



Building Act 1975

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Reprint No. 6

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Information about this reprint

This Act is reprinted as at 7 December 2006. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

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

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

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[as amended by all amendments that commenced on or before 7 December 2006]

An Act to regulate building development approvals, building work, building classification and building certifiers, and for other purposes

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Building Act 1975*.

2 Act binds all persons

- (1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

3 Simplified outline of main provisions of Act

- (1) Chapter 2 provides for what building work is assessable development for IPA.
- (2) Chapter 3 imposes requirements, in addition to those under IPA, for making a building development application.
- (3) Chapter 4—
 - (a) provides for the laws and other documents for the assessment of building development applications and

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- the carrying out of self-assessable building work; and
 - (b) provides for who is responsible for carrying out building assessment work for building development applications; and
 - (c) regulates the assessment and approval of building development applications.
- (4) Chapter 5—
- (a) provides for the giving of final inspection certificates and other inspection documentation for particular buildings; and
 - (b) provides for the giving of certificates of classification for other buildings; and
 - (c) regulates the making of BCA classification changes; and
 - (d) restricts the occupation and use of particular buildings.
- (5) Chapter 6—
- (a) regulates private certifiers and other building certifiers and the performance of building and private certifying functions; and
 - (b) regulates the engagement of private certifiers; and
 - (c) provides for the licensing of, and complaints, investigations, and disciplinary proceedings against, private certifiers and other building certifiers.
- (6) Chapter 7 makes provisions about fire safety for budget accommodation buildings.
- (7) Chapter 8 regulates swimming pool fencing.
- (8) Chapter 9 provides for the giving of show cause and enforcement notices for particular building work.

Part 2 Interpretation

Division 1 Dictionary

4 Definitions

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

Division 2 Key definitions

5 What is *building work*

(1) *Building work* is—

- (a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
 - (b) excavating or filling—
 - (i) for, or incidental to, the activities mentioned in paragraph (a); or
 - (ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or
 - (c) supporting, whether vertically or laterally, land for activities mentioned in paragraph (a); or
 - (d) other work regulated under the building assessment provisions, other than IDAS.
- (2) For subsection (1)(d), work includes a management procedure or other activity relating to a building or structure even though the activity does not involve a structural change to the building or structure.

Example—

a management procedure under the fire safety standard relating to a budget accommodation building

6 What is a *building development application*

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

7 What is *building assessment work*

Building assessment work is the assessment, under the building assessment provisions, of a building development application for compliance with those provisions.

8 Who is a *building certifier*

- (1) A *building certifier* is an individual who, under chapter 6, part 3, is licensed as a building certifier.
- (2) A reference to building certifier includes a reference to a private certifier.
- (3) In chapter 6, the term also includes a reference to a former building certifier.

9 Private certifiers and their classes

- (1) A *private certifier* is a building certifier whose licence has, under section 160, private certification endorsement.
- (2) A *private certifier (class A)* is a private certifier whose licence has development approval endorsement.
- (3) A *private certifier (class B)* is a private certifier whose licence does not have development approval endorsement.

10 What is a *building certifying function*

A *building certifying function* is doing any of the following—

- (a) carrying out building assessment work, other than a part of building assessment work that, under section 46,¹ a

¹ Section 46 (Concurrence agencies may carry out building assessment work within their jurisdiction)

- concurrency agency may carry out;
- (b) the giving of a certificate (a *compliance certificate*) in the approved form that, other than for aspects of building assessment work that under section 46 must be assessed by a concurrency agency, states building work complies with the building assessment provisions;
 - (c) for a building development approval—inspecting the building work to decide whether to certify the work;
 - (d) for building work for a single detached class 1a building or a class 10 building or structure, the giving of—
 - (i) a certificate in the approved form for the stage of the building work that is after excavation of foundation material and before the footings for the building are laid; and
 - (ii) a certificate (a *final inspection certificate*) in the approved form for the final stage of the building work;
 - (e) the giving of a certificate of classification for a building or structure of another class.

11 **Who is the *assessment manager* for a building development application**

- (1) Generally, the *assessment manager* for a building development application is the assessment manager for the application as defined under IPA, section 3.1.7.
- (2) However, if under section 48 a private certifier (class A) is performing functions for the application, the certifier is the assessment manager for the application.

12 **What is the *Building Code of Australia* (or *BCA*)**

- (1) The *Building Code of Australia* (or *BCA*) is the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board.
- (2) A reference to the code includes the edition as amended from time to time by amendments published by the board.

13 What is the *Queensland Development Code* (or *QDC*)

- (1) The *Queensland Development Code* (or *QDC*) is the parts, or aspects of the parts, of the document called ‘Queensland Development Code’ published by the department and stated in schedule 1.
- (2) The chief executive may amend the QDC by—
 - (a) adding another part to it; or
 - (b) amending or replacing a part, or an aspect of a part, stated in schedule 1 or added under paragraph (a), or any amendment or replacement of the part or aspect.
- (3) However, the amendment does not take effect until the chief executive publishes the amendment on the department’s website and a regulation approves the amendment.
- (4) The regulation must state the day on which the amendment was published.
- (5) A reference to the QDC is taken to include any amendment under subsection (2) that has taken effect.

14 When building work *complies* with the BCA or QDC

- (1) This section applies if in this Act there is a reference to building work complying with—
 - (a) the BCA or QDC; or
 - (b) the building assessment provisions to the extent they include the BCA and QDC.
- (2) Building work *complies* with the BCA or QDC (the *code*) only if it complies with all relevant performance requirements under the code.
- (3) For subsection (2), the building work complies with a relevant performance requirement only if it achieves a relevant building solution under the code for the requirement.
- (4) For subsection (3), a relevant building solution is achieved for a performance requirement only by—
 - (a) complying with the following (the *relevant requirement*)—

- (i) if the code is the BCA—the relevant deemed-to-satisfy provisions under the BCA for the performance requirement;
- (ii) if the code is the QDC—the relevant acceptable solution under the QDC for the performance requirement; or
- (b) formulating an alternative solution that—
 - (i) complies with the performance requirement; or
 - (ii) is shown to be at least equivalent to the relevant requirement; or
- (c) a combination of paragraphs (a) and (b).

