down in the board's policies.

(4) The authority may, for any proper reason, waive compliance with a requirement of this section on such conditions as the authority considers appropriate.

(5) If building work is not supervised as required by this section the licensed contractor commits an offence.

Maximum penalty—

- (a) for an individual—40 penalty units for a first offence, 60 penalty units for a second offence and 80 penalty units for a third or subsequent offence; and
- (b) for a company—80 penalty units for a first offence, 120 penalty units for a second offence and 160 penalty units for a third or subsequent offence.

***Division 8—Owner-builders***

**Permits for owner-builders**

**44.(1)** The authority may, on application by the owner of land, and payment of the appropriate fee determined under the regulations, issue a

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permit permitting the owner (subject to any other relevant law) to carry out on the land building work of a class prescribed by regulation for the purposes of this division.

(2) If the land is owned jointly or in common by 2 or more persons, the application must be made jointly by all of them.

(3) The regulations may require that an applicant for a permit to carry out building work of a particular class, or if there are 2 or more joint applicants, at least 1 of them, must have completed a specified course of instruction.

(4) A permit cannot be issued under this section if a permit has been issued to the same applicant within the previous 6 years unless—

- (a) the case falls within an exception stated in the regulations; or
- (b) the authority is satisfied that there are special reasons for issuing the permit.

(5) In this section—

“owner” includes a person—

- (a) who—
  - (i) holds an estate or interest in land that entitles the person to become an owner (as defined in section 4)<sup>3</sup> of the land; or
  - (ii) is the occupier of land under a lease, licence or other authority from the owner (as defined in section 4) of the land; and
- (b) who produces with an application under subsection (1) the written agreement of the owner (as defined in section 4) of the land for a permit to be issued under this section to the person.

### **Notification on certificate of title**

**46.(1)** If a permit is issued under this division, the authority must notify the registrar of titles of the granting of the permit.

(2) If the authority becomes aware that building work has been carried

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<sup>3</sup> Now see Schedule 2 (Dictionary)

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out, and that a permit should have been, but was not, obtained under section 44 for carrying out the building work, the authority must notify the registrar of titles of the carrying out of the building work without a permit.

(3) On receiving a notification under this section, the registrar of titles must enter the notification in the file attached to the register and it may not be removed except under this section.

(4) At the end of 7 years from entry of a notification, the registrar of titles may remove it from the file.

(5) If the authority directs earlier removal of a notification from the file, the registrar of titles must comply with that direction.

(6) In this section—

“**register**” means—

- (a) for freehold land—the freehold land register; or
- (b) for other land—the relevant register for the land.

## **Warnings**

**47.(1)** If—

- (a) building work is carried out on land by a person who is not licensed to carry out that building work; and
- (b) the land is offered for sale within 6 years after completion of the building work;

the vendor must, before the contract of sale is signed by the purchaser, give the prospective purchaser a notice containing details of the building work and a warning in the form required by regulation.

(2) If a notice is not given as required by this section, the vendor will be taken to have given the purchaser a contractual warranty (which operates to the exclusion of any inconsistent provision of the contract of sale) that the building work was properly carried out.

*Division 9—Cancellation, suspension or surrender of licence*

**Cancellation or suspension of licence**

**48.** The authority may suspend or cancel a licence if—

- (a) the licence was obtained on the basis of incorrect information supplied to the authority, whether or not fraud was intended; or
- (b) the licence was obtained by fraud or other improper means; or
- (c) the licensee is convicted of an indictable offence or an offence that, if committed in Queensland, would be an indictable offence; or
- (e) the licensee is a company and it ceases, for a period exceeding 28 days, to have a nominated supervisor holding a licence authorising supervision of building work of the appropriate class or classes; or
- (f) the licensee is convicted of an offence against this Act; or
- (g) the licensee becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (h) the licensee contravened a condition to which the licence is subject under section 35 or that is imposed under section 36 on the licensee's licence; or
- (i) the licensee owes an amount to the authority and fails to comply with a demand by the authority to discharge the debt; or
- (j) the authority becomes aware of the existence of facts that, having regard to section 31(1)(a)—
  - (i) would allow the authority to refuse to issue the licence if it were now being applied for by the licensee; or
  - (ii) would have allowed the authority to refuse to issue the licence originally.

**Procedure for cancellation or suspension**

**49.(1)** The authority must, before cancelling or suspending a licence, give

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the licensee notice of its reasons for the proposed cancellation or suspension and allow the licensee 21 days from service of the notice to make written representations on the matter.

(2) The authority must consider any written representations made within the time allowed under subsection (1) before imposing the cancellation or suspension.

(3) A cancellation or suspension is imposed by written notice to the licensee.

(4) The notice of cancellation or suspension must inform the licensee or former licensee of the right to apply to the tribunal for a review of the authority's decision.

### **Immediate suspension of licence**

**49A.(1)** The authority may suspend a licensee's licence without allowing the licensee time to make written representations before the suspension takes effect if the authority believes, on reasonable grounds, there is a real likelihood that serious financial loss or other serious harm will happen to any of the following if the licence is not immediately suspended—

- (a) other licensees;
- (b) the employees of other licensees;
- (c) consumers;
- (d) suppliers of building materials or services.

(2) The suspension under subsection (1) is imposed by written notice given to the licensee that also—

- (a) tells the licensee—
  - (i) the reasons for the suspension; and
  - (ii) that the licensee may make written representations for a lifting of the suspension; and
  - (iii) that the licensee may apply to the tribunal for a review of the authority's decision to immediately suspend the licence; and
- (b) briefly explains how the suspension could lapse under

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subsection (3).

(3) The suspension under subsection (1) lapses if—

- (a) the authority does not, within 10 days after the licensee is given notice of the suspension, give the licensee notice under section 49(1) of the authority's reasons for a proposed cancellation or suspension of the licence under section 48 (a “**section 49 notice**”); or
- (b) the authority, within 10 days after the licensee is given notice of the suspension, gives the licensee a section 49 notice, but the licence is not suspended or cancelled under section 48 within 3 months, or a longer period decided under subsections (4) and (5), after the section 49 notice is given; or
- (c) the authority suspends or cancels the licence under section 48.

(4) The authority may extend the period of 3 months mentioned in subsection (3)(b), but only if it appears to the authority that, in the circumstances, it is in the interests of the licensee to do so.

(5) The period may be extended more than once, but whenever it is extended, it must not be extended for more than 1 month.

### **Surrender of licence**

**50.** A licensee may, with the consent of the authority, surrender the licence.

### ***Division 9A—Monitoring continued satisfaction of financial requirements***

#### **Approved audit program**

**50A.(1)** The Minister may approve a program (an “**approved audit program**”) under which the authority may audit licensees to find out if they continue to satisfy the relevant financial requirements stated in the board's policies.

(2) An approved audit program must state the following—



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- (a) the purpose of the program;
- (b) when the program starts;
- (c) the period over which the program is to be carried out;
- (d) objective criteria for selecting licensees who are to be the subject of audit;
- (e) if the licensees to be audited are to be selected from licensees holding licences of a particular class, a description of the class.

(3) Despite anything in an approved audit program, a licensee may be the subject of an audit under an approved audit program only if there has not been an audit of the licensee under an approved audit program within the preceding 2 years.

### **Notice of proposed audit program**

**50B.(1)** At least 14 days, but not more than 28 days, before an approved audit program starts, the authority must give notice of the program.

(2) The notice must be published in the gazette, and may be published in any other publication the authority considers appropriate.

(3) The notice must state the following—

- (a) the purpose of the approved audit program;
- (b) when the program starts;
- (c) the period over which the program is to be carried out;
- (d) the objective criteria for selecting licensees who are to be the subject of audit;
- (e) if the licensees to be audited are to be selected from licensees holding licences of a particular class, a description of the class;
- (f) how licensees selected for audit under the program will be advised they have been selected;
- (g) the obligations to be complied with by licensees selected for audit under the program.

### **Supply of financial information under approved audit program or for other reason**

**50C.(1)** This section applies to a licensee if—

- (a) the licensee is selected to be audited under an approved audit program; or
- (b) the authority is satisfied, because of information received by the authority, there are reasonable grounds for concern that the licensee does not satisfy the relevant financial requirements stated in the board's policies.

(2) The authority may give written notice to the licensee requiring the licensee to give the authority copies of, or access to, the financial records described in the notice.

(3) The financial records described in the written notice must be only 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.

(4) The licensee must comply with the written notice within 21 days after the licensee receives the written notice, unless the licensee has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) Also, if the licensee does not comply with the written notice within 21 days after the licensee receives it, the licensee is taken, for section 48(h), to have contravened a condition imposed under section 36 on the licensee's licence.

### ***Division 10—Miscellaneous***

#### **Improper use of licence card, certificate, number or PIN**

**51.(1)** A licensed contractor must not allow another person to make use of the licensed contractor's licence if the licensed contractor knows, or ought reasonably to know, that the other person intends to make use of the licence—

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- (a) if the other person is not also a licensed contractor—to pretend to be a licensed contractor; or
- (b) if the other person is also a licensed contractor—to pretend to be the holder of a contractor’s licence authorising carrying out building work the other person is not authorised to carry out.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

(2) A person who is not a licensed contractor must not make use of a licensed contractor’s licence to pretend to be a licensed contractor.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

(3) A licensed contractor (the “**first contractor**”) must not make use of another licensed contractor’s licence to pretend to be the holder of a contractor’s licence authorising carrying out building work the first contractor is not authorised to carry out.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

(4) In this section—

“**make use of**” a licensed contractor’s licence, means make use of the number of the licensed contractor’s licence or the licensed contractor’s licence card, licence certificate or PIN.

### **Other offences relating to unlawful carrying out of building work**

**51A.(1)** A licensed contractor must not help another person to carry out building work if the licensed contractor knows, or ought reasonably to know, that in carrying out the building work the other person is committing an offence against section 42.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

**(2)** A licensed contractor must not carry out, or undertake to carry out, building work using a name, number or PIN other than the licensed contractor's name, number or PIN unless the contractor has a reasonable excuse.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
- (b) for a second offence—120 penalty units; and
- (c) for a third or subsequent offence—160 penalty units.

**(3)** Section 42(2) also applies for this section.

### **Signs to be exhibited**

**52.(1)** A licensed contractor (not being a subcontractor) must exhibit at a prominent position on a building site under the contractor's control a sign conforming with the regulations showing the name under which the contractor is licensed under this Act and the number of the contractor's licence.

Maximum penalty—20 penalty units.

**(2)** A person who carries out building work under an owner-builder permit must exhibit at a prominent position on a building site under that person's control a sign conforming with the regulations showing the number of the permit.

Maximum penalty—20 penalty units.

### **Return of licence**

**53.(1)** A licensee (or former licensee) whose licence is suspended or cancelled must, within 14 days of receiving notice of the suspension or cancellation, return the licence and, if the authority has issued a licence certificate, the licence certificate, to the authority.

**(2)** A licensee must, within 14 days of receiving notice of the imposition, variation or revocation of a condition of the licence return the licence and, if the authority has issued a licence certificate, the licence certificate, to the authority for endorsement.

**(3)** A person who fails, without reasonable excuse, to comply with a requirement of this section commits an offence.

Maximum penalty—80 penalty units.

### **Satisfying financial requirements at renewal**

**53A.(1)** The authority must not renew a contractor's licence if the authority is not given information, in a form approved by the board, and within the time allowed under a regulation, about the contractor's continued satisfaction of the relevant financial requirements stated in the board's policies.

**(2)** The form approved by the board may require some or all of the information to be given by a person suitably qualified and experienced in accountancy.

**(3)** If the contractor does not give the authority the information mentioned in subsection (1), the authority may, by written notice given to the licensee, suspend the licence.

**(4)** A suspension imposed under this section ends when the authority is given the information.

**(5)** If a licence has remained in suspension under this section for more than 3 months, the authority may, by notice to the licensee, cancel the licence.

### **False or misleading documents about financial requirements**

**53B.(1)** A person must not give a document to the authority about a contractor's satisfaction of financial requirements stated in the board's policies if—

- (a) the person knows the document contains information that is false or misleading; or
- (b) the document contains information that is false or misleading and the person did not take reasonable steps to make sure that the information was not false or misleading.

Maximum penalty—100 penalty units or 2 years imprisonment.

**(2)** Subsection (1)(a) does not apply to a person who, when giving the document—

- (a) informs the authority, to the best of the person's ability, how it is false or misleading; and
- (b) gives the correct information to the authority if the person has, or can reasonably obtain, the correct information.

**(3)** A complaint against a person for an offence against subsection (1)(a) is sufficient if it states the document was false or misleading to the person's knowledge.

### **Advertisements**

**54.** A licensee who publishes or causes to be published any advertisement in connection with the licensee's business must ensure that the advertisement—

- (a) contains the name under which the licensee is licensed; and
- (b) states that the licensee is licensed under this Act and the number of the licensee's licence; and
- (c) conforms with any other requirements imposed by regulation.

Maximum penalty—35 penalty units.

### **Notification of nominated supervisor**

**55.** If a company that holds a licence—

- (a) ceases to have a nominated supervisor; or
- (b) changes its nominated supervisor;

the company must, within 14 days, give notice containing the information required by regulation to the authority.

Maximum penalty—20 penalty units.

### **Partnerships**

**56.(1)** A licensed contractor may carry on business under the licence in partnership with an unlicensed person subject to the following conditions—

- (a) no contract to carry out building work may be entered into, and no offer or tender to carry out building work may be made, on behalf of the partnership except by the licensed contractor;
- (b) any such contract offer or tender must be signed by the licensed contractor and have endorsed on it the names of the other members of the partnership;
- (c) any advertisement published in relation to the business carried on, or to be carried on, under the licence must state the name under which the licensed contractor is licensed and conform with any requirements imposed by regulation.

**(2)** If a condition imposed by subsection (1) is contravened, each member of the partnership commits an offence.

Maximum penalty—80 penalty units.