Division 3 Other references

15 References to changed BCA or QDC provision

Section 14H² of the *Acts Interpretation Act 1954* applies to a reference to the BCA or QDC as if the reference were a reference to a law.

16 Reference in Act to applicants, development, assessment managers, referral agencies, building work or building certifiers

- (1) In a provision of this Act about a building development application, a reference to any of the following persons or matters is a reference to the person or matter stated for the referred person or matter—
 - (a) the applicant—the person who made the application;
 - (b) building work—building work the subject of the application;
 - (c) the building—the building the subject of the application;

² Section 14H (References taken to be included in reference to law) of the *Acts Interpretation Act 1954*

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- (d) the development—the development the subject of the application;
 - (e) the assessment manager—the assessment manager for the application;
 - (f) a referral agency, concurrence agency or advice agency—a referral agency, concurrence agency or advice agency for the application;
 - (g) the decision notice—the decision notice for the application.
- (2) In a provision of this Act about a building development approval, a reference to any of the following persons or matters is a reference to the person or matter stated for the referred person or matter—
- (a) the applicant—the person who applied for the approval;
 - (b) building work—building work the subject of the approval;
 - (c) the building—the building the subject of the approval;
 - (d) the development—the development the subject of the approval;
 - (e) the building certifier—the building certifier who performed, or is performing, building certifying functions for the relevant building development application or the approval.
- (3) In a provision of this Act about a building or building work a reference to any of the following persons or matters is a reference to the person or matter stated for the referred person or matter—
- (a) the building development approval—each building development approval to which the building or building work is subject;
 - (b) the assessment manager—the assessment manager for the building development application for the building development approval to which the building or building work is subject.

17 Reference in Act to local government

In a provision of this Act, a reference to a local government, for any of the following matters, means the local government for the area stated for the matter—

- (a) a building or proposed building—the area in which the building is, or is proposed to be, situated;
- (b) building work or other work—the area in which the work is, or is proposed to be, carried out;
- (c) a building development application or development approval—the area in which the building work is, or is proposed to be, carried out.

18 Reference to local government includes any other assessment manager under IPA

If—

- (a) a provision of this Act about a building development application refers to the local government; and
- (b) under IPA schedule 8A,³ an entity other than the local government is the assessment manager;

the provision applies as if the reference to the local government were a reference to the entity.

19 Reference to a proposed building or structure

In this Act—

- (a) a reference to a building or structure includes a reference to a proposed building or structure; and
- (b) a reference to the owner of a building or structure is a reference to the person who, if the proposed building or structure were completed, would be its owner; and
- (c) a reference to the use of a proposed building or structure is a reference to its proposed use on its completion.

³ IPA, schedule 8A (Assessment manager for development applications)

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

Notes—

- 1 Under IPA, sections 3.1.4 and 4.3.1⁴—
 - (a) a development permit is required for assessable development; and
 - (b) subject to some qualifications, a development permit is not required for self-assessable building work or building work that is exempt development.
- 2 Under IPA, schedule 10, assessable development is—
 - (a) development specified in IPA, schedule 8, part 1; or
 - (b) for a planning scheme area—development that is not specified in IPA, schedule 8, part 1 but is declared under the planning scheme for the area to be assessable development.
- 3 For the stages of IDAS for applying for and obtaining a building development approval, see generally IPA, chapter 3, parts 2 to 5.
- 4 Chapters 3 and 4 contain additional provisions for applying for and obtaining a building development approval or for carrying out self-assessable building work.

20 Building work that is assessable development for IPA

All building work is assessable development, unless—

- (a) under section 22, it is exempt development; or
- (b) under section 21 it is self-assessable development; or
- (c) it is operational work mentioned in IPA, section 3.2.2B.⁵

21 Building work that is self-assessable for IPA

- (1) Building work (*self-assessable building work*) is declared to be self-assessable for IPA, schedule 8,⁶ part 2, table 1 if it—

4 IPA, sections 3.1.4 (When is a development permit necessary) and 4.3.1 (Carrying out assessable development without permit)

5 IPA, section 3.2.2B (Approved operational work for retaining walls required for certain development)

6 IPA, schedule 8 (Assessable development and self-assessable development)

- (a) is prescribed under a regulation; and
 - (b) complies with—
 - (i) generally—the BCA and QDC; or
 - (ii) if alternative provisions under section 33⁷ apply to the building work—
 - (A) the alternative provisions; and
 - (B) the provisions of the BCA and QDC, other than the QDC boundary clearance and site cover provisions.
- (2) Subsection (1) is subject to section 37.⁸

22 Building work that is exempt development for IPA

Building work prescribed under a regulation is declared to be exempt development for IPA, schedule 8, part 1, table 1, item 1 and part 2, table 1, item 1.

7 Section 33 (Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings)

8 Section 37 (Provision for changes to building assessment provisions)

Chapter 3 Additional requirements for building development applications

Note—

For the general requirements for development applications, see IPA, section 3.2.1.⁹

Part 1 Requirements for supporting documents

23 Operation of pt 1

This part imposes requirements for documents (*supporting documents*) that under IPA, section 3.2.1(2)(b), are given or required to be given for a building development application.

24 Required information for supporting documents

- (1) Each supporting document must—
 - (a) state the following details of the person who prepared them—
 - (i) the person's name;
 - (ii) if the person is a designated person—the person's registration or licence number as a designated person; or
 - (b) be accompanied by another document that—
 - (i) states the information mentioned in paragraph (a); and
 - (ii) identifies each supporting document.
- (2) In this section—

designated person means a person who—

 - (a) is an architect under the *Architects Act 2002*; or

⁹ IPA, section 3.2.1 (Applying for development approval)

- (b) is a licensed builder; or
- (c) under the *Queensland Building Services Authority Act 1991*, holds a licence of any of the following classes—
 - (i) building design—low rise;
 - (ii) building design—medium rise;
 - (iii) building design—open; or
- (d) is a registered professional engineer under the *Professional Engineers Act 2002*.

25 General requirements for supporting documents

- (1) Each supporting document must on its face demonstrate that the carrying out of the building work will comply with the building assessment provisions, other than IDAS.
- (2) Each supporting document must state each of the following—
 - (a) whether any of the following (a *relevant authorisation*) is necessary for the application—
 - (i) the consent of a registered easement or statutory covenant holder mentioned in section 65(1);
 - (iii) a development permit, preliminary approval or concurrence agency assessment mentioned in section 83(1);¹⁰
 - (b) if the application relates to relevant authorisation that has not lapsed or been withdrawn—how the application is consistent with the authorisation;
 - (c) if—
 - (i) the application relates to self-assessable development under IPA because it has been declared under a planning scheme to be self-assessable development for IPA; and
 - (ii) the development may affect the position, height or form of the building work;

¹⁰ Sections 65 (Land subject to registered easement or statutory covenant) and 83 (General restrictions on granting building development approval)

how the building work is consistent with requirements for the development under the planning scheme;

- (d) if the application requires site works—
 - (i) if they are assessable development—how they comply with the building assessment provisions; or
 - (ii) if they are self-assessable building work—their location and type.

26 Requirements if alternative solution used

If an alternative solution is used in the supporting documents, the documents must—

- (a) state—
 - (i) the performance requirements with which the building work purports to comply; and
 - (ii) how the building work complies with the performance requirements; and
- (b) contain details of—
 - (i) how the alternative solution is different from the relevant deemed-to-satisfy provisions under the BCA or acceptable solutions under the QDC; and
 - (ii) inspection or test results and other documents or information relied on to prepare the application.

Part 2 Other requirements

27 Application for building work for budget accommodation building

A building development application for a budget accommodation building must be accompanied by a fire safety management plan that will, after the building work is

carried out, comply with the *Fire and Rescue Service Act 1990*, section 104FC.¹¹

28 Application to build swimming pool on residential land must include fencing

A building development application for the construction of a swimming pool on residential land must also be for the construction of fencing for the pool.

29 Application must include required site works

A building development application must include any site works that, under the building assessment provisions, must be carried out as part of or for the development.

¹¹ *Fire and Rescue Service Act 1990*, section 104FC (Meaning of *fire safety management plan*)

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

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

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

30 Relevant laws and other documents for assessment of building work

- (1) Building assessment work and self-assessable building work must be carried out under the following laws and documents (the *building assessment provisions*)—
 - (a) IDAS;
 - (b) chapter 3 and this chapter;
 - (c) the fire safety standard;
 - (d) any provisions of a regulation made under this Act relating to building assessment work or self-assessable building work;
 - (e) any relevant local law, planning scheme provision or resolution made under section 32 or 33;
 - (f) the BCA;
 - (g) subject to section 33, the QDC.
- (2) However, for any particular building assessment work or self-assessable building work, subsection (1) is subject to—

- (a) how, under this division, the building assessment provisions apply to the work; and
- (b) any variation of them under division 2.

31 Building assessment provisions form a code for IDAS

- (1) For IPA, each of the building assessment provisions, other than IDAS, is a code for IDAS for the carrying out of building assessment work or self-assessable building work.
- (2) However, for any particular building assessment work or self-assessable building work the provisions of each of the codes are subject to—
 - (a) how, under this division, the provisions apply to the work; and
 - (b) any variation of them under division 2.
- (3) For IPA, section 3.1.3(4),¹² each code under subsection (1) is a code that can not be changed under a local law, local planning instrument or local government resolution.
- (4) Subsection (3) is subject to sections 32 and 33.

32 Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions

- (1) A local government may make or amend—
 - (a) a local planning instrument that designates, for the BCA or QDC, matters prescribed under a regulation; or

Example of a matter that may be prescribed—

designated bush fire prone areas for the BCA
 - (b) a provision of a local law or planning scheme or a resolution about an aspect of, or matter related or incidental to, building work prescribed under a regulation; or

Examples of aspects that may be prescribed—

swimming pool fencing or land liable to flooding

¹² IPA, section 3.1.3 (Code and impact assessment for assessable development)

- (c) alternative provisions under section 33.
- (2) To remove any doubt, it is declared that subsection (1) does not prevent a local government from, under IPA, making or amending a provision in a planning scheme that deals with building work for matters not within the scope of the building assessment provisions.

33 Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings

- (1) This section applies for work (*relevant work*) that—
 - (a) is building assessment work or self-assessable building work; and
 - (b) is for a single detached class 1 building or a class 10 building or structure located on the same allotment as a single detached class 1 building.
- (2) A planning scheme may include provisions (*alternative provisions*) that, for relevant work, are alternative or different to the QDC boundary clearance and site cover provisions.
- (3) However, a planning scheme may include alternative provisions only if the provisions are a qualitative statement or quantifiable standard.
- (4) If there are alternative provisions for relevant work, the QDC boundary clearance and site cover provisions only apply to the extent the alternative provisions do not apply to the work.
- (5) Alternative provisions can not be made other than under a planning scheme.
- (6) In this section—
 - qualitative statement* means a statement about a performance or outcome sought to be achieved when applicable buildings or structures are completed.
 - quantifiable standard* means a standard that achieves a performance or outcome sought under a qualitative statement.

34 Relationship between IDAS and other building assessment provisions

IDAS applies to building assessment work and self-assessable building work subject to the other building assessment provisions mentioned in section 30(1).

35 Relationship between the BCA and the QDC

If the BCA is inconsistent with a part of the QDC, the part prevails to the extent of the inconsistency.

36 When building assessment provisions must be applied

- (1) This section applies subject to sections 37 and 61.¹³
- (2) Building assessment work, other than building assessment work carried out under section 46,¹⁴ must comply with the building assessment provisions in force when the application is approved.