## PART 3A—EXCLUDED AND PERMITTED INDIVIDUALS AND EXCLUDED COMPANIES

### *Division 1—Preliminary*

#### **Definitions for pt 3A**

**56AA.** In this part—

**“excluded company”** see section 56AC(7).

**“excluded individual”**, for a relevant event, see section 56AC(3) and (4).

**“influential person”**, 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.

**“permitted individual”**, for a relevant event, means an individual who, under this part, is categorised as a permitted individual for the relevant event.

**“relevant bankruptcy event”** see section 56AC(1)(a).

**“relevant company event”** see section 56AC(2)(b).

**“relevant event”** means a relevant bankruptcy event or a relevant company event.

#### **Operation of pt 3A**

**56AB.** This part has effect despite anything in part 3.

#### **Excluded individuals and excluded companies**

**56AC.(1)** This section applies to an individual if—

- (a) after the commencement of this section, the individual takes advantage of the laws of bankruptcy or becomes bankrupt (**“relevant bankruptcy event”**); and



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(b) 5 years have not elapsed since the relevant bankruptcy event happened.

(2) This section also applies to an individual if—

(a) after the commencement of this section, a company, for the benefit of a creditor—

(i) has a provisional liquidator, liquidator, administrator or controller appointed; or

(ii) is wound up, or is ordered to be wound up; and

(b) 5 years have not elapsed since the event mentioned in paragraph (a)(i) or (ii) (“**relevant company event**”) happened; and

(c) the individual—

(i) was, when the relevant company event happened, a director or secretary of, or an influential person for, the company; or

(ii) was, at any time after the commencement of this section and within the period of 1 year immediately before the relevant company event happened, a director or secretary of, or an influential person for, the company.

(3) If this section applies to an individual because of subsection (1), the individual is an “**excluded individual**” for the relevant bankruptcy event.

(4) If this section applies to an individual because of subsection (2), the individual is an “**excluded individual**” for the relevant company event.

(5) An excluded individual for a relevant bankruptcy event (the “**first event**”) does not also become an excluded individual for another relevant bankruptcy event (the “**other event**”) if the first event and the other event are both consequences flowing from what is, in substance, the one set of circumstances applying to the individual.

(6) An excluded individual for a relevant company event (the “**first event**”) does not also become an excluded individual for another relevant company event (the “**other event**”) if the first event and the other event are both consequences flowing from what is, in substance, the one set of circumstances applying to the company.

(7) A company is an “**excluded company**” if an individual who is a director or secretary of, or an influential person for, the company is an excluded individual for a relevant event.

### *Division 2—Categorisation as permitted individual*

#### **Becoming a permitted individual**

**56AD.(1)** An individual may apply to the authority to be categorised as a permitted individual for a relevant event if the individual has been advised by the authority, or has otherwise been made aware, that the authority considers the individual to be an excluded individual for the relevant event.

(2) However, if as a result of the application the individual is not categorised as a permitted individual for the relevant event, the individual may not, while the individual is an excluded individual for the relevant event, again apply to be categorised as a permitted individual for the relevant event.

(3) If the individual applies, the application must include the reasons why the authority should categorise the individual as a permitted individual for the relevant event.

(4) If the individual is a director or secretary of, or influential person for, a company that is a licensee, the company is taken to be a party to the application, and may make submissions to the authority about the application.

(5) The authority must give its decision on the categorisation within 28 days, or a longer period agreed between the individual and the authority.

(6) If the authority does not give its decision within the time required under subsection (5), the authority is taken, for section 98,<sup>4</sup> to have refused to categorise the individual as a permitted individual for the relevant event.

(7) Nothing in subsection (6) stops the authority, after the time required under subsection (5) has elapsed, from confirming the authority’s refusal to categorise the individual as a permitted individual for the relevant event.

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<sup>4</sup> Section 98 (Reviewable decisions)

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(8) The authority may categorise the individual as a permitted individual for the relevant event only if the authority is satisfied, on the basis of the application, that the individual took all reasonable steps to avoid the coming into existence of the circumstances that resulted in the happening of the relevant event.

(9) If an individual is categorised as a permitted individual for a relevant event, the individual is taken not to be an excluded individual for the relevant event.

*Division 3—Licence exclusion and cancellation*

**Exclusion from contractor's licence**

**56AE.** The authority must not grant a person a contractor's licence if the person is—

- (a) an excluded individual for a relevant event; or
- (b) an excluded company.

**Procedure if licensee is excluded individual**

**56AF.(1)** This section applies if the authority considers that an individual who is a licensee is an excluded individual for a relevant event.

(2) The authority must give the individual a written notice identifying the relevant event and stating the following—

- (a) why the authority considers the individual is an excluded individual for the relevant event;
- (b) the individual may apply to the authority to be categorised as a permitted individual for the relevant event if the individual has not already done so;
- (c) the authority must cancel the licence if—
  - (i) the individual has not already applied to be categorised as a permitted individual for the relevant event, and the individual does not apply for the categorisation within 28 days after the authority gives the individual the written notice; or

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(ii) both of the following apply—

(A) the individual has already applied to be categorised as a permitted individual for the relevant event, or the individual applies for the categorisation within the 28 days mentioned in the subparagraph (i);

(B) the authority refuses the application.

(3) The authority must cancel the individual's licence by written notice given to the individual if—

(a) the individual has not already applied to be categorised as a permitted individual for the relevant event, and the individual does not apply for the categorisation within 28 days after the authority gives the individual the written notice under subsection (2); or

(b) the individual has already applied to be categorised as a permitted individual for the relevant event, or the individual applies for the categorisation within the 28 days mentioned in paragraph (a), but—

(i) the authority refuses the application; and

(ii) either of the following applies—

(A) the period for applying for a review of the decision to refuse has ended and no application for review has been made;

(B) an application for review has been made and the authority's decision is confirmed, or the application is not proceeded with.

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

### **Procedure if licensee is excluded company**

**56AG.(1)** This section applies if the authority considers that a company that is a licensee is an excluded company.

(2) The authority must give the company a written notice stating the following—

(a) particulars identifying the individual (the “**relevant individual**”)

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who is a director or secretary of, or an influential person for, the company and who is an excluded individual for a relevant event;

- (b) particulars identifying the relevant event;
- (c) within 28 days after the authority gives the company the written notice, the relevant individual must—
  - (i) stop being a director, secretary or influential person; or
  - (ii) if the individual is eligible to do so but has not already done so, apply to the authority to be categorised as a permitted individual for the relevant event;
- (d) the authority must cancel the licence if—
  - (i) within the 28 days mentioned in paragraph (c), the relevant individual—
    - (A) does not stop being a director, secretary or influential person; or
    - (B) if the relevant individual is eligible to do so but has not already done so, does not apply to be categorised as a permitted individual for the relevant event; or
  - (ii) the relevant individual has already applied to be categorised as a permitted individual for the relevant event, or the relevant individual applies for the categorisation within the 28 days mentioned in paragraph (c), but the authority refuses the application and the relevant individual does not stop being a director, secretary or influential person; or
  - (iii) the relevant individual is not eligible to apply to the authority to be categorised as a permitted individual for the relevant event and the relevant individual does not, within the 28 days mentioned in paragraph (c), stop being a director, secretary or influential person.

**(3)** The authority must cancel the company's licence by written notice given to the company if, within the 28 days mentioned in subsection (2)(c), the relevant individual—

- (a) does not stop being a director or secretary of, or an influential person for, the company; and

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- (b) if the relevant individual is eligible to do so but has not already done so, does not apply to be categorised as a permitted individual for the relevant event.

(4) The authority must also cancel the company's licence by written notice given to the company if all of the following apply—

- (a) the relevant individual has already applied to be categorised as a permitted individual for the relevant event, or the relevant individual applies for the categorisation within the 28 days mentioned in subsection (2)(c);
- (b) the authority refuses the application and the relevant individual does not stop being a director, secretary or influential person;
- (c) either—
  - (i) the period for applying for a review of the decision to refuse has ended and no application for review has been made; or
  - (ii) an application for review has been made and the authority's decision is confirmed, or the application is not proceeded with.

(5) The authority must also cancel the company's licence by written notice given to the company if the relevant individual is not eligible to apply to the authority to be categorised as a permitted individual for the relevant event and the relevant individual does not, within the 28 days mentioned in subsection (2)(c), stop being a director, secretary or influential person.

(6) Section 49 does not apply to a cancellation under subsection (3).

### **Review by tribunal of authority's opinion**

**56AH.(1)** This section applies if the authority considers under section 56AF or 56AG (the "**relevant section**") that a person is an excluded individual or excluded company, or that an individual is still a director or secretary of, or an influential person for, a company.

(2) If a person applies for a review of the authority's decision, the application for review does not affect anything already done or in force under the relevant section, but periods of time mentioned in the relevant section are taken to stop running until the review is finished.

## PART 4A—BUILDING CONTRACTS OTHER THAN DOMESTIC BUILDING CONTRACTS

### *Division 1—Preliminary*

#### Definitions for pt 4A

67A. In this part—

**“approved security provider”** means a financial institution that is an approved security provider under the *Financial Management Standard 1997*.

**“building contract”** means a contract or other arrangement, other than a domestic building contract, for carrying out building work in Queensland.

**“carry out building work”** means—

- (a) carry out building work personally; or
- (b) directly or indirectly, cause building work to be carried out; or
- (c) provide advisory, administrative, management or supervisory services for carrying out building work.

**“commercial building contract”** means a building contract that is not a construction management trade contract or a subcontract.

**“construction management trade contract”** means a building contract described in section 67B.

**“contracted party”**, for a building contract, means the party to the contract who is to carry out the building work the subject of the contract.

**“contracting party”**, for a building contract, means the party to the contract for whom the building work the subject of the contract is to be carried out.

**“contract price”**, for a building contract, means the amount payable under the contract for carrying out the building work the subject of the contract, including, if the contract has been the subject of a variation, the contract as varied.

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**“principal”** means a person who is the contracting party for a building contract and who—

- (a) is not a building contractor; or
- (b) is a building contractor, but did not enter into the building contract in the course of carrying on business as a building contractor.

**“progress payment”**, for a building contract, means the payment of an amount that is a part of the contract price for the contract, other than an amount that is, or is in the nature of, a deposit under the contract.

**“retention amount”**, for a building contract, means an amount described in section 67C.

**“security”**, for a building contract, means something—

- (a) given to, or for the direct or indirect benefit of, the contracting party for the contract by or for the contracted party for the contract; and
- (b) intended to secure, wholly or partly, the performance of the contract; and
- (c) in the form of either, or a combination of both, of the following—
  - (i) an amount, other than an amount held as a retention amount for the contract;
  - (ii) 1 or more valuable instruments, whether or not exchanged for, or held instead of, a retention amount for the contract.

**“subcontract”** means a building contract described in section 67D.

**“valuable instrument”** means any of the following—

- (a) a banker’s undertaking;
- (b) a bond;
- (c) inscribed stock;
- (d) a guarantee policy;
- (e) an interest bearing deposit.

**“variation”**, of a building contract, means an addition to, or an omission from, the building work the subject of the contract.



“**written form**”, for a building contract or the variation of a building contract, means in handwritten or typewritten form, or in a combination of handwritten and typewritten forms.

### **Meaning of “construction management trade contract” in pt 4A**

**67B.(1)** For this part, a building contract is a “**construction management trade contract**” if—

- (a) the contracting party for the building contract is a principal; and
- (b) the contracted party for the building contract is the holder of a licence, other than a licence identified under a regulation as a general building licence; and
- (c) the building work the subject of the building contract is part of a wider project of building work (the “**project**”) involving the principal in entering into 1 or more other building contracts, also as a principal, for the carrying out of other building work that is also part of the project.

**(2)** For deciding whether a principal has entered into a building contract, it does not matter if the building contract was entered into on behalf of the principal, including, for example, by a person described in the contract as a construction manager.

### **Meaning of “retention amount” in pt 4A**

**67C.** For this part, an amount is a “**retention amount**” for a building contract if—

- (a) the amount is payable as part of the contract price under the building contract, but, under the contract, may be withheld from payment to the contracted party for the building contract—
  - (i) during the progress of the building work the subject of the contract; or
  - (ii) for a period (a “**maintenance period**”) after the completion of the building work; or
  - (iii) both during the progress of the building work and for a

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maintenance period; and

- (b) the purpose of withholding the amount is to give financial protection to the contracting party in relation to the need to correct defects in the building work, or otherwise to secure, wholly or partly, the performance of the contract.

### **Meaning of “subcontract” in pt 4A**

**67D.** For this part, a building contract is a “**subcontract**” if—

- (a) both the contracting party and the contracted party for the contract are building contractors; and
- (b) for the contract, the contracted party is a subcontractor for the contracting party; and
- (c) the building work the subject of the contract is the whole or a part of building work the subject of—
  - (i) another building contract, under which the contracting party mentioned in paragraphs (a) and (b) is the contracted party; or
  - (ii) a domestic building contract between the contracting party mentioned in paragraphs (a) and (b) and a consumer.

### **Operation of pt 4A**

**67E.(1)** Subject to any provision of this part that expressly provides that a building contract, or a provision of a building contract, is void, this part does not have effect to make void or voidable a building contract, or a provision of a building contract, even if—

- (a) in entering into the building contract, or the building contract containing the provision, a party to the building contract commits an offence against this part; or
- (b) the building contract or the provision of the building contract is inconsistent with a condition to which the building contract is subject under this part.

**(2)** However, if a building contract, or a provision of a building contract,

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is inconsistent with a provision (the “**Act provision**”) of this part applying to the building contract, the building contract, or the provision of the building contract, has effect only to the extent it is not inconsistent with the Act provision.

(3) Without limiting subsection (2), a building contract is unenforceable against the contracted party for the contract to the extent that the contract provides for retention amounts or security in a way that is inconsistent with a condition to which the contract is subject under division 2.

(4) This part—

- (a) has effect in relation to a building contract despite anything in the building contract; and
- (b) applies to a building contract even if—
  - (i) the contract was entered into outside Queensland; or
  - (ii) the parties to the contract have agreed that the law of Queensland does not apply to the contract or to a provision of the contract.

*Division 2—All building contracts*

**Suggested forms of contract**

**67F.** The authority may prepare and publish suggested forms for building contracts.

**Building contracts to be in writing**

**67G.(1)** A building contractor commits an offence if—

- (a) the building contractor enters into a building contract, whether as the contracting party or the contracted party for the contract; and
- (b) the building contract is not put into written form—
  - (i) if the reasonable cost of the building work the subject of the contract is more than \$10 000—before carrying out the building work is started; or

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- (ii) if the reasonable cost of the building work the subject of the contract is \$10 000 or less—before carrying out the building work is finished.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

**(2)** A building contractor commits an offence if—

- (a) the building contractor enters into a building contract, whether as the contracting party or the contracted party for the contract; and
- (b) the reasonable cost of the building work the subject of the building contract is \$10 000 or less; and
- (c) after the building contract is entered into but before the building contract has been put into written form, the reasonable cost of the building work the subject of the building contract becomes more than \$10 000 because of a variation of the building contract, whether or not the variation is the first variation of the building contract; and
- (d) the building contract, incorporating all variations, is not put into written form—
  - (i) if no building work has been carried out under the contract—before carrying out building work under the contract is started; or
  - (ii) otherwise—before there is further carrying out of building work under the contract.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

**(3)** A building contractor commits an offence if—

- (a) the building contractor enters into a building contract, whether as

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- the contracting party or the contracted party for the contract; and
- (b) the building contract is put into written form; and
  - (c) the building contract, in written form, does not comply with the formal requirements for a building contract stated in subsection (4).

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

**(4)** A building contract in written form complies with the formal requirements for a building contract if the contract states the following—

- (a) the scope of the building work the subject of the contract;
- (b) when the building work is to be completed;
- (c) the amount to be paid for carrying out the building work or, if appropriate, how the amount to be paid for carrying out the building work is to be worked out;
- (d) the parties' agreement about retention amounts and securities to be held;
- (e) the name of the building contractor who is the contracted party for the building contract;
- (f) the licence number of the building contractor mentioned in paragraph (e), as it appears on the building contractor's licence card;
- (g) the address of the land where the building work is to be carried out.

**(5)** This section does not apply to a building contractor who enters into a building contract as a principal.

**(6)** If, in contravention of subsection (1) or (2), a building contract is not put into written form, a building contractor who is a party to the contract is taken not to commit an offence against the provision if—

- (a) building work the subject of the contract must be carried out

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urgently; and

- (b) it is not reasonably practicable to enter into a written contract in the particular circumstances.

*Example—*

A cyclone has caused considerable damage at a remote community, repairs are urgently needed, the parties to the building contract are not both present at the community and communications failure prevents transmission of written material between the parties.

### **Agreed contract variations**

**67H.(1)** A building contractor commits an offence if—

- (a) the building contractor is the contracting party or contracted party for a building contract; and
- (b) the building contractor agrees to a variation of the building contract; and
- (c) the variation is not put into written form and signed by the parties to it—
  - (i) if the building contract has been put into written form, and the variation provides only for the omission of some of the building work from the building contract—within the shortest practicable time; or
  - (ii) if the building contract has been put into written form but subparagraph (i) does not apply—before building work the subject of the variation is carried out; or
  - (iii) if the building contract has not yet been put into written form—when the building contract is put into written form and signed by the parties to the building contract.

**Maximum penalty—**

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

**(2)** A building contractor commits an offence if—

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- (a) the building contractor agrees to a variation of a building contract; and
- (b) the variation is put into written form; and
- (c) the variation, in written form, does not comply with the formal requirements for a variation stated in subsection (3).

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

**(3)** A variation in written form of a building contract complies with the formal requirements for a variation if the variation—

- (a) states the scope of the building work the subject of the variation; and
- (b) states the change of the contract price for the building contract because of the variation, or the way the parties to the building contract are to work out the change of the contract price; and
- (c) is to the effect that any addition of building work must be allowed for in an increase in the first progress payment to be made after any part or the whole of the addition is carried out.

**(4)** This section does not apply to a building contractor who enters into a variation of a building contract if the building contractor is a party to the building contract as a principal.

**(5)** Despite subsection (3)(b), it is not necessary for the variation to state the change of the contract price because of the variation or the way the parties are to work out the change of the contract price if a provision of the building contract provides for how the change is to be worked out.

**(6)** If, in contravention of subsection (1) or (2), a variation of a building contract is not put into written form, a building contractor who is a party to the contract is taken not to commit an offence against the provision if—

- (a) building work the subject of the variation must be carried out urgently; and
- (b) it is not reasonably practicable to enter into a written variation in

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the particular circumstances.

*Example—*

Building work is in progress at a remote community, a cyclone causes considerable damage at the community, repairs are urgently needed, the parties to the building contract are not both present at the community and communications failure prevents transmission of written material between the parties.

### **Directions given under building contracts**

**67L(1)** This section applies if under a building contract the contracting party for the contract, or another person authorised under the contract, may, without the agreement of the contracted party for the contract, give a direction to the contracted party.

**(2)** Unless the building contract otherwise provides, a direction may initially be given other than in writing.

**(3)** However, if a direction is given other than in writing, the contracted party—

- (a) may ask for the direction to be given in writing; and
- (b) is not required to comply with the direction until it is given in writing.

**(4)** If a direction is given other than in writing, the contracting party commits an offence if the direction is not given to the contracted party in writing within 3 business days after it was given other than in writing.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

**(5)** In this section—

“**direction**” includes a direction for a variation of a building contract.



### **Set-offs under building contracts**

**67J.(1)** The contracting party for a building contract may reduce an amount payable under the contract by an amount owed under the contract, or use a security for the building contract, wholly or partly, to obtain an amount owed under the contract, only if—

- (a) the reduction of the amount payable or the use of the security is permitted under the contract; and
- (b) the contracting party has given—
  - (i) written notice (the **“first notice”**) to the contracted party for the contract advising of the proposed reduction or use and, if the amount owed can be quantified when the first notice is given, of the amount owed; and
  - (ii) if the amount owed can not be quantified when the first notice is given, a further written notice (the **“second notice”**) to the contracted party advising of the amount owed.

**(2)** The first notice must be given within 28 days after the contracting party becomes aware, or ought reasonably to have become aware, of the contracting party’s right to obtain the amount owed.

**(3)** If the second notice is required to be given, it must be given within 3 business days after the contracting party becomes able to quantify the amount owed.

**(4)** If, because of subsections (1) and (2) or (1), (2) and (3), the contracting party is stopped from reducing an amount payable under a building contract by an amount owed under the contract, or from using a security for a building contract to obtain an amount owed under the contract, the contracting party for the contract is not stopped from recovering the amount owed in another way.

**(5)** In this section—

**“amount owed”**, under a building contract, means an amount that, under the contract, and subject to its being quantified, is owed by the contracted party for the contract to the contracting party for the contract because of circumstances associated with the contracted party’s performance of the contract.

**“amount payable”**, under a building contract, means an amount that, under the building contract, is payable by the contracting party for the contract to the contracted party for the contract, including any amount payable to the contracted party from a retention amount for the contract.

### **Limits for retention amounts and securities for building contracts other than subcontracts**

**67K.(1)** This section applies to a building contract if the contracting party under the contract is a principal.

**(2)** The building contract is subject to a condition that at any time before, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 5% of the contract price for the contract—

- (a) all retention amounts for the contract that are being withheld;
- (b) all securities for the contract given and still held.

**(3)** Subsection (2) does not apply to retention amounts or securities to the extent that the retention amounts or securities are for the financial protection of the contracting party, having regard to amounts paid by the contracting party that relate to something that has not yet been installed in accordance with the requirements of the contract.

**(4)** The building contract is not subject to the condition mentioned in subsection (2) if—

- (a) the contract—
  - (i) is in written form; and
  - (ii) explains the condition; and
  - (iii) expressly provides that the contract is not subject to the condition; and
- (b) the provision of the contract that expressly provides in the way mentioned in paragraph (a)(iii) is initialled by the parties to the contract.

### **Limits for retention amounts and securities for subcontracts**

**67L.(1)** A subcontract is subject to a condition that, at any time before, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 5% of the contract price for the subcontract—

- (a) all retention amounts for the subcontract that are being withheld;
- (b) all securities for the subcontract given and still held.

**(2)** Subsection (1) does not apply to retention amounts or securities to the extent that the retention amounts or securities are for the financial protection of the contracting party, having regard to amounts paid by the contracting party that relate to something that has not yet been installed in accordance with the requirements of the contract.

### **Limits on deductions for retention amounts**

**67M.(1)** This section applies if—

- (a) an amount (the “**relevant amount**”) is payable by the contracting party for a building contract to the contracted party for the building contract; and
- (b) the relevant amount relates to carrying out building work under the contract; and
- (c) the relevant amount, except for a retention amount for the building contract that is withheld, is paid to the contracted party.

**(2)** The building contract is subject to a condition that the retention amount withheld is to be not more than 10% of the relevant amount.

### **Limits for retention amounts and securities for building contracts after practical completion**

**67N.(1)** A building contract is subject to a condition that, at any time after, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 2.5% of the contract price for the contract—

- (a) all retention amounts for the contract that are being withheld;

(b) all securities for the contract given and still held.

(2) Subsection (1) does not apply to retention amounts or securities to the extent that the retention amounts or securities do not relate to the need to correct defects, identified in the defects liability period under the contract, in the building work under the contract.

### **Suspension of works**

**670.(1)** This section applies if—

- (a) the contracting party for a building contract has not complied with an order of a court or of the tribunal given in favour of the contracted party for the contract in relation to an issue arising under the contract; or
- (b) all of the following apply—
  - (i) an amount is required to be paid to the contracted party for a building contract by a particular time;
  - (ii) the full amount is not paid, other than solely because of the retention of an amount lawfully permitted to be retained;
  - (iii) the requirement to pay the amount is not in dispute between the contracting party and the contracted party.

(2) The contracted party may give the contracting party a written notice stating—

- (a) details of the circumstance mentioned in subsection (1)(a), or of the circumstances mentioned in subsection (1)(b)(i) to (iii); and
- (b) that the contracted party intends to suspend building work the subject of the building contract if the order mentioned in subsection (1)(a) is not complied with, or if the amount mentioned in subsection (1)(b) is not paid, within the time stated in the written notice.

(3) The time stated in the written notice must be not less than 7 days after the written notice is given.

(4) If the order is not complied with, or the amount is not paid, within the time stated in the written notice, the contracted party may—

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- (a) give the contracting party a further written notice that the contracted party is suspending the building work immediately; and
- (b) suspend the building work immediately the further written notice is given.

(5) If the contracted party suspends building work under subsection (4), the contracted party—

- (a) is not in breach of the building contract; and
- (b) keeps the contracted party's rights under the contract, including any right to terminate the contract; and
- (c) may at any time lift the suspension, even if the order has not been complied with or the amount has not been paid.

(6) Subsection (7) applies if—

- (a) the order is complied with, or the amount is paid; and
- (b) the suspension is still in force; and
- (c) the contracting party gives written notice to the contracted party—
  - (i) advising the order has been complied with or the amount has been paid; and
  - (ii) requiring the contracted party to recommence the building work under the contract.

(7) The building contract is subject to a condition that the contracted party must recommence carrying out building work under the contract within 7 days after the contracted party receives the written notice mentioned in subsection (6)(c), or at a later time agreed to between the contracting party and the contracted party.

### **Late progress payments**

**67P.(1)** This section applies if—

- (a) the contracting party for a building contract is required to pay an amount (the “**progress amount**”) to the contracted party for the building contract; and

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- (b) the progress amount is payable as the whole or a part of a progress payment; and
- (c) the time (the “**payment time**”) by which the progress amount is required to be paid has passed, and the progress amount, or a part of the progress amount, has not been paid.

(2) For the period for which the progress amount, or the part of the progress amount, is still unpaid after the payment time, the contracting party is also required to pay the contracted party interest at the penalty rate, as applying from time to time, for each day the amount is unpaid.

(3) In this section—

“**penalty rate**” means—

- (a) the rate made up of the sum of the following—
  - (i) 10% a year;
  - (ii) the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills; or
- (b) if the building contract provides for a higher rate of interest than the rate worked out under paragraph (a)—the higher rate.

### **Pay if or when paid clauses void**

**67Q.** A provision of a building contract is void to the extent it provides that an amount becomes payable to the contracted party for the building contract only if the contracting party for the building contract is first paid an amount by someone else.

### ***Division 3—Construction management trade contracts and subcontracts***

#### **Application of div 3**

**67R.** This division applies to a building contract if the building contract is a construction management trade contract or a subcontract.

### **Lodgement of security instead of retention amount or security in money form**

**67S.(1)** This section applies if the contracted party for a building contract is under a lawful obligation to lodge a security in the form of an amount of money (the “**relevant amount**”).

**(2)** The contracted party complies with the obligation if—

- (a) the contracted party lodges with the contracting party a security, in the form of a government bond or a valuable instrument from an approved security provider, to take the place of the security in the form of money; and
- (b) the value of the security is equal to the relevant amount.

**(3)** If the contracted party lodges a security in the form of a valuable instrument from an entity that is an approved security provider, and the entity stops being an approved security provider, the contracted party must, if asked by the contracting party, lodge a further security, in a form mentioned in subsection (2)(a), to take the place of the security in the form of money.

### **Lodgement of security to replace retention amount or security in money form**

**67T.(1)** This section applies if, under a building contract, the contracting party is holding—

- (a) an amount (the “**relevant amount**”) as a retention amount; or
- (b) a security in the form of an amount of money (also the “**relevant amount**”).

**(2)** The building contract is subject to a condition that—

- (a) the contracted party may lodge with the contracting party a security, in the form of a government bond or a valuable instrument from an approved security provider, to take the place of the retention amount or of the security in the form of money; and
- (b) on the lodging of the security, the contracting party must pay the contracted party the relevant amount.

(3) However, subsection (2) applies only if the value of the security lodged is equal to the relevant amount.

(4) If the contracted party lodges a security in the form of a valuable instrument from an entity that is an approved security provider, and the entity stops being an approved security provider, the contracted party must, if asked by the contracting party, lodge a further security, in a form mentioned in subsection (2)(a), to take the place of the retention amount or of the security in the form of money.