37 Provision for changes to building assessment provisions

- (1) This section applies to building work if—
 - (a) the lawful carrying out of the work starts before a building assessment provision is amended; or
 - (b) the building development approval was given before a building assessment provision is amended, but the work does not start before the amendment commences; or
 - (c) a building development application is made for the work before a building assessment provision is amended, but the application is not decided before the amendment commences; or
 - (d) planning for carrying out the work started before a building assessment provision is amended and the building certifier for the building development approval

13 Section 61 (Alterations to safe existing work may be approved on basis of earlier building assessment provisions)

14 Section 46 (Concurrence agencies may carry out building assessment work within their jurisdiction)

is satisfied that to require the work to be replanned to comply with the amended provision would cause financial hardship to the person for whom the work is to be carried out, having regard to—

- (i) the stage the planning has reached; and
 - (ii) the nature of the work; and
 - (iii) the person's means and circumstances.
- (2) Despite the amendment, a building development approval for the work may be given if the approval is given under the building assessment provisions in force immediately before the amendment, and IDAS.
- (3) For subsection (1)(a) the work is lawfully carried out if it is carried out under the building assessment provisions in force immediately before the amendment.
- (4) For subsections (1) and (3), an amendment of the building assessment provisions includes an amendment of a document adopted by, or to which a reference is made in, any of the provisions.
- (5) In this section—
building assessment provisions does not include IDAS.

Division 2 Variation of how particular building assessment provisions apply

38 Applying to vary how particular building assessment provision applies

- (1) If—
- (a) building work is proposed to be carried out, is being carried out or has been carried out; and
 - (b) the building work will not, or does not, comply with a provision of any of the building assessment provisions, other than IDAS;

a person may apply (the *variation application*) to the chief executive to vary how the provision applies to the building work.

- (2) However, the variation application can not be made if the provision permits an assessment manager to exercise discretion about the matter for which the variation is sought.

Example of a provision mentioned in subsection (2)—

part 3¹⁵

- (3) The variation application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

39 Applying for fast-track decision

- (1) The applicant under the variation application, may, in the application, ask the chief executive to decide the application within 2 business days after making the application.
- (2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.
- (3) The chief executive may grant or refuse the request.
- (4) If the chief executive grants the request, the chief executive may, as a condition of granting the request, require the applicant to pay any reasonable additional costs that would be incurred by the chief executive in deciding the variation application within the 2 business days.

40 Effect of variation application on IDAS process

If the variation application is about building work proposed to be carried out for which work a building development application has been made, the process under IDAS for the building development application—

- (a) stops on the day the variation application is received by the chief executive; and
- (b) starts again the day the chief executive gives the applicant under the variation application notice under section 43.

15 Part 3 (Discretionary matters in the assessment of building development applications)

41 Deciding variation application

- (1) If the building work is being or is to be carried out by or for someone other than the State, the chief executive must consult with the assessment manager about the variation application before deciding it.
- (2) The chief executive may consult with any other person about the variation application before deciding it.
- (3) After considering the variation application, the chief executive must decide to vary or refuse to vary how the provision applies to the building work.
- (4) The chief executive must decide the variation application within 20 business days after the application is made.

42 Criteria for decision

- (1) In making the decision the chief executive must consider all relevant matters, including for example—
 - (a) whether the building work substantially complies with the other building assessment provisions, other than IDAS; and
 - (b) whether compliance with the provision is unnecessary in the particular circumstances; and
 - (c) whether the proposed variation is as effective as, or more effective than, compliance with the provision.
- (2) However, the chief executive may vary how the provision applies to the building work only if the chief executive considers the general safety and structural standards of the relevant building or structure would not be at risk.

43 Notice of decision

- (1) The chief executive must, within 5 business days after deciding the variation application, give the applicant and the assessment manager for the building work notice of the decision.
- (2) If the decision is to refuse to vary how the provision applies to the building work, the notice must be an information notice.

Note—

For appeals against a decision for which an information notice must be given under this section, see IPA, section 4.2.12A.

44 Effect of variation

- (1) This section applies if the chief executive decides to vary how the provision applies to the building work.
- (2) Subject to any appeal against the chief executive's decision, the provision, as varied by the decision, applies to the building work.
- (3) An assessment manager must not refuse to approve a building development application to which the chief executive's decision relates only on the ground that the building work does not comply with the provision without the variation.

Part 2 Persons responsible for assessing building development applications**Division 1 Who carries out building assessment work****45 Generally a building certifier must assess**

Subject to section 46, building assessment work must be carried out by a building certifier.

46 Concurrence agencies may carry out building assessment work within their jurisdiction

- (1) This section applies if, under IPA, a concurrence agency has jurisdiction for a part of building assessment work.
- (2) Only the concurrence agency may assess the part.

- (3) Assessment of the part by the concurrence agency must be done under the building assessment provisions.
- (4) Subject to sections 37 and 61,¹⁶ the assessment must be carried out under the building assessment provisions in force when the assessment is made.
- (5) If the part is assessing compliance with the fire safety standard, the concurrence agency must appoint or employ a building certifier to carry out the assessment.

Notes—

- 1 For a list of the concurrence agencies and the parts of building assessment work that they decide, see IPA Regulation, schedule 2, table 1.
- 2 For the treatment of matters within a concurrence agency's jurisdiction under IPA, see IPA, sections 3.1.8, 3.2.15 to 3.3.18 and 3.5.11.

Division 2 Functions of private certifiers

47 Operation of div 2

- (1) This division confers functions on private certifiers for building development applications.
- (2) The functions are in addition to the building certifying functions that private certifiers may perform as building certifiers.
- (3) The additional functions, together with building certifying functions, are *private certifying functions*.

48 Functions of private certifier (class A)

- (1) A private certifier (class A) may—
 - (a) receive and assess a building development application;
 - and

¹⁶ Sections 37 (Provision for changes to building assessment provisions) and 61 (Alterations to safe existing work may be approved on basis of earlier building assessment provisions)

Building Act 1975

-
- (b) decide the application and grant or refuse the building development approval applied for as if the certifier were the person, who, under IPA, section 3.1.7, is the assessment manager; and
 - (c) decide whether enforcement action under this Act or IPA ought to be taken for a building development approval granted by—
 - (i) the private certifier (class A); or
 - (ii) another private certifier (class A) employed by the same private certifier employer when the decision to take the enforcement action is made.
- (2) For IPA, chapter 4, part 3, divisions 2 and 3,¹⁷ a reference to an assessing authority includes a reference to a private certifier (class A) performing functions under subsection (1)(c).
 - (3) For section 248,¹⁸ a reference to a local government includes a reference to a private certifier (class A) performing functions under subsection (1)(c).
 - (4) However, subsection (1)(c), (2) and (3) apply only until the giving of a final inspection certificate for the building work or a certificate of classification for the building.
 - (5) To remove any doubt, it is declared that subsection (1)(c), (2) and (3) do not limit the local government's functions or powers under this Act or IPA, chapter 4, part 3, divisions 2 and 3.
 - (6) If—
 - (a) under this section a private certifier (class A) gives a person an enforcement notice under this Act or IPA; and
 - (b) the person does not comply with the notice;
 the certifier must ensure the local government is given notice of that fact.