### **Implied conditions for prompt payment**

**67U.(1)** A building contract is subject to the conditions stated in subsections (2) to (8).

(2) From when the building work under the contract is started until when, under the contract, practical completion of building work is reached, the contracted party for the contract has the right to receive progress payments for carrying out building work under the contract.

(3) The period between when the building work under the contract starts and when the contracted party has the right to submit a claim under the contract for the first progress payment must not be more than 1 month.

(4) The period between when the contracted party submits a claim under the contract for a progress payment and when the contracted party has the right to submit a claim under the contract for the next progress payment must not be more than 1 month.

(5) The amount of the first progress payment must be worked out having regard to the amount of building work carried out from when the building work started until when the claim for the first progress payment is made.

(6) The amount of a progress payment (the “**current progress payment**”) other than the first progress payment must be worked out having regard to the amount of building work carried out from when the contracted party first submitted a claim under the contract for the progress payment most recently payable until the contracted party submitted a claim under the contract for the current progress payment.

(7) A progress payment must be made—



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- (a) within 35 days after the contracted party submits a claim under the contract for its payment; or
- (b) if a shorter time is agreed under the contract—within the shorter time.

**(8)** If the contracting party for the contract disputes the payment of a progress payment for which the contracted party has submitted a claim under the contract, the contracting party must, within the time otherwise required for the payment of the whole of the progress payment, pay the contracted party the progress payment to the extent the contracting party's liability to pay the amount is not in dispute.

**(9)** A building contract is not subject to a condition mentioned in subsections (2) to (8) if—

- (a) the contract—
  - (i) is in written form; and
  - (ii) explains the condition; and
  - (iii) expressly provides that the contract is not subject to the condition; and
- (b) the provision of the contract that expressly provides in the way mentioned in paragraph (a)(iii) is initialled by the parties to the contract.

**(10)** Nothing in subsections (1) to (8)—

- (a) affects the operation of the *Subcontractors' Charges Act 1974* in relation to a building contract; or
- (b) affects the right of a contracting party for a building contract to claim a set-off for an amount owed to the contracting party by the contracted party for the contract.

***Division 4—Warning for construction management trade contracts***

**Offence of not warning that contract is construction management trade contract**

**67V.(1)** The contracting party for a construction management trade contract commits an offence if—

- (a) the construction management trade contract does not include a warning complying with subsection (2); and
- (b) the warning is not initialled by the contracted party for the contract.

Maximum penalty—

- (a) for a first offence—40 penalty units; and
- (b) for a second offence—60 penalty units; and
- (c) for a third or subsequent offence—80 penalty units.

**(2)** The warning—

- (a) must be in a form approved by the board; and
- (b) must be concerned with the possible dangers for the contracted party for the contract of entering into a construction management trade contract rather than a subcontract.

***Division 5—Commercial building contracts***

**Implied conditions for prompt payment**

**67W.(1)** A commercial building contract is subject to the conditions stated in subsections (2) to (8).

**(2)** From when the building work under the contract is started until when, under the contract, practical completion is reached, the contracted party for the contract has the right to receive progress payments for carrying out building work under the contract.

**(3)** The period between when the building work under the contract starts

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and when the contracted party has the right to submit a claim under the contract for the first progress payment must not be more than 1 month.

(4) The period between when the contracted party submits a claim under the contract for a progress payment and when the contracted party has the right to submit a claim under the contract for the next progress payment must not be more than 1 month.

(5) The amount of the first progress payment must be worked out having regard to the amount of building work carried out from when the building work started until when the claim for the first progress payment is made.

(6) The amount of a progress payment (the “**current progress payment**”) other than the first progress payment must be worked out having regard to the amount of building work carried out from when the contracted party first submitted a claim under the contract for the progress payment most recently payable until the contracted party submitted a claim under the contract for the current progress payment.

(7) A progress payment must be made—

- (a) within 21 days after the contracted party submits a claim under the contract for its payment; or
- (b) if a longer or shorter time is agreed under the contract—within the longer or shorter time.

(8) If the contracting party for the contract disputes the payment of a progress payment for which the contracted party has submitted a claim under the contract, the contracting party must, within the time otherwise required for the payment of the whole of the progress payment, pay the contracted party the progress payment to the extent the contracting party’s liability to pay the amount is not in dispute.

(9) A commercial building contract is not subject to a condition mentioned in subsections (2) to (6) and (8) if—

- (a) the contract—
  - (i) is in written form; and
  - (ii) explains the condition; and
  - (iii) expressly provides that the contract is not subject to the condition; and

- (b) either of the following applies—
- (i) before the contract was entered into, the contracted party was notified, in a form approved by the board, that the contract would expressly provide in the way mentioned in paragraph (a)(iii);
  - (ii) the provision of the contract that expressly provides in the way mentioned in paragraph (a)(iii) is initialled by the parties to the contract.

**(10)** Nothing in subsections (1) to (8) affects the right of a contracting party for a commercial building contract to claim a set-off for an amount owed to the contracting party by the contracted party for the contract.

## **PART 5—THE STATUTORY INSURANCE SCHEME**

### **Payment of insurance premium**

**68.(1)** A building contractor must, before commencing residential construction work pay to the authority the appropriate insurance premium for the work in accordance with the regulations.

Maximum penalty—40 penalty units.

**(2)** An assessment manager must not, under the *Integrated Planning Act 1997*, issue a development approval for building work in respect of residential construction work unless—

- (a) the assessment manager has written information from the authority showing that the appropriate insurance premium has been paid; or
- (b) the applicant produces satisfactory evidence that no insurance premium is payable.

**(3)** A certificate of insurance issued by the authority in relation to residential construction work is conclusive evidence that the work is covered by a policy of insurance under the statutory insurance scheme.

(4) A private certifier who is acting as an assessment manager must not contravene subsection (2).

Maximum penalty—20 penalty units.

### **Insurance of building work**

**69.(1)** When the authority accepts the appropriate insurance premium in respect of residential construction work, the authority must issue a certificate of insurance in respect of the residential construction work.

(2) A policy of insurance comes into force in the terms prescribed by regulation if a consumer enters into a contract for the performance of residential construction work, and—

- (a) the contract bears the licence number of a licensed contractor and, under the licensed contractor's licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
- (b) the contract is with a licensed contractor and, under the licensed contractor's licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
- (c) the contract is with a person fraudulently claiming to hold a licence under which the person may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme.

(3) Subsection (2) applies whether or not an insurance premium has been paid or a certificate of insurance has been issued.

(4) The certificate of insurance given to a consumer need not state the terms of the policy of insurance, but a copy of the policy must be given to the consumer when the certificate of insurance is given to the consumer and the certificate of insurance must include a clear reference to the policy.

(5) To remove doubt, it is declared that a policy of insurance under this section has effect according to its terms and a consumer can not avoid the

consequences of a breach of a provision of the policy of insurance only because the policy of insurance forms part of a statutory insurance scheme.

### **Insurance claims**

**70.(1)** A person claiming to be entitled to indemnity under the insurance scheme must give notice of the claim to the authority in accordance with the regulations.

**(2)** If a claimant is dissatisfied with the authority's decision on the claim, the claimant may apply to the tribunal for a review of the authority's decision.

**(3)** On an application under this section the tribunal may confirm, vary or reverse the authority's decision and make consequential orders and directions.

### **Recovery from building contractor etc.**

**71.(1)** If the authority makes any payment on a claim under the insurance scheme, the authority may recover the amount of the payment, as a debt, from the building contractor by whom the relevant residential construction work was, or was to be, carried out or any other person through whose fault the claim arose.

**(2)** For subsection (1)—

- (a) a building contractor by whom the relevant residential construction work was, or was to be, carried out is taken to include—
  - (i) a licensed contractor whose licence card is imprinted on the contract for carrying out the work; and
  - (ii) a licensed contractor whose name, licence number and address are stated on the contract; and
  - (iii) a licensed contractor whose name is stated on the contract for carrying out the work; and
  - (iv) a licensed contractor whose name is stated on an insurance notification form for the work; and

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- (v) a licensed contractor whose licence number is stated on the contract for carrying out the work; and
  - (vi) a licensed contractor whose licence number is stated on an insurance notification form for the work; and
  - (vii) a licensed contractor whose PIN was used for putting in place, for the work, insurance under the statutory insurance scheme; and
  - (viii) a building contractor by whom the work was, or was to be, carried out; and
  - (ix) a person who, for profit or reward, carried out the work; and
- (b) a person through whose fault the claim arose is taken to include a person who performed services for the work if the services were performed without proper care and skill.

**(3)** The authority is subrogated, to the extent of any payment that the authority has made, or has undertaken to make, to the rights of a person to whom, or for whose benefit, the payment has been, or is to be, made in respect of the matter out of which the insurance claim arose.

**(4)** In a proceeding brought by the authority under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(i), it is a defence for the licensed contractor to prove that—

- (a) the licensed contractor's licence card was imprinted on the contract for carrying out the work without the licensed contractor's authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the licence card was imprinted on contracts only with the licensed contractor's authority.

**(5)** In a proceeding brought by the authority under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(ii), it is a defence for the licensed contractor to prove that—

- (a) the licensed contractor's name, licence number and address were stated on the contract for carrying out the work without the licensed contractor's authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the

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licensed contractor's name, licence number and address were stated in contracts only with the licensed contractor's authority.

(6) In a proceeding brought by the authority under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(iii), (iv), (v), (vi) or (vii), it is a defence for the licensed contractor to prove—

- (a) for a licensed contractor mentioned in subsection (2)(a)(iii)—that the licensed contractor's name was stated on the contract for carrying out the work without the licensed contractor's authority; and
- (b) for a licensed contractor mentioned in subsection (2)(a)(iv)—that the licensed contractor's name was stated on the insurance notification form for the work without the licensed contractor's authority; and
- (c) for a licensed contractor mentioned in subsection (2)(a)(v)—that the licensed contractor's licence number was stated on the contract for carrying out the work without the licensed contractor's authority; and
- (d) for a licensed contractor mentioned in subsection (2)(a)(vi)—that the licensed contractor's licence number was stated on the insurance notification form for the work without the licensed contractor's authority; and
- (e) for a licensed contractor mentioned in subsection (2)(a)(vii)—
  - (i) that the licensed contractor's PIN was used for putting in place, for the work, insurance under the statutory insurance scheme without the licensed contractor's authority; and
  - (ii) that the licensed contractor took all reasonable steps to ensure the licensed contractor's PIN was kept and used in accordance with the authority's requirements for the keeping and use of the PIN.



## **PART 6—RECTIFICATION OF BUILDING WORK**

### **Power to require rectification of building work**

**72.(1)** If the authority is of the opinion that building work is defective or incomplete, the authority may direct the person who carried out the building work to rectify the building work within the period stated in the direction.

**(2)** In deciding whether to give a direction under subsection (1), the authority may take into consideration all the circumstances it considers are reasonably relevant, and in particular, is not limited to a consideration of the terms of, including the terms of any warranties included in, the contract for carrying out the building work.

**(3)** The period stated in the direction must be at least 28 days unless the authority is satisfied that, if the direction is not required to be complied with within a shorter period—

- (a) a substantial loss will be incurred by, or a significant hazard will be caused to the health or safety of, a person because of the defective building work; or
- (b) the defective building work will cause a significant hazard to public safety or the environment generally.

**(4)** Subject to subsection (3), the period stated in the direction must be a period the authority considers to be appropriate in the circumstances.

**(5)** For subsection (1), the person who carried out the building work is taken to include—

- (a) a licensed contractor whose licence card is imprinted on the contract for carrying out the building work; and
- (b) a licensed contractor whose name, licence number and address are stated on the contract; and
- (ba) a licensed contractor whose name is stated on the contract for carrying out the building work; and
- (bb) a licensed contractor whose name is stated on an insurance notification form for the building work; and

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- (bc) a licensed contractor whose licence number is stated on the contract for carrying out the building work; and
- (bd) a licensed contractor whose licence number is stated on an insurance notification form for the building work; and
- (be) a licensed contractor whose PIN was used for putting in place, for the building work, insurance under the statutory insurance scheme; and
- (c) a building contractor by whom the building work was carried out; and
- (d) a person who, for profit or reward, carried out the building work; and
- (e) a person who, under the *Domestic Building Contracts Act 2000*, is a building contractor under a domestic building contract who managed the carrying out of the building work.

**(5A)** In subsection (2), a reference to a contract for carrying out building work includes a reference to a domestic building contract for managing the carrying out of building work.

**(6)** If in order to rectify building work it is necessary to do so, the direction may require that a building or part of a building be demolished and building work be recommenced.

**(7)** If a direction is given under this section to a person who is not currently licensed to carry out the required work, the person must have the work carried out by a licensed contractor.

**(8)** A direction cannot be given under this section more than 6 years and 3 months after the building work to which the direction relates was completed or left in an incomplete state unless the tribunal is satisfied, on application by the authority, that there is in the circumstances of a particular case sufficient reason for extending the time for giving a direction and extends the time accordingly.

**(9)** The fact that a direction is given under this section does not prevent disciplinary action in respect of the defective or incomplete building work.

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**(10)** A person who fails to rectify building work as required by a direction under this section is guilty of an offence.

Maximum penalty—80 penalty units.

**(11)** For the purposes of subsection (5)(c) and (d)—

- (a) a person carries out building work whether the person—
  - (i) carries it out personally; or
  - (ii) directly or indirectly causes it to be carried out; and
- (b) a person is taken to carry out building work if the person provides advisory services, administration services, management services or supervisory services for the work.

**(12)** In a prosecution for an offence against subsection (10), or in a proceeding for taking disciplinary action on the ground that a licensee has failed to comply with a direction to rectify building work, it is a defence for a licensed contractor mentioned in subsection (5)(a) to prove that—

- (a) the licensed contractor's licence card was imprinted on the contract for carrying out the building work without the contractor's authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the licence card was imprinted on contracts only with the licensed contractor's authority.