¹⁷ IPA, chapter 4, part 3, divisions 2 (Show cause notices) and 3 (Enforcement notices)

¹⁸ Section 248 (Enforcement notices)

Note—

See also section 132.¹⁹

49 Functions of private certifier (class B)

A private certifier (class B) may—

- (a) receive a building development application; and
- (b) carry out all building assessment work for the application other than in relation to the QDC boundary clearance and site cover provisions.

50 Restrictions on building certifying functions that a private certifier (class B) can perform

- (1) A private certifier (class B) can not give a final inspection certificate or certificate of classification.
- (2) A private certifier (class B) can only give a compliance certificate about whether building work complies with the BCA or a provision of the QDC, other than the QDC boundary clearance and site cover provisions.

Division 3 Functions of local government

51 Function to act on building development application or development approval unless private certifier (class A) engaged

- (1) This section applies if—
 - (a) a person wishes to make a building development application to the local government; and
 - (b) if the application were made, it would be a properly made application; and
 - (c) a private certifier (class A) is not engaged for the application; and

¹⁹ Section 132 (Effect of building certifier not complying with Act if no penalty provided)

Building Act 1975

- (d) if a private certifier (class B) is engaged for the application—the private certifier (class B) has not entered into an agreement mentioned in section 140(3)²⁰ for the proposed application.
- (2) The local government must do the following—
- (a) under IDAS, receive, assess and decide the application;
 - (b) appoint or employ a private certifier or another building certifier to perform building certifying functions for—
 - (i) the application; and
 - (ii) if the building development approval applied for is granted—the building work.

Note—

If a private certifier is appointed or employed, the functions can not include private certifying functions that are not also building certifying functions. See section 138.

- (3) If—
- (a) a private certifier (class A) has granted a building development approval; and
 - (b) the engagement of a private certifier to inspect and certify the building work is discontinued; and
 - (c) the building work has not been certified;
- the local government for the approval must, if asked in writing by the nominated owner of the building, appoint or employ a building certifier to perform building certifying functions for the building work.
- (4) This section is subject to sections 30 and 52.²¹
- (5) In this section—

nominated owner, of a building, means the person who, under the most recent building development application for the building, was nominated on the approved form under IPA,

20 Section 140 (Restriction on engagement of private certifier (class B))

21 Sections 30 (Relevant laws and other documents for assessment of building work) and 52 (Restriction on local government issuing building development approval)

section 3.2.1(2),²² as the person to receive the inspection documentation for building work for the building.

52 Restriction on local government issuing building development approval

The local government for a building development application may issue the building development approval applied for only if—

- (a) a local government building certifier has carried out the building assessment work for the application; and
- (b) the building certifier is appropriately licensed to carry out the building assessment work.

53 Local government may rely on particular compliance certificates and other documents

(1) This section applies if—

- (a) a building certifier gives the local government for a building development application (the *original application*) a compliance certificate or other document; and
- (b) the certificate or other document was made by or given to the building certifier to carry out building assessment work under the original application.

(2) The local government may, in carrying out functions under this Act for the following, accept and, without further checking, rely and act on the certificate or other document—

- (a) the original application;
- (b) another building development application for all or part of the building work under the original application.

54 Local government may rely on documents private certifier gives it for inspection or purchase

If—

²² IPA, section 3.2.1 (Applying for development approval)

- (a) under this Act, a private certifier gives the local government for a building development application a document; and
 - (b) under IPA, the local government must make the document available for inspection or purchase;
- the local government may accept and, without further checking, rely and act on the document for the purpose of making it available for inspection or purchase.

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

55 Power to decide what stage of IDAS application is to resume or start

- (1) This section applies if—
 - (a) a private certifier (class A) is engaged to assess or decide a building development application; and
 - (b) the engagement is discontinued; and
 - (c) the application has not been decided; and
 - (d) a new private certifier (class A) is engaged for the application.
- (2) This section also applies if—
 - (a) a building development approval lapses under part 7; and
 - (b) the owner of the land to which the approval attached immediately before it lapsed makes a new building development application for all or part of the building work under the lapsed approval.
- (3) The assessment manager for the application or new application may resume or start the application process at any stage of IDAS the assessment manager considers appropriate.

Part 3

Discretionary matters in the assessment of building development applications

56 Building certifier's discretion—BCA

- (1) This section applies for a building certifier carrying out building assessment work for a building development application if—
 - (a) the BCA allows a discretionary decision about a building design or specification for building work; and
Example of discretionary decision—

the BCA uses the word 'suitable' or 'adequate'
 - (b) the application proposes the use of the discretion.
- (2) The building certifier must—
 - (a) consider the objectives and functional statements of the BCA in relation to the design or specification; and
 - (b) decide whether the design or specification complies with—
 - (i) generally—the BCA; or
 - (ii) if, for the application, the BCA is varied under part 1, division 2²³—the BCA as varied.
- (3) The building certifier must not make the decision in a way that conflicts with the objectives or functional statements.

57 Building certifier's or concurrence agency's discretion—QDC

- (1) This section applies for a building certifier or concurrence agency carrying out building assessment work for a building development application if—
 - (a) a part of the QDC applies to the application; and

23 Part 1, division 2 (Variation of how particular building assessment provisions apply)

- (b) the part allows a discretionary decision about a building design or specification; and

Example of discretionary decision—

QDC uses the word ‘suitable’ or ‘adequate’

- (c) the application proposes the use of the discretion.
- (2) The building certifier or concurrence agency must decide whether the design or specification complies with—
 - (a) generally—the QDC; or
 - (b) if, for the application, the QDC is varied under part 1, division 2—the QDC as varied.