**(13)** In a prosecution for an offence against subsection (10), or in a proceeding for taking disciplinary action on the ground that a licensee has failed to comply with a direction to rectify building work, it is a defence for a licensed contractor mentioned in subsection (5)(b) to prove that—

- (a) the licensed contractor's name, licence number and address were stated on the contract for carrying out the building work without the licensed contractor's authority; and
- (b) the licensed contractor took all reasonable steps to ensure that the licensed contractor's name, licence number and address were stated in contracts only with the licensed contractor's authority.

**(13A)** In a prosecution for an offence against subsection (10), or in a proceeding for taking disciplinary action on the ground that a licensee has

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failed to comply with a direction to rectify building work—

- (a) it is a defence for a licensed contractor mentioned in subsection (5)(ba) to prove that the licensed contractor's name was stated on the contract for carrying out the building work without the licensed contractor's authority; and
- (b) it is a defence for a licensed contractor mentioned in subsection (5)(bb) to prove that the licensed contractor's name was stated on the insurance notification form for the building work without the licensed contractor's authority; and
- (c) it is a defence for a licensed contractor mentioned in subsection (5)(bc) to prove that the licensed contractor's licence number was stated on the contract for carrying out the building work without the licensed contractor's authority; and
- (d) it is a defence for a licensed contractor mentioned in subsection (5)(bd) to prove that the licensed contractor's licence number was stated on the insurance notification form for the building work without the licensed contractor's authority; and
- (e) it is a defence for a licensed contractor mentioned in subsection (5)(be) to prove that—
  - (i) the licensed contractor's PIN was used for putting in place, for the building work, insurance under the statutory insurance scheme without the licensed contractor's authority; and
  - (ii) the licensed contractor took all reasonable steps to ensure the licensed contractor's PIN was kept and used in accordance with the authority's requirements for the keeping and use of the PIN.

**(14)** The authority is not required to give a direction under this section to a person who carried out building work for the rectification of the building work if the authority is satisfied that, in the circumstances, it would be unfair to the person to give the direction.

*Example for subsection (14)—*

The authority might decide not to give a direction for the rectification of building work because of the amount payable but unpaid under the contract for carrying out

the building work.

(15) A direction given under this section need not be complied with if—

- (a) a proceeding for a review of the authority's decision is started in the tribunal; and
- (b) the tribunal orders a stay of the decision.

### **Panels of licensed contractors for rectification work**

**73.(1)** The authority may establish panels of licensed contractors who express interest in tendering for rectification work.

(2) The panels will be established in relation to—

- (a) the areas of the State in which the work is to be carried out; and
- (b) the nature of the work involved.

(3) The authority may advertise, from time to time, inviting expressions of interest from licensed contractors who wish to be included on the appropriate panel for the area or areas in which they carry on business.

(4) A licensed contractor who by notice in writing to the authority expresses interest in being included on a panel for a particular area may, if entitled to carry out building work of the relevant class, be included on the panel.

(5) The authority may remove the name of a contractor from a panel for any good reason.

### **Tenders for rectification work**

**74.(1)** If rectification work in respect of residential construction work is required under this Act and the person required to carry out the work does not carry it out, or have it carried out, within the time allowed by the direction, the authority must seek tenders for carrying out the work.

(2) The authority must also seek tenders for carrying out building work if the authority—

- (a) is of the opinion that the building work is defective or incomplete; but

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(b) has decided not to give a direction under section 72 for the rectification of the building work.

(3) The authority may accept any tender that it considers appropriate, irrespective whether the tender was for the lowest cost.

(4) Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the authority to be reasonable in the circumstances.

(5) A licensed contractor from whom a tender may be sought must be—

(a) a licensed contractor whose name is included on an appropriate panel; or

(b) a licensed contractor whose name is not included on an appropriate panel, if the authority is satisfied it would be in the best interests of the efficient rectification of the building work if the licensed contractor were to provide a tender.

(6) The authority may authorise the person for whom the building work requiring rectification was, or was to be, carried out to act for the authority in seeking the necessary tenders.

(7) The authority may only have work carried out under this section to the extent that the cost of the work is covered by a payment to be made under the statutory insurance scheme in relation to the defective or incomplete work.

## **PART 9—INSPECTORS**

### **Appointment of inspectors**

**104.(1)** The authority may appoint inspectors.

(2) The authority must issue an identity card, containing a photograph of the inspector, to each inspector.

(3) A person who ceases to be an inspector must, as soon as practicable, return the identity card to the authority.

Maximum penalty for contravention of this subsection—10 penalty units.

### **Inspector to produce identity card**

**105.** An inspector is not entitled to exercise powers under this Act in relation to another person unless the inspector first produces the inspector's identity card for inspection by the person.

### **Inspector's power to require name and address**

**106.(1)** An inspector who suspects on reasonable grounds that a person has committed an offence against this Act may require the person to state the person's name and address and, if the inspector has reasonable grounds to believe that the name or address given is false, may require evidence of its correctness.

(2) A person who is required under subsection (1) to state the person's name and address must not, without reasonable excuse—

- (a) fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—50 penalty units.

(3) A person who is required under subsection (1) to give evidence of the correctness of a name or address must not, without reasonable excuse, fail to give the evidence or give false evidence.

Maximum penalty—50 penalty units.

(4) If—

- (a) an inspector makes a requirement under subsection (1) on suspicion that a person has committed an offence against this Act; and
- (b) the person is not proved to have committed an offence against this Act;

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the person cannot be convicted of an offence against subsection (1) because of a failure to comply with the requirement.

### **Power to enter and inspect building site**

**107.(1)** An inspector may enter and inspect a building site—

- (a) for the purpose of ascertaining whether this Act is being complied with; or
- (b) for the purpose of determining whether the building work has been, or is being, properly carried out.

**(2)** The entry and inspection must be—

- (a) made with the consent of the person in control of the building site; or
- (b) authorised by warrant of a member of the tribunal.

**(3)** An inspector may apply to a member of the tribunal for a warrant under this section in relation to a particular building site.

**(4)** Subject to subsection (5), the member may issue the warrant if the member is satisfied, by information on oath, that there is a proper reason for entering and inspecting the building site.

**(5)** If the member requires further information concerning the grounds on which the warrant is sought, the member must not issue the warrant unless the inspector or some other person has given the information to the member in the form (either orally or by affidavit) that the member requires.

**(6)** The warrant must—

- (a) authorise the inspector, with such assistance and by such force as is necessary and reasonable, to enter and inspect the place; and
- (b) state whether the entry may be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.



### **Obligation of assessment manager**

**108.** An assessment manager must allow an inspector or any other officer or employee of the authority, at any reasonable time, to examine and make copies of, or take extracts from, books, documents, papers and records of the local authority<sup>5</sup> relating to building work or proposed building work.

## **PART 10—MISCELLANEOUS**

### **Access to building sites**

**109.(1)** A building contractor must, at the request of a consumer, allow the consumer reasonable access to a building site at which building work is being carried out for the consumer.

**(2)** A contractual provision that is inconsistent with subsection (1) is void.

### **Service of documents**

**109A.(1)** A document may be served under this Act on a licensee by leaving it at, or sending it by post, telex, facsimile or similar facility to, the address of the licensee in the register of licensees kept by the authority.

**(2)** Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 39.<sup>6</sup>

### **Prosecutions for offences**

**111.(1)** A prosecution for an offence against this Act may be started within 2 years after the alleged date of commission of the offence or within 1 year after the offence comes to the knowledge of the authority, whichever

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<sup>5</sup> Now see *Local Government Act 1993* s 796(1)(a).

<sup>6</sup> *Acts Interpretation Act 1954*, section 39 (Service of documents)

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is the later.

(2) A prosecution may only be started by a person authorised by the authority (either generally or in the particular case) to bring the prosecution or the Attorney-General.

(3) The authorisation required by subsection (2) is to be presumed in the absence of evidence to the contrary.

### **Responsibility for acts or omissions of representatives**

**111A.(1)** This section applies for—

- (a) a proceeding for an offence against this Act; and
- (b) an inquiry conducted by the tribunal under part 5, division 3 of the Tribunal Act to decide whether proper grounds exist for taking disciplinary action under the division.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

**“representative”** means—

- (a) of a company—an executive officer, employee or agent of the company; or
- (b) of an individual—an employee or agent of the individual.

“state of mind” of a person includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

### **Executive officers must ensure company complies with Act**

**111B.(1)** The executive officers of a company must ensure the company complies with this Act.

**(2)** If a company commits an offence against a provision of this Act, each of the company’s executive officers also commits an offence, namely, the offence of failing to ensure that the company complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

**(3)** Evidence that the company has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the company complies with the provision.

**(4)** However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the company in relation to the offence—the officer exercised reasonable diligence to ensure the company complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the company in relation to the offence.

### **Liability of directors for amounts**

**111C.(1)** This section applies if—

- (a) a company is convicted of an offence against a provision of this Act; and
- (b) a penalty for the offence is imposed on the company; and
- (c) the amount of the penalty is not paid within the time required for

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its payment.

**(2)** This section also applies if—

- (a) under section 111 of the Tribunal Act, the tribunal finds that proper grounds exist for taking disciplinary action against a company; and
- (b) an order is made by the tribunal imposing a penalty on the company; and
- (c) the amount of the penalty is not paid within the time required for its payment.

**(3)** This section also applies if a company owes the authority an amount because of a payment made by the authority on a claim under the insurance scheme.

**(4)** If this section applies because of subsection (1), the liability to pay the penalty attaches to—

- (a) each individual who was a director of the company when the offence was committed; and
- (b) each individual who is a director of the company when the penalty is imposed.

**(5)** If this section applies because of subsection (2), the liability to pay the penalty attaches to—

- (a) each individual who was a director of the company when the act or omission happened giving rise to the finding of the tribunal; and
- (b) each individual who is a director of the company when the penalty is imposed.

**(6)** If this section applies because of subsection (3), the liability to pay the amount attaches to—

- (a) each individual who was a director of the company when building work the subject of the claim was, or was to have been, carried out; and
- (b) each individual who was a director of the company when the payment was made by the authority.

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(7) A liability under subsection (4), (5) or (6) to pay a penalty or an amount applies regardless of the status of the company, including for example, that the company is being or has been wound up.

(8) If a liability under subsection (4), (5) or (6) attaches to 2 or more persons, the persons are jointly and severally liable.

### **Appropriation of penalty**

**112.** Any monetary penalty recovered for an offence against this Act must be paid to the authority.

### **Double jeopardy**

**113.(1)** The fact that disciplinary action has been taken against a person under this Act does not affect the liability of that person to be prosecuted, convicted and punished for an offence arising from the same circumstances.

(2) The fact that a person has been prosecuted and convicted or acquitted of an offence against this Act or the *Builders' Registration and Home-owners' Protection Act 1979* does not affect the liability of that person to disciplinary action under this Act.

### **Protection**

**114.(1)** Neither the State, the general manager of the authority nor an officer or employee of the authority incurs any civil liability for an honest act or omission, other than a publication act, in the performance or purported performance of functions under this Act.

(2) A civil liability that would, apart from subsection (1), attach to an entity other than the authority attaches instead to the authority.

(3) Neither the State, the authority nor the general manager of the authority incurs any liability for a publication act.

(4) This section does not affect the liability of a person other than the authority to disciplinary action under the conditions of the person's employment.

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(5) In this section—

**“publication act”** means a disclosure or publication made by or for the authority in giving a warning to the public under section 18(2)(f) about—

- (a) building work; or
- (b) the commercial or business reputation of any person associated with building work; or
- (c) the quality or standard of building work performed by any person; or
- (d) a contravention or alleged contravention of this Act or the operation or enforcement of this Act.

### **Regulations**

**116.** The Governor in Council may make regulations under this Act.

## SCHEDULE 1

### TRANSITIONAL AND VALIDATING PROVISIONS

#### PART 1—TRANSITIONAL PROVISIONS FOR ACT No. 98 OF 1991 AND AMENDING ACTS UP TO AND INCLUDING ACT No. 70 OF 1997

##### Definitions

1A. In section 2—

**“former board”** means the Builders’ Registration Board of Queensland established under the repealed Act.

**“repealed Act”** means the *Builders’ Registration and Home-Owners’ Protection Act 1979*.

##### Transitional provisions

2.(3) The provisions of the repealed Act about insurance continue to apply, with the changes prescribed by regulation under this Act, to building work started before 1 July 1992 and—

- (a) the provisions continue to apply to the building work whether the work is carried out before or after the date as if the repealed Act had not been repealed; and
- (b) the authority may exercise any of the powers of the former board about the insurance.

(3A) Instruments of guarantee and indemnity entered into under section 31(3) of the repealed Act and in force immediately before 1 July 1992 continue to have effect, with all necessary changes and any changes prescribed by regulation under this Act, until the instruments are discharged by the authority.

(3B) Without limiting subsection (3A), a reference in the instruments to the former board is taken to be a reference to the authority.

SCHEDULE 1 (continued)

**(3C)** The instruments guarantee the payment by the guarantors of amounts payable to the authority under—

- (a) section 70 of the repealed Act because of subsection (3); and
- (b) section 71 of this Act.

**(3D)** A house purchaser's agreement that the former board is taken to have entered into under the repealed Act continues in force for the balance of its term and all rights, duties, obligations and liabilities of the former board under the agreement are taken to be the rights, duties, obligations and liabilities of the authority.

**(3E)** An amount paid by the former board under its obligations under section 69 of the repealed Act and not recovered at 1 July 1992—

- (a) is taken to be a debt owing to the authority; and
- (b) the authority has the same rights under section 71 of this Act as if the amount had been paid by the authority on a claim under the insurance scheme mentioned in that section.

**(4)** A direction or order for rectification of building work may be made under this Act in relation to building work, as defined in the repealed Act, carried out before 1 July 1992 by a person who was a registered builder, registered general builder or registered house builder within the meaning of the repealed Act as if references in this Act to a licensed contractor extended to the person.

**(5)** An order in force under section 59 of the repealed Act immediately before the commencement of part 6 is, on the commencement of that part, taken to be a direction under that part.

**(6)** The provisions of the repealed Act relating to building work carried out by owner-builders continue to apply, subject to any adaptations and modifications prescribed under this Act, to any such building work that had been carried out or started before the commencement of part 3 and an approval mentioned in section 53(3) of the repealed Act may be given by the authority.