58 Survey certificate

- (1) A building certifier may, before assessing a building development application, require that a cadastral survey, including a survey commonly called in the surveying profession an identification survey, be carried out to show—
 - (a) the boundaries of the allotment on which the building work is proposed; and
 - (b) the location of any proposed or existing buildings or structures on the allotment.
- (2) The absence of a requirement under subsection (1) does not prevent the requirement being made by a condition of the building development approval, under section 78.

59 Discretion for building development applications for particular budget accommodation buildings

- (1) This section applies to the assessment of a building development application to the extent it is for building work required to ensure the building complies, under section 220,²⁴ with the fire safety standard.

²⁴ Section 220 (Owner must ensure building conforms with fire safety standard)

- (2) The decision on the application may compromise the achievement of the desired environmental outcomes in a relevant planning scheme.²⁵

Example—

A desired environmental outcome in a relevant planning scheme is that the building does not affect the amenity and aesthetics of the neighbourhood of the building. An external stairway required under the site safety standard does not comply with the outcome. The application may be approved despite the noncompliance.

60 Building certifier may rely on particular compliance certificates and other documents

- (1) This section applies if—
- (a) a building certifier has given anyone else a compliance certificate or other document; and
 - (b) the certificate or other document made by or given to the building certifier to carry out building assessment work for a building development application (the *original application*).
- (2) Another building certifier may, in carrying out functions under this Act for the following, accept and, without further checking, rely and act on the certificate or other document—
- (a) the original application;
 - (b) another building development application for all or part of the building work under the original application.

61 Alterations to safe existing work may be approved on basis of earlier building assessment provisions

- (1) This section applies for a building development application if—
- (a) the building work is alterations to an existing building or structure; and
 - (b) the building certifier is satisfied the general safety and structural standards of the building or structure would

²⁵ See IPA, section 3.5.13(4) (Decision if application requires code assessment)

not be at risk if the alterations were to be carried out under earlier building assessment provisions.

(2) The building certifier may carry out building assessment work for the application on the basis that the building work is to be carried out under the earlier building assessment provisions.

(3) In this section—

building assessment provisions includes the former Standard Building By-laws and Standard Building Law under this Act and the repealed *Standard Building Regulation 1993*.

earlier building assessment provisions means the building assessment provisions as they were in force at a particular time before the application was made.

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

62 Requirement to consider any advice agency response

(1) This section applies if, under IPA, an advice agency for a building development application has jurisdiction for a part of building assessment work for the application.

(2) The assessment manager must not approve the application unless IPA, section 3.5.4(2)(b) or 3.5.5(2)(a) has been complied with.²⁶

Notes—

1 For what are the advice agencies for building development applications and the issues they may advise on, see IPA Regulation, schedule 2, table 1.

2 For the treatment of matters within an advice agency's jurisdiction under IPA, see IPA sections 3.1.8, 3.3.15 to 3.3.1 and 3.5.11.

²⁶ IPA section 3.5.4 (Code assessment) or 3.5.5 (Impact assessment)

63 Restriction on granting building development application for budget accommodation building

If a building development application is for a budget accommodation building, the assessment manager must not approve the application unless the assessment manager is satisfied—

- (a) the fire safety management plan accompanying the application complies with the *Fire and Rescue Service Act 1990*, section 104FC;²⁷ or
- (b) the building work involves an alternative solution, for performance requirements under the BCA, that includes a fire safety management procedure as a condition of the occupation and use of the building and the fire safety management plan adequately reflects the procedure.

64 Required report before assessing application for temporary building or structure with special fire service

- (1) This section applies to a building development application for a temporary building or structure that is proposed to have a special fire service.
- (2) Before carrying out building assessment work for the application, the building certifier must obtain from QFRS a report on the suitability of the proposed service.

65 Land subject to registered easement or statutory covenant

- (1) This section applies if a building development application is for land subject to—
 - (a) a registered easement; or
 - (b) a registered statutory covenant for which the registered holder of the covenant is—
 - (i) the State; or
 - (ii) a statutory body representing the State; or

²⁷ *Fire and Rescue Service Act 1990*, section 104FC (Meaning of *fire safety management plan*)

- (iii) a local government.
- (2) The assessment manager must not approve the application unless each registered holder of the easement or covenant has consented to the building work.
- (3) In this section—
registered means registered under the *Land Act 1994* or *Land Title Act 1994*.

66 Special structures

- (1) This section applies to a building development application for a building that, under section 120, is classified as a special structure.
- (2) The assessment manager must not approve the application unless the special structure—
 - (a) complies with the building assessment provisions; and
 - (b) reasonably provides for all of the following—
 - (i) the safety of persons using the structure if there is a fire (including, for example, means of egress);
 - (ii) the prevention and suppression of fire;
 - (iii) the prevention of the spread of fire;
 - (iv) the health and amenity of persons using the structure.

67 Temporary building or structure that does not comply with other building assessment provisions

- (1) This section applies to a building development application for a temporary building or structure that, apart from this section, would not comply with the building assessment provisions.
- (2) The assessment manager must not approve the application unless subsections (3) and (4) have been complied with.
- (3) The building certifier must have decided that the temporary building or structure—
 - (a) is structurally sound and capable of withstanding the loadings likely to arise from its use; and

- (b) reasonably provides for all of the following—
 - (i) the safety of persons to be accommodated in the building or structure if there is a fire (including, for example, means of egress);
 - (ii) the prevention and suppression of fire;
 - (iii) the prevention of the spread of fire;
 - (iv) the health and amenity of persons to be accommodated in the building or structure.
- (4) The approval must include a condition that—
 - (a) limits the period during which the temporary building or structure may remain in place; and
 - (b) requires removal or demolition of the temporary building or structure at the end of the period.