**(7)** A proceeding for an offence against the repealed Act may, subject to the limitation of time prescribed by section 58 of the repealed Act, be



SCHEDULE 1 (continued)

brought by a person authorised by the authority, either generally or in the particular case, to bring the proceeding.

(8) A person who was, immediately before the commencement of part 3, carrying on the business of a class of building work for which a licence is required under this Act, but for which registration was not required under the repealed Act, is taken to be licensed to carry out and supervise that class of building work—

- (a) until a day 6 months after the commencement of part 3 or, if another day is fixed by regulation for the purposes of this subsection in relation to the relevant class of building work, that other day; or
- (b) until the day the person is granted or refused a licence under this Act;

whichever is earlier.

**References to repealed Acts**

4. A reference in an Act or document to either of the following Acts is taken to be a reference to this Act—

- *Builders' Registration Act 1971*
- *Builders' Registration and Home-owners' Protection Act 1979.*

**References to registrar/general manager and Home Building Advisory Service**

5. In an Act or document—

- (a) a reference to the registrar/general manager of the authority is taken to be a reference to the general manager of the authority; and
- (b) a reference to Home Building Advisory Service is taken to be a reference to the authority.

## SCHEDULE 1 (continued)

**PART 2—VALIDATING PROVISIONS FOR ACT  
No. 70 OF 1997**

**Definitions**

8. In this part—

**“affected licence”** means a document purporting to be a licence that—

- (a) was issued by the authority on or after 1 July 1992 but before the commencement day; and
- (b) was issued to an individual who did not, or a company in relation to which the company’s nominated supervisor did not, when the document was issued, have the relevant qualifications and experience required by regulation.

**“basic compliance period”**, for a transitional licence, see definition **“transitional licence”**.

**“building contract”** means a contract for the carrying out of building work by a person to whom an affected licence has been issued.

**“commencement day”**, for a provision of this part, means the day on which the provision in which the expression occurs commences.

**“compliance period”**, for a transitional licence, means—

- (a) the basic compliance period for the licence; or
- (b) if the authority extended or further extended the period—the period as extended.

**“expired licence”** means an affected licence to which section 9(3) applies.

**“relevant licensee”**, for an affected or transitional licence, means the person to whom the licence was issued.

**“transitional licence”** means an affected licence in relation to which the authority, in issuing the licence—

- (a) indicated to the relevant licensee that the licence was a transitional licence; and

SCHEDULE 1 (continued)

- (b) stated a period (the “**basic compliance period**”)—
  - (i) as the period for which the licence was issued; and
  - (ii) in relation to the licensee (for a licence issued to an individual) or the company’s nominated supervisor (for a licence issued to a company)—as the period for the licensee or supervisor to obtain stated qualifications or experience in order to have the relevant qualifications and experience required by regulation.

**Validation of affected licences**

**9.(1)** An affected licence is taken to be, and at all times to have been, a validly issued licence.

**(2)** Subsection (3) applies if—

- (a) before the commencement day, an affected licence was suspended, cancelled or surrendered; and
- (b) for a suspension or cancellation—the decision to suspend or cancel the licence was or is not subsequently annulled or terminated under this Act.

**(3)** Despite subsection (1), the licence is taken to have been a validly issued licence only until it was suspended, cancelled or surrendered.

**Period of effect of transitional licences—compliance period ended**

**10.(1)** This section applies to a transitional licence if—

- (a) the licence is not an expired licence; and
- (b) the compliance period for the licence ended before the commencement day.

**(2)** The licence is taken to have remained in force for the period starting when the compliance period ended and ending on the day before the commencement day.

**(3)** Also, the licence remains in force, subject to this Act, until the end of

## SCHEDULE 1 (continued)

the period of 3 months starting on the commencement day.

(4) Subsection (6) applies if—

- (a) before the commencement day, the relevant licensee entered into a building contract; and
- (b) neither of the following things happens before the end of the period of 3 months mentioned in subsection (3)—
  - (i) practical completion under the contract;
  - (ii) termination of the contract.

(5) However, subsection (6) applies only for the contract or contracts to which it relates.

(6) Despite subsection (3), the licence remains in force, subject to this Act—

- (a) if, by the application of subsection (4), there is only 1 contract involved—until 1 of the following things happens—
  - (i) the stage of practical completion is reached under the contract;
  - (ii) the contract is terminated; or
- (b) if, by the application of subsection (4), there is more than 1 contract involved—until there is no contract either under which the stage of practical completion has not been reached or that has not been terminated.

**Period of effect of transitional licences—compliance period current**

**11.(1)** This section applies to a transitional licence if—

- (a) the licence is not an expired licence; and
- (b) the compliance period for the licence has not ended before the commencement day.

(2) The licence remains in force, subject to this Act, until the later of the following—

SCHEDULE 1 (continued)

- (a) the end of the compliance period;
- (b) the end of the period of 3 months starting on the commencement day.

**(3)** Subsection (5) applies if—

- (a) before the commencement day, the relevant licensee entered into a building contract; and
- (b) neither of the following things happens before the end of the period for which the licence remains in force under subsection (2)—
  - (i) practical completion under the contract;
  - (ii) termination of the contract.

**(4)** However, subsection (5) applies only for the contract or contracts to which it relates.

**(5)** Despite subsection (2), the licence remains in force, subject to this Act—

- (a) if, by the application of subsection (3), there is only 1 contract involved—until 1 of the following things happens—
  - (i) the stage of practical completion is reached under the contract;
  - (ii) the contract is terminated; or
- (b) if, by the application of subsection (3), there is more than 1 contract involved—until there is no contract either under which the stage of practical completion has not been reached or that has not been terminated.

**Condition of transitional licences**

**12.(1)** This section applies to a transitional licence that is not an expired licence.

**(2)** The licence is subject to a condition that the relevant licensee must not, while the licence remains in force under section 10 or 11, enter into a

## SCHEDULE 1 (continued)

building contract on the basis of being a licensee under the licence.

(3) The authority must promptly give written notice of the condition to the relevant licensee.

(4) A failure by the authority to comply with subsection (3) does not affect the effectiveness of the condition.

**PART 3—TRANSITIONAL PROVISIONS FOR  
QUEENSLAND BUILDING SERVICES AUTHORITY  
AMENDMENT ACT 1999**

**Existing board goes out of office**

13. On the commencement of this section, the members of the board in office immediately before the commencement go out of office.

**PART 4—TRANSITIONAL PROVISIONS FOR GST  
AND RELATED MATTERS ACT 2000**

**Residential construction work for s 71**

14. For applying section 71(2)(a)(iii) to (vi), the relevant residential construction work mentioned in section 71(2)(a) does not include relevant residential construction work that was the subject of a contract entered into before 1 July 2000.

## SCHEDULE 1 (continued)

**Building work for s 72**

**15.** For applying section 72(5)(ba) to (bd), the building work mentioned in section 72(5) does not include building work that was the subject of a contract entered into before 1 July 2000.

**Delayed operation of definition “building work”, para (g)**

**16.** Despite schedule 2, definition “**building work**”, paragraph (g), until the end of 31 December 2000, building work under this Act is taken not to include the installation, maintenance, or certification of the installation or maintenance, of a fire protection system for a commercial or residential building.

## SCHEDULE 2

### DICTIONARY

section 4

**“approved security provider”**, for part 4A, see section 67A.

**“architect”** means a person registered as an architect under the *Architects Act 1985*.

**“assessment manager”** has the meaning given by the *Integrated Planning Act 1997*.<sup>7</sup>

**“authority”** means the Queensland Building Services Authority.

**“board”** means the Queensland Building Services Board.

**“board’s policies”** means the policies of the board made for the purposes of section 9A.

**“building”** includes any fixed structure.

**“building contract”**, for part 4A, see section 67A.

**“building contractor”** means a person who carries on a business that consists of or includes carrying out building work, and includes a subcontractor who carries out building work for a building contractor.

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

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<sup>7</sup> *Integrated Planning Act 1997*, section 3.1.7—

The **“assessment manager”**, for an application, is—

- (a) if the development is wholly within a local government’s area—the local government, unless a different entity is prescribed under a regulation; or
- (b) if paragraph (a) does not apply—
  - (i) the entity prescribed under a regulation; or
  - (ii) if no entity has been prescribed—the entity decided by the Minister.

Under *Integrated Planning Act 1997*, section 5.3.5(1), a private certifier may, in certain circumstances, act as an assessment manager.



## SCHEDULE 2 (continued)

**“building work”** means—

- (a) the erection or construction of a building; or
- (b) the renovation, alteration, extension, improvement or repair of a building; or
- (c) the provision of lighting, heating, ventilation, airconditioning, water supply, sewerage or drainage in connection with a building; or
- (e) any site work (including the construction of retaining structures) related to work of a kind referred to above; or
- (f) the preparation of plans or specifications for the performance of building work; or
- (g) the installation, maintenance, or certification of the installation or maintenance, of a fire protection system for a commercial or residential building; or
- (h) carrying out site testing and classification in preparation for the erection or construction of a building on the site; or
- (i) carrying out a completed building inspection;

but does not include work of a kind excluded by regulation from the ambit of this definition.

**“carry out building work”**, for part 4A, see section 67A.

**“commercial building contract”**, for part 4A, see section 67A.

**“company”** means any body corporate.

**“completed building inspection”** means—

- (a) the inspection or investigation of, and the provision of advice or a report about, a completed building; or
- (b) certification about whether the erection or construction of a completed building has been in compliance with a relevant code, standard or statutory requirement.

**“condition”** includes a limitation or restriction.

## SCHEDULE 2 (continued)

“**construction management trade contract**”, for part 4A, see section 67A.

“**consumer**” means a person for whom building work is carried out, but does not include a building contractor for whom building work is carried out by a subcontractor.

“**contracted party**”, for part 4A, see section 67A.

“**contracting party**”, for part 4A, see section 67A.

“**contractor’s licence**” means a licence authorising the licensee to carry out, and to supervise, building work.

“**contract price**”, for part 4A, see section 67A.

“**defective**”, in relation to building work, includes faulty or unsatisfactory.

“**design work**” means—

- (a) the preparation of plans or specifications for building work; or
- (b) professional advice in relation to building work.

“**domestic building contract**” means a domestic building contract under the *Domestic Building Contracts Act 2000*.

“**engineer**” means a person who is a registered professional engineer under the *Professional Engineers Act 1988*.

“**excluded company**”, for part 3A, see section 56AC(7).

“**excluded individual**”, for part 3A, see section 56AA.

“**executive officer**”, of a company, means a person who is—

- (a) a director or secretary of the company; or
- (b) a person who is concerned with, or takes part in, the company’s management, whether or not the person is a director or secretary of the company or the person’s position is given the name of executive officer.

“**farm building**” means a building of a kind classified by regulation as a farm building.

## SCHEDULE 2 (continued)

**“field work”** means—

- (a) a site investigation; or
- (b) a site assessment; or
- (c) soil sampling; or
- (d) soil collection.

**“fire protection system”**, for a building, means a system of fire protection for all or part of the building comprising some or all of the following—

- (a) portable fire-fighting appliances, including, for example, wheeled fire extinguishers, fire hoses, fire blankets and portable fire extinguishers;
- (b) fire hydrants, with or without pumps;
- (c) fire hose reels, with or without pumps;
- (d) a fire detection system, alarm system or emergency warning and communication system;
- (e) a fire suppression system or fire sprinkler system, whether solid based, liquid based or gas based;
- (f) fire doors, fire shutters and fire damper assemblies.

**“influential person”**, for part 3A, see section 56AA.

**“insurance notification form”** means a form approved by the authority on which information about building work is submitted to the authority for insuring the work under the statutory insurance scheme.

**“licence”** means a licence under this Act.

**“licensed builder”** means a person who is a licensed builder under the regulations.

**“licensed contractor”** means a person who holds a contractor’s licence.

**“licensed supervisor”**, in relation to building work, means a person who holds a contractor’s licence or a supervisor’s licence authorising supervision of building work of the relevant class.

## SCHEDULE 2 (continued)

**“licensee”** means a person who holds a licence.

**“nominated supervisor”**, 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.

**“owner”** of land means—

- (a) for freehold land—the registered owner of the land under the *Land Title Act 1994*; or
- (b) for land held under a statutory lease or licence giving a right to possession of the land—the lessee or licensee.

**“owner-builder permit”** means a permit under part 3 division 8.

**“permitted individual”**, for part 3A, see section 56AA.

**“PIN”** see section 34A.

**“principal”**, for part 4A, see section 67A.

**“progress payment”**, for part 4A, see section 67A.

**“rectify”** building work means to remedy defective building work or to complete incomplete building work.

**“registrar of titles”**, for land that is not under the *Land Title Act 1994*, means the officer responsible for keeping a register for the land.

**“relevant bankruptcy event”**, for part 3A, see section 56AC(1)(a).

**“relevant company event”**, for part 3A, see section 56AC(2)(b).

**“relevant event”**, for part 3A, see section 56AA.

**“residential construction work”** means building work classified by regulation as residential construction work.

**“retention amount”**, for part 4A, see section 67A.

**“review”** means review by the tribunal.

**“security”**, for part 4A, see section 67A.

## SCHEDULE 2 (continued)

**“site classification”** means the classification of a site, or the reclassification of a site, under a standard directed to ensuring the appropriate selection or design of footings.

**“site testing”** means—

- (a) field work for soil testing or site classification; or
- (b) laboratory testing of soil.

**“statutory insurance scheme”** means the insurance scheme established under part 5.

**“subcontract”**, for part 4A, see section 67A.

**“supervisor’s licence”** means a licence authorising the licensee to supervise (but not to carry out) building work.

**“trade licence”** means a contractor’s licence or a supervisor’s licence related to building work within a particular trade or particular trades.

**“tribunal”** means the Queensland Building Tribunal under the Tribunal Act.

**“Tribunal Act”** means the *Queensland Building Tribunal Act 2000*.

**“valuable instrument”**, for part 4A, see section 67A.

**“value”** of building work means an amount representing the reasonable cost to a consumer of having the work carried out by a licensed contractor on the basis that all building materials are to be supplied by the contractor (whether or not the work is in fact carried out by a licensed contractor on that basis).

**“variation”**, for part 4A, see section 67A.

**“written form”**, for part 4A, see section 67A.

## ENDNOTES

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 7 July 2000. Future amendments of the Queensland Building Services Authority Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

**Key to abbreviations in list of legislation and annotations**

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

### 4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 68 of 1992	9 December 1992
2	to Act No. 76 of 1993	10 January 1994
3	to Act No. 20 of 1994	24 August 1994
3A	to Act No. 58 of 1995	20 August 1996
3B	to Act No. 58 of 1996	9 December 1996
4	to Act No. 58 of 1996	20 October 1997
4A	to Act No. 70 of 1997	9 February 1998
5	to Act No. 13 of 1998	1 May 1998
6	to Act No. 43 of 1999	6 November 1999

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1, 3, 5

## 6 List of legislation

### **Queensland Building Services Authority Act 1991 No. 98**

date of assent 17 December 1991

ss 1–2 commenced on date of assent

pt 1 (other than ss 1–2), pt 2, pt 7, div 1 and s 115 commenced 1 January 1992  
(see s 2(1))

pt 7, divs 2–6 commenced 1 June 1992 (1992 SL No. 108)

remaining provisions commenced 1 July 1992 (1992 SL No. 108)

as amended by—

### **Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 1**

date of assent 2 July 1992

amdts 3–14 commenced 1 July 1992 (see s 2 sch 1)

remaining provisions commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1**

date of assent 7 December 1992

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1**

date of assent 14 December 1993

amdts 4–9 commenced 1 July 1992 (see s 3 sch 1)

remaining provisions commenced on date of assent

### **Land Title Act 1994 No. 11 ss 1–2, 194 sch 2**

date of assent 7 March 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 24 April 1994 (1994 SL No. 132)

### **Queensland Building Services Authority Amendment Act 1994 No. 20**

date of assent 10 May 1994

ss 1–2 commenced on date of assent

ss 4(1), (2) (insertion of definition “licensed builder”), 7–8, 13, 19–21, 23–24,  
34, 3 sch amdts 3, 15 (insertion of new s 4) commenced 5 August 1994  
(1994 SL No. 286)

remaining provisions commenced 20 May 1994 (1994 SL No. 156)



**Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 1**

date of assent 1 December 1994

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

**Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2,  
9 sch**

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1997 (1997 SL No. 128)

**Queensland Building Services Authority Amendment Act 1996 No. 58**

date of assent 5 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 5 September 1996 (see s 2)

**Queensland Building Services Authority Amendment Act 1997 No. 70**

date of assent 1 December 1997

commenced on date of assent

**Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 8**

date of assent 23 March 1998

ss 1–2 commenced on date of assent

ss 185, 188 commenced 30 March 1998 (1998 SL No. 55)

remaining provisions commenced 30 April 1998 (1998 SL No. 55)

**Queensland Building Services Authority Amendment Act 1999 No. 43**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

ss 3, 4(2), 5 (other than to the extent it inserts the new s 4C), 6–37, 38(1)–(3)  
commenced 1 October 1999 (1999 SL No. 226)

remaining provisions commenced 1 July 2000 (2000 SL No. 7) (remaining  
provisions were to commence 1 February 2000 but the commencing  
proclamation (1999 SL No. 226) was repealed (2000 SL No. 7))

**Domestic Building Contracts Act 2000 No. 9 ss 1–2, 104 sch 1**

date of assent 20 April 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 156)

**Queensland Building Tribunal Act 2000 No. 10 ss 1–2, 183 sch 1**

date of assent 20 April 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 157)

**Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2**

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions not yet proclaimed into force**GST and Related Matters Act 2000 No. 20 ss 1, 2(2), (4), 29 sch 3**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(2), (4), 2000 SL No. 7)

**Equity and Fair Trading (Miscellaneous Provisions) Act 2000 No. 24 pts 1, 11**

date of assent 27 June 2000

commenced on date of assent

## 7 List of annotations

**Commencement**

s 2 om 1998 No. 13 s 186

**Objects of Act**

s 3 amd 2000 No. 10 s 183 sch 1

**Definitions**

s 4 amd 1994 No. 20 s 3 sch; 1999 No. 43 s 4(1)  
 def “**Advisory Service**” om 1994 No. 20 s 4(1)  
 def “**approved security provider**” ins 1999 No. 43 s 4(2)  
 def “**assessment manager**” ins 1998 No. 13 s 187  
 def “**board’s policies**” ins 1994 No. 20 s 4(2)  
 def “**building contract**” ins 1999 No. 43 s 4(2)  
 def “**building work**” amd 1999 No. 43 s 4(3); 2000 No. 9 s 104 sch 1  
 def “**carry out building work**” ins 1999 No. 43 s 4(2)  
 def “**commercial building contract**” ins 1999 No. 43 s 4(2)  
 def “**completed building inspection**” ins 1999 No. 43 s 4(2)  
 def “**construction management trade contract**” ins 1999 No. 43 s 4(2)  
 def “**contracted party**” ins 1999 No. 43 s 4(2)  
 def “**contracting party**” ins 1999 No. 43 s 4(2)  
 def “**contract price**” ins 1999 No. 43 s 4(2)  
 def “**engineer**” sub 1992 No. 68 s 3 sch 1  
 def “**excluded company**” ins 1999 No. 43 s 4(2)  
 def “**excluded individual**” ins 1999 No. 43 s 4(2)  
 def “**executive officer**” ins 1999 No. 43 s 4(2)  
 def “**exempt building work**” om 1994 No. 20 s 4(1)  
 def “**field work**” ins 1999 No. 43 s 4(2)  
 def “**fire protection system**” ins 1999 No. 43 s 4(2)  
 def “**influential person**” ins 1999 No. 43 s 4(2)  
 def “**licensed builder**” ins 1994 No. 20 s 4(2)  
 def “**owner**” sub 1994 No. 11 s 194 sch 2  
 def “**permitted individual**” ins 1999 No. 43 s 4(2)

def “**principal**” ins 1999 No. 43 s 4(2)  
 def “**progress payment**” ins 1999 No. 43 s 4(2)  
 def “**Real Property Acts**” om 1994 No. 11 s 194 sch 2  
 def “**registrar of titles**” sub 1994 No. 11 s 194 sch 2  
 def “**relevant bankruptcy event**” ins 1999 No. 43 s 4(2)  
 def “**relevant company event**” ins 1999 No. 43 s 4(2)  
 def “**relevant event**” ins 1999 No. 43 s 4(2)  
 def “**retention amount**” ins 1999 No. 43 s 4(2)  
 def “**security**” ins 1999 No. 43 s 4(2)  
 def “**site classification**” ins 1999 No. 43 s 4(2)  
 def “**site testing**” ins 1999 No. 43 s 4(2)  
 def “**subcontract**” ins 1999 No. 43 s 4(2)  
 def “**valuable instrument**” ins 1999 No. 43 s 4(2)  
 def “**variation**” ins 1999 No. 43 s 4(2)  
 def “**written form**” ins 1999 No. 43 s 4(2)  
 reloc as sch 2 1999 No. 43 s 4(4)

**Value of building work carried out in stages**

**prov hdg** ins 1994 No. 20 s 3 sch  
**s 4A** (prev s 4(2)) renum 1994 No. 20 s 3 sch

**Act binds all persons**

**s 4B** ins 1999 No. 43 s 5

**Certain building contractors not bound**

**s 4C** ins 1999 No. 43 s 5

**Constitution of authority**

**s 6** amd 1994 No. 20 s 5

**Role of board**

**s 9** amd 1993 No. 76 s 3 sch 1  
 sub 1994 No. 20 s 6  
 amd 1999 No. 43 s 6

**Board’s policies**

**s 9A** ins 1994 No. 20 s 6

**Composition of board**

**s 10** amd 1994 No. 20 s 7  
 sub 1999 No. 43 s 7

**Appointment of members**

**s 10A** ins 1999 No. 43 s 7

**Times and places of meetings**

**s 11** amd 1994 No. 20 s 3 sch

**Proceedings at meetings**

**s 12** amd 1994 No. 20 s 8; 1999 No. 43 s 8

**Fees and allowances**

**s 15** sub 1999 No. 43 s 9

**Division 4—The general manager**

**div hdg** sub 1994 No. 20 s 3 sch

**The office of general manager**

**prov hdg** amd 1994 No. 20 s 3 sch

**s 16** amd 1994 No. 20 s 3 sch

**Appointment of the general manager**

**prov hdg** amd 1994 No. 20 s 3 sch

**s 17** amd 1994 No. 20 s 3 sch

**Role of the general manager**

**prov hdg** amd 1994 No. 20 s 3 sch

**s 18** amd 1994 No. 20 ss 9, 3 sch; 1998 No. 13 s 188; 1999 No. 43 s 10

**Relationship between general manager and board**

**s 19** sub 1994 No. 20 s 10

**Delegation**

**s 20** amd 1994 No. 20 s 3 sch

**Division 5—The insurance manager**

**div hdg** prev div 5 hdg om 1994 No. 20 s 11

pres div 5 hdg ins 1999 No. 43 s 11

**Appointment of insurance manager**

**s 21** prev s 21 om 1994 No. 20 s 11

pres s 21 ins 1999 No. 43 s 11

**Role of insurance manager**

**s 22** prev s 22 om 1994 No. 20 s 11

pres s 22 ins 1999 No. 43 s 11

**Director of the Advisor Service**

**s 23** om 1994 No. 20 s 11

**Funding of Advisor Service**

**s 24** om 1994 No. 20 s 11

**General Statutory Fund**

**s 25** amd 1996 No. 54 s 9 sch; 1999 No. 43 s 12; 2000 No. 10 s 183 sch 1

**Insurance Fund**

**s 26** amd 1994 No. 20 s 3 sch; 1996 No. 54 s 9 sch; 1999 No. 43 s 13

**Authority is statutory body**

**s 27** prev s 27 om 1992 No. 36 s 2 sch 1

pres s 27 ins 1996 No. 54 s 9 sch

**Division 7—Annual report**

**div hdg** om 1994 No. 20 s 12

**Annual report**

**s 29** sub 1992 No. 36 s 2 sch 1

om 1994 No. 20 s 12

**Entitlement to contractor's licence**

s 31            amd 1999 No. 43 s 14

**Application for licence**

s 33            amd 1999 No. 43 s 15

**Grant of licence**

s 34            amd 1992 No. 36 s 2 sch 1; 1994 No. 20 s 13; 1999 No. 43 s 16;  
                  2000 No. 20 s 29 sch 3

**Division 3A—Issue of PINs to licensees**

div hdg       ins 2000 No. 20 s 29 sch 3

**PINs**

s 34A          ins 2000 No. 20 s 29 sch 3

**Imposition of conditions etc. on grant of licence**

s 35            amd 1999 No. 43 s 17

**Subsequent imposition of conditions etc.**

s 36            amd 1999 No. 43 s 18

**Annual licence fee**

s 37            amd 1992 No. 36 s 2 sch 1

**Receipt of fee does not revive licence**

s 38A          ins 1999 No. 43 s 19

**Register**

s 39            amd 1992 No. 36 s 3 sch 1; 1999 No. 43 s 20; 2000 No. 10 s 183 sch 1

**List of licensees**

s 40            om 1994 No. 20 s 14

**Unlawful carrying out of building work**

s 42            amd 1994 No. 20 s 3 sch; 1999 No. 43 s 21; 2000 No. 10 s 183 sch 1

**Exemption from s 42 for up to 6 months**

s 42A          ins 2000 No. 24 s 42

**Supervision of building work**

s 43            amd 1994 No. 20 ss 15, 3 sch

**Permits for owner-builders**

s 44            amd 1993 No. 76 s 2 sch

**Responsibilities of owner-builder**

s 45            om 1994 No. 20 s 16

**Notification on certificate of title**

s 46            amd 1994 No. 11 s 194 sch 2; 1999 No. 43 s 22

**Warnings**

s 47            amd 1994 No. 20 s 3 sch

**Cancellation or suspension of licence**

s 48            amd 1994 No. 20 s 17; 1999 No. 43 s 23; 2000 No. 16 s 590 sch 1

**Immediate suspension of licence**

**s 49A** ins 1994 No. 20 s 18  
sub 1999 No. 43 s 24

**Division 9A—Monitoring continued satisfaction of financial requirements**

**div 9A (ss 50A–50C)** ins 1999 No. 43 s 25

**Improper use of licence card, certificate, number or PIN**

**prov hdg** amd 2000 No. 20 s 29 sch 3  
**s 51** sub 1999 No. 43 s 26  
amd 2000 No. 20 s 29 sch 3

**Other offences relating to unlawful carrying out of building work**

**s 51A** ins 1999 No. 43 s 26  
amd 2000 No. 20 s 29 sch 3

**Satisfying financial requirements at renewal**

**s 53A** ins 1999 No. 43 s 27

**False or misleading documents about financial requirements**

**s 53B** ins 1999 No. 43 s 27

**Partnerships**

**s 56** amd 1992 No. 36 s 2 sch 1

**PART 3A—EXCLUDED AND PERMITTED INDIVIDUALS AND EXCLUDED COMPANIES**

**pt hdg** ins 1999 No. 43 s 28

**Division 1—Preliminary**

**div 1 (ss 56AA–56AC)** ins 1999 No. 43 s 28

**Division 2—Categorisation as permitted individual**

**div 2 (s 56AD)** ins 1999 No. 43 s 28

**Division 3—Licence exclusion and cancellation**

**div hdg** ins 1999 No. 43 s 28

**Exclusion from contractor's licence**

**s 56AE** ins 1999 No. 43 s 28

**Procedure if licensee is excluded individual**

**s 56AF** ins 1999 No. 43 s 28

**Procedure if licensee is excluded company**

**s 56AG** ins 1999 No. 43 s 28

**Review by tribunal of authority's opinion**

**s 56AH** ins 1999 No. 43 s 28  
amd 2000 No. 10 s 183 sch 1

**PART 4—DOMESTIC BUILDING CONTRACTS**

**pt hdg** om 2000 No. 9 s 104 sch 1

**Application of pt 4**

s 56A ins 1994 No. 20 s 19  
om 2000 No. 9 s 104 sch 1

**Suggested contractual forms**

s 57 om 2000 No. 9 s 104 sch 1

**Contract for major domestic building work**

s 58 amd 1992 No. 36 s 2 sch 1  
sub 1994 No. 20 s 20  
om 2000 No. 9 s 104 sch 1