68 Particular alterations not permissible

- (1) This section applies to a building development application for alterations to an existing building or structure.
- (2) However, this section does not apply if—
 - (a) the alterations are for a budget accommodation building, to which chapter 7, part 3,²⁸ applies; and
 - (b) the purpose of the alterations is to ensure the building or structure complies with the fire safety standard.
- (3) The assessment manager must not approve the application unless the building certifier has decided the alterations do not unduly reduce the following—
 - (a) the existing level of fire protection for persons accommodated in, or using, the building or structure;
 - (b) the existing level of resistance to fire of the building or structure;
 - (c) the existing safeguards against spread of fire to adjoining buildings or structures;

²⁸ Chapter 7 (Fire safety for budget accommodation buildings), part 3 (Budget accommodation buildings built, approved or applied for, before 1 January 1992)

- (d) the existing level of emergency egress from the building or structure.

68A Statement of reasons for approving alternative solution

- (1) This section applies if—
 - (a) an alternative solution is used in the supporting documents for a building development application; and
 - (b) the assessment manager decides to approve the application on the basis of the alternative solution.
- (2) The assessment manager must prepare a written statement of reasons for the decision.
- (3) The statement must contain details of—
 - (a) how the alternative solution is different from the relevant deemed-to-satisfy provisions under the BCA or acceptable solutions under the QDC; and
 - (b) inspection or test results and other documents or information relied on to make the decision.

Part 5 Conditions of building development approvals

Note—

For general provisions about conditions of development approvals, see IPA, chapter 3, part 5, division 6.²⁹

Division 1 Conditions taken to be imposed

69 Operation of div 1

- (1) This division imposes restrictions and obligations for particular building development approvals.

²⁹ IPA, chapter 3, part 5, division 6 (Conditions)

- (2) The restrictions and obligations are taken to be conditions of building development approvals to which they relate.
- (3) This division does not limit the conditions that may be imposed under IPA.
- (4) If a provision of this division applies to a building development approval, the condition provided for under the provision (an *imposed condition*) is taken to—
 - (a) have been imposed on the approval; and
 - (b) be relevant and reasonable for IPA, section 3.5.30.
- (5) IPA, sections 3.5.33 and 3.5.33A do not apply to an imposed condition.³⁰
- (6) If there is a conflict between an imposed condition and another condition of a building development approval, the imposed condition prevails to the extent of the inconsistency.

70 Engineering drawings

- (1) This section applies if—
 - (a) supporting documents for a building development application are in the form of engineer's drawings or other engineering details; and
 - (b) the drawings or details were not included with the application; and
 - (c) the application is approved.
- (2) Work on any footings for the building work must not start until the drawings and details for the footings have been approved by the building certifier.
- (3) A stage of the building work must not be started until the drawings and details for the stage have been approved by the building certifier.

³⁰ IPA, sections 3.5.30 (Conditions must be relevant or reasonable), 3.5.33 (Request to change or cancel conditions) and 3.5.33A (When condition may be changed or cancelled by assessment manager or concurrence agency)

71 When demolition, removal and rebuilding must start and be completed

- (1) This section applies to a building development approval for building work to—
 - (a) demolish or remove a building or structure; or
 - (b) rebuild, after removal, a building or structure.
- (2) The building work must substantially start within 2 months after the giving of the approval.
- (3) Within 6 months after the giving of the approval—
 - (a) the building work must be completed; and
 - (b) if the building work is rebuilding, after removal, of a building or structure, either—
 - (i) if, under the approval or a regulation, the building work must be inspected, a final inspection showing that the building work complies with the approval or regulation is carried out; or
 - (ii) under chapter 5, a certificate of classification must be given for the building.
- (4) The condition under subsection (3) is the *demolition/removal completion condition*.

72 Building work in erosion prone area

- (1) This section applies to a building development approval for an erosion prone area under the *Coastal Protection and Management Act 1995*.
- (2) All material excavated from land for the building work must be placed, levelled and stabilised against wind erosion—
 - (a) on the land seaward of the building or structure; or
 - (b) at another location, stated in the approval, within the erosion prone area.
- (3) If the building work includes the erection or alteration of a roof drainage system or stormwater drain for the building or other structure, the system or drain must not be erected or altered in a way that is likely to cause erosion of the area.

- (4) However, the conditions under subsections (2) and (3) do not apply if the approval states that the person carrying out the building assessment work for the application is satisfied the conditions are not necessary for coastal management, including, in particular, the prevention of erosion or tidal inundation.

73 Obligation to make current drawing available for inspection

The applicant for a building development approval must ensure 1 legible set of the current drawings for the building is, while the building work is being carried out, available for inspection by anyone who, under an Act, is entitled to inspect the relevant building site.

74 Inspection and testing of special fire service installation

- (1) This section applies to a building development approval for a building served by a special fire service.
- (2) The person installing the service must—
- (a) give QFRS—
 - (i) while the installation of the service is being carried out but before it is finished—a notice to inspect the installation; and
 - (ii) after the installation of the service but before interior surface finishes are applied—a notice to test the service; and
 - (b) give a copy of the notices to the assessment manager when they are given to QFRS.
- (3) QFRS may inspect and test the building work only about special fire services.

75 Earthworks and retaining walls

If soil conditions, ground levels, excavation or filling make it necessary to protect land, buildings or structures in the neighbourhood of building work—

- (a) retaining walls must be built, or other suitable methods used, to prevent soil movement; and
- (b) drainage of the land, buildings or structures must be provided.

76 Drainage of buildings or land

If a building development approval permits a building or land to be drained, the drainage must be carried out in a way that protects land, buildings and structures in the neighbourhood of the building or land.

77 Building work over existing sanitary drainage

Building work over or adjacent to existing sanitary drainage must comply with the Standard Plumbing and Drainage Regulation.

Division 2 Conditions that may be imposed

78 Survey certificate

- (1) A building development approval may include a condition that the building certifier must be given a cadastral survey, including a survey commonly called in the surveying profession an identification survey, showing—
 - (a) the boundaries of the allotment; and
 - (b) the actual location of the building or structure on the allotment.
- (2) A survey under subsection (1) must be given—
 - (a) as soon as the actual location of the building or structure on the allotment can be established; or
 - (b) at a later time the building certifier allows.