**Variations to be in writing**

s 59 amd 1994 No. 20 s 21  
om 2000 No. 9 s 104 sch 1

**Statement of contract price**

s 60 om 2000 No. 9 s 104 sch 1

**Prime cost items etc**

s 61 om 2000 No. 9 s 104 sch 1

**Cost escalation clauses**

s 62 om 2000 No. 9 s 104 sch 1

**Noncompliance with time for completion**

s 63 om 2000 No. 9 s 104 sch 1

**Fixtures and fittings**

s 64 om 2000 No. 9 s 104 sch 1

**Display home contracts**

s 65 om 2000 No. 9 s 104 sch 1

**Progress payments**

s 66 amd 1992 No. 36 s 2 sch 1

**Arbitration clauses prohibited**

s 67 om 2000 No. 9 s 104 sch 1

**PART 4A—BUILDING CONTRACTS OTHER THAN DOMESTIC BUILDING  
CONTRACTS**

pt hdg ins 1999 No. 43 s 29

**Division 1—Preliminary**

div 1 (ss 67A–67E) ins 1999 No. 43 s 29

**Division 2—All building contracts**

div hdg ins 1999 No. 43 s 29

**Suggested forms of contract**

s 67F ins 1999 No. 43 s 29

**Building contracts to be in writing**

s 67G ins 1999 No. 43 s 29

**Agreed contract variations**

s 67H ins 1999 No. 43 s 29

**Directions given under building contracts**

s 67I ins 1999 No. 43 s 29

**Set-offs under building contracts**

s 67J ins 1999 No. 43 s 29

**Limits for retention amounts and securities for building contracts other than subcontracts**

s 67K ins 1999 No. 43 s 29

**Limits for retention amounts and securities for subcontracts**

s 67L ins 1999 No. 43 s 29

**Limits on deductions for retention amounts**

s 67M ins 1999 No. 43 s 29

**Limits for retention amounts and securities for building contracts after practical completion**

s 67N ins 1999 No. 43 s 29

**Suspension of works**

s 67O ins 1999 No. 43 s 29

**Late progress payments**

s 67P ins 1999 No. 43 s 29  
amd 2000 No. 10 s 183 sch 1

**Pay if or when paid clauses void**

s 67Q ins 1999 No. 43 s 29

**Division 3—Construction management trade contracts and subcontracts**

div 3 (ss 67R–67U) ins 1999 No. 43 s 29

**Division 4—Warning for construction management trade contracts**

div 4 (s 67V) ins 1999 No. 43 s 29

**Division 5—Commercial building contracts**

div 5 (s 67W) ins 1999 No. 43 s 29

**Payment of insurance premium**

s 68 amd 1994 No. 20 s 22; 1998 No. 13 s 189; 1999 No. 43 s 30; 2000 No. 20 s 29 sch 3

**Insurance of building work**

s 69 amd 1994 No. 20 s 23; 1999 No. 43 s 31; 2000 No. 20 s 29 sch 3

**Recovery from building contractor etc.**

s 71 amd 1994 No. 20 s 24; 2000 No. 20 s 29 sch 3

**Power to require rectification of building work**

s 72 amd 1994 No. 20 s 25; 1999 No. 43 s 32; 2000 No. 9 s 104 sch 1; 2000 No. 10 s 183 sch 1; 2000 No. 20 s 29 sch 3



**Tenders for rectification work**

**s 74**            amd 1999 No. 43 s 33

**PART 7—THE QUEENSLAND BUILDING TRIBUNAL**

**pt hdg**        om 2000 No. 10 s 183 sch 1

**Division 1—Establishment of tribunal**

**div hdg**        om 2000 No. 10 s 183 sch 1

**Establishment of tribunal**

**s 75**            om 2000 No. 10 s 183 sch 1

**Members of tribunal**

**s 76**            amd 1996 No. 37 s 147 sch 2  
                  om 2000 No. 10 s 183 sch 1

**Terms and conditions of appointment**

**s 77**            om 2000 No. 10 s 183 sch 1

**Chairperson and staff of tribunal**

**s 78**            amd 1996 No. 37 s 147 sch 2  
                  om 2000 No. 10 s 183 sch 1

**Division 2—Constitution of tribunal**

**div hdg**        om 2000 No. 10 s 183 sch 1

**Constitution of tribunal**

**s 79**            om 2000 No. 10 s 183 sch 1

**Division 3—General powers of tribunal**

**div hdg**        om 2000 No. 10 s 183 sch 1

**Power to require attendance of witnesses etc.**

**s 80**            om 2000 No. 10 s 183 sch 1

**Powers of tribunal relating to taking of evidence**

**s 81**            om 2000 No. 10 s 183 sch 1

**Reference of matters for expert report**

**s 82**            om 2000 No. 10 s 183 sch 1

**Entry and inspection of property**

**s 83**            om 2000 No. 10 s 183 sch 1

**Contempt of tribunal**

**s 84**            om 2000 No. 10 s 183 sch 1

**Protection of members etc.**

**s 85**            om 2000 No. 10 s 183 sch 1

**Division 4—Proceedings before tribunal**

**div hdg**        om 2000 No. 10 s 183 sch 1

**Start of proceedings**

**s 86**            om 2000 No. 10 s 183 sch 1

**Hearing of proceedings**

s 87 om 2000 No. 10 s 183 sch 1

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s 88 om 2000 No. 10 s 183 sch 1

**Legal representation**

s 89 amd 1994 No. 20 s 26  
om 2000 No. 10 s 183 sch 1

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s 90 om 2000 No. 10 s 183 sch 1

**Division 5—Enforcement of tribunal determinations**

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s 91 sub 1992 No. 68 s 3 sch 1  
om 2000 No. 10 s 183 sch 1

**Division 6—Reconsideration, cases stated and appeals**

div hdg om 2000 No. 10 s 183 sch 1

**Power of tribunal to reconsider determinations**

s 92 amd 1994 No. 20 s 27  
om 2000 No. 10 s 183 sch 1

**Cases stated**

s 93 om 2000 No. 10 s 183 sch 1

**Appeals**

s 94 om 2000 No. 10 s 183 sch 1

**PART 8—JURISDICTION OF THE TRIBUNAL**

pt hdg om 2000 No. 10 s 183 sch 1

**Division 1—Domestic building disputes**

div hdg om 2000 No. 10 s 183 sch 1

**Tribunal's power to adjudicate domestic building disputes**

s 95 om 2000 No. 10 s 183 sch 1

**Mediation**

s 96 amd 1994 No. 20 s 28  
om 2000 No. 10 s 183 sch 1

**Transfer of proceedings between tribunal and the courts**

s 97 amd 1996 No. 58 s 4  
om 2000 No. 10 s 183 sch 1

**Division 2—Proceedings for review**

div hdg om 2000 No. 10 s 183 sch 1

**Reviewable decisions**

s 98 om 2000 No. 10 s 183 sch 1

**Application for review**

**s 99**           amd 1994 No. 20 s 29  
                  om 2000 No. 10 s 183 sch 1

**Tribunal may settle matters of dispute during review of application**

**s 99A**          ins 1994 No. 20 s 30  
                  om 2000 No. 10 s 183 sch 1

**Minor domestic building dispute proceedings not reviewable**

**s 100**          om 2000 No. 10 s 183 sch 1

**Division 3—Disciplinary proceedings**

**div hdg**       om 2000 No. 10 s 183 sch 1

**Disciplinary action**

**s 101**          amd 1992 No. 68 s 3 sch 1; 1995 No. 58 s 4 sch 1; 1999 No. 43 s 34  
                  om 2000 No. 10 s 183 sch 1

**Division 4—Stop orders and suspension orders**

**div hdg**       sub 1994 No. 20 s 31  
                  om 2000 No. 10 s 183 sch 1

**Stop orders**

**s 102**          om 2000 No. 10 s 183 sch 1

**Suspension orders**

**s 102A**        ins 1994 No. 20 s 32  
                  om 2000 No. 10 s 183 sch 1

**Division 5—Determinations about debts**

**div hdg**       sub 1994 No. 20 s 33  
                  om 2000 No. 10 s 183 sch 1

**Determinations about debts**

**s 103**          sub 1994 No. 20 s 33  
                  om 2000 No. 10 s 183 sch 1

**Obligation of assessment manager**

**prov hdg**     sub 1998 No. 13 s 190(1)  
**s 108**          amd 1998 No. 13 s 190(2)

**Service of documents**

**s 109A**        ins 1999 No. 43 s 35

**Non-application of certain Acts**

**s 110**          sub 1994 No. 20 s 3 sch; 1996 No. 58 s 5  
                  om 2000 No. 9 s 104 sch 1

**Prosecutions for offences**

**s 111**          amd 1994 No. 20 s 3 sch

**Responsibility for acts or omissions of representatives**

**s 111A**        ins 1999 No. 43 s 36  
                  amd 2000 No. 10 s 183 sch 1

*Queensland Building Services Authority Act  
1991*

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**Executive officers must ensure company complies with Act**

**s 111B** ins 1999 No. 43 s 36

**Liability of directors for amounts**

**s 111C** ins 1999 No. 43 s 36  
amd 2000 No. 10 s 183 sch 1

**Double jeopardy**

**s 113** amd 1994 No. 20 s 34

**Protection**

**s 114** sub 1999 No. 43 s 37

**Rules**

**s 115** prev s 115 renum as s 116 1992 No. 68 s 3 sch 1  
pres s 115 ins 1992 No. 68 s 3 sch 1  
om 2000 No. 10 s 183 sch 1

**Regulations**

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**SCHEDULE 1—TRANSITIONAL AND VALIDATING PROVISIONS**

**sch hdg** amd R2 (see RA s 39); 1994 No. 20 s 3 sch; 1997 No. 70 s 3(1); 1999 No. 43 s 38(4)

**PART 1—TRANSITIONAL PROVISIONS FOR ACT NO. 98 OF 1991 AND AMENDING ACTS UP TO AND INCLUDING ACT NO. 70 OF 1997**

**pt hdg** ins 1997 No. 70 s 3(1)  
amd 1999 No. 43 s 38(1)

**Repeals**

**s 1** om R1 (see RA s 40)

**Definitions**

**s 1A** ins 1993 No. 76 s 3 sch 1  
amd 1997 No. 70 s 3(2)  
def “**former board**” ins 1993 No. 76 s 3 sch 1  
def “**repealed Act**” ins 1993 No. 76 s 3 sch 1

**Transitional provisions**

**prov hdg** amd 1994 No. 20 s 3 sch  
**s 2** amd 1992 No. 36 s 2 sch 1; 1993 No. 76 s 3 sch 1; R1 (see RA s 38); 1994 No. 20 s 3 sch; 1997 No. 70 s 3(3)

**Existing policies for supervision of building work**

**s 3** ins 1994 No. 20 s 3 sch  
exp 20 November 1994 (see s 3(4))

**References to repealed Acts**

**s 4** prev s 4 ins 1994 No. 20 s 3 sch  
exp 5 August 1994 (see s 4(4))  
pres s 4 ins 1994 No. 87 s 3 sch 1

*Queensland Building Services Authority Act  
1991*

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**References to registrar/general manager and Home Building Advisory Service**  
s 5 ins 1994 No. 20 s 3 sch

**Director of the Advisory Service**  
s 6 ins 1994 No. 20 s 3 sch  
exp 20 May 1994 (see s 6(3))

**Disciplinary action**  
s 7 ins 1994 No. 20 s 3 sch  
amd 1997 No. 70 s 3(2), (4)  
exp 1 October 1998 (see s 7(2))

**PART 2—VALIDATING PROVISIONS FOR ACT NO. 70 OF 1997**  
pt hdg amd 1999 No. 43 s 38(2)  
pt 2 (ss 8–12) ins 1997 No. 70 s 3(5)

**PART 3—TRANSITIONAL PROVISIONS FOR QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT ACT 1999**  
pt hdg ins 1999 No. 43 s 38(3)

**Existing board goes out of office**  
s 13 ins 1999 No. 43 s 38(3)

**PART 4—TRANSITIONAL PROVISIONS FOR GST AND RELATED MATTERS ACT 2000**  
pt 4 (ss 14–16) ins 2000 No. 20 s 29 sch 3

**SCHEDULE 2—DICTIONARY**

sch hdg ins 1999 No. 43 s 39  
(prev s 4) reloc 1999 No. 43 s 4(4)  
def “**building work**” amd 1999 No. 43 s 4(3); 2000 No. 9 s 104 sch 1  
def “**cost escalation clause**” om 2000 No. 9 s 104 sch 1  
def “**determination**” om 2000 No. 10 s 183 sch 1  
def “**display home**” om 2000 No. 9 s 104 sch 1  
def “**domestic building contract**” sub 2000 No. 9 s 104 sch 1  
def “**domestic building dispute**” om 2000 No. 10 s 183 sch 1  
def “**domestic building work**” om 2000 No. 9 s 104 sch 1  
def “**home**” om 2000 No. 9 s 104 sch 1  
def “**home-building contract**” om 2000 No. 9 s 104 sch  
def “**insurance notification form**” ins 2000 No. 20 s 29 sch 3  
def “**major domestic building work**” om 2000 No. 9 s 104 sch 1  
def “**PIN**” ins 2000 No. 20 s 29 sch 3  
def “**review**” ins 2000 No. 10 s 183 sch 1  
def “**tribunal**” sub 2000 No. 10 s 183 sch 1  
def “**Tribunal Act**” ins 2000 No. 10 s 183 sch 1

## **8 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Mental Health Act 2000 No. 16 s 590 sch 1 pt 2 reads as follows—**

### **1. Section 48(g)—**

*omit.*