79 Hazardous buildings

- (1) This section applies to a building development approval for a class 5, 6, 7 or 8 building—

- (a) with a total floor area greater than 36000m²; or
 - (b) for which the building certifier considers special provision should be made to restrict or combat the spread of fire within or from the building because of the purpose or purposes for which the building is being or is to be used.
- (2) The building development approval may include conditions the building certifier considers appropriate about restricting or combating the spread of fire in or from the building.
- (3) However, the conditions may be imposed only if the building certifier has consulted QFRS about their appropriateness.

80 Alterations to unsafe existing work

- (1) This section applies to a building development approval if—
- (a) the building work is alterations to an existing building or structure; and
 - (b) the building certifier decides the building or structure is unsafe or structurally unsound.
- (2) The building development approval may include a condition that all, or a stated part, of the building or structure must comply with the building assessment provisions in force—
- (a) when the approval was granted; or
 - (b) at another stated time that the building certifier considers will ensure the building or structure is made safe and structurally sound.

81 Building development approval for particular alterations may require existing building or structure to comply with building assessment provisions

- (1) This section applies to a building development approval for alterations to an existing building or structure if—
- (a) the total of the following represents more than half the total volume of the existing building or structure, measured over its roof and external walls—
 - (i) the alterations;

- (ii) any previous structural alterations to it approved or completed in the previous 3 years; or
- (b) the building certifier has decided the alterations pose a risk—
 - (i) to the safety of persons accommodated in or using the building or structure; or
 - (ii) of spreading fire to adjoining buildings or structures.
- (2) However, this section does not apply if—
 - (a) the alterations are for a budget accommodation building, to which chapter 7, part 3,³¹ applies; and
 - (b) the purpose of the alterations is to ensure the building or structure complies with the fire safety standard.
- (3) The building development approval may include a condition that all, or a stated part, of the existing building or structure must comply with all or a stated part of the building assessment provisions as if it were a new building or structure.
- (4) This section does not limit chapter 5, part 3.³²

Part 6

Regulation of building assessment work and the issuing of building

31 Chapter 7 (Fire safety for budget accommodation buildings), part 3 (Budget accommodation buildings built, approved or applied for, before 1 January 1992)

32 Chapter 5, part 3 (Changes to BCA classification)

development approvals by private certifiers

82 Application of pt 6

This part applies if, under section 48,³³ a private certifier (class A) is assessing a building development application or deciding and issuing the decision notice.

83 General restrictions on granting building development approval

- (1) The private certifier must not grant the building development approval applied for—
 - (a) if the building development application includes development other than building work—until, under IPA, all necessary development permits are effective for the other development; and

Example—

A proposal involves building work, a material change of use and reconfiguring a lot, under IPA. The private certifier is engaged to carry out the building assessment work and decide the building development application. The application must not be decided until all necessary development permits are effective for the change of use and reconfiguring of the lot.

- (b) until all necessary preliminary approvals under IPA are effective for other assessable parts of the development; and

Example—

A proposal requires building assessment work against a planning scheme under IPA and the building assessment provisions. The private certifier is engaged to carry out the building assessment work and decide the building development application. The application must not be decided until all necessary preliminary approvals are effective for the assessment of the building work against the planning scheme.

33 Section 48 (Functions of private certifier (class A))

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- (c) until the building assessment work for the application has been carried out under the building assessment provisions; and
- (d) if, under IPA, a concurrence agency has jurisdiction for a part of building assessment work—
 - (i) that part has been assessed by the concurrence agency, under the building assessment provisions; and
 - (ii) if the concurrence agency is the local government—any security it has required for the carrying out of the building work has been given; and
- (e) if proposed works relating to the development include installing or changing on premises an on-site sewerage facility under the *Plumbing and Drainage Act 2002*—until a compliance permit under that Act has been given for the installation or change; and
- (f) if the building work is over or adjacent to a sewer or water main—until consent under the *Water Act 2000*, section 823 has been granted for the work to be over or adjacent to the sewer or water main.

Maximum penalty—165 penalty units.

- (2) For subsection (1)(f), building work over or adjacent to a sewer includes building work in which the offset of the nearest point of the work from the centre line of the sewer is a distance less than the depth to the invert of the sewer.
- (3) If the private certifier receives the application before all other assessments for permits and approvals mentioned in subsection (1) are completed, for timings under IDAS, the application is taken not to have been received until the day all other assessments under IDAS have been completed.
- (4) This section does not limit part 4.³⁴

³⁴ Part 4 (Requirements for and restrictions on assessing or approving building development applications)

84 Approval must not be inconsistent with particular earlier approvals or self-assessable development

- (1) The private certifier must not approve the application if—
- (a) the building development application relates to an earlier development approval granted by the local government; and
 - (b) the earlier approval has not lapsed; and
 - (c) the application is inconsistent with the earlier approval.

Maximum penalty—165 penalty units.

- (2) Also, the private certifier must not approve the application if—
- (a) the building development application relates to self-assessable development under IPA; and
 - (b) the development may affect the position, height or form of building work; and
 - (c) a local planning instrument declared the development to be self-assessable development; and
 - (d) the application is inconsistent with the local planning instrument.

Maximum penalty—165 penalty units.

85 Additional requirement for decision notice

The private certifier must, when issuing the decision notice, include in the notice details of any self-assessable code under IPA that the applicant may need to comply with for the building work.

86 Requirements on approval of application

- (1) If the private certifier approves the application, the certifier must—
- (a) within 5 business days, give the local government a copy of each of the following documents, identified in the way stated in subsection (2)—
 - (i) the application;

- (ii) the approval documents for the application; and
- (b) give the local government the approved form for the documents mentioned in paragraph (a); and
- (c) pay the fee fixed by the local government under the *Local Government Act 1993*, section 1071A(1)(e) for accepting the application and the approval documents.

Maximum penalty—40 penalty units.

- (2) For subsection (1)(a), the documents must be identified by—
 - (a) marking each of them as documents that relate to the application and that have been approved by the private certifier; or
 - (b) giving them to the local government with another document that—
 - (i) identifies each of the documents; and
 - (ii) states their edition number, if any; and
 - (iii) states that they relate to the application and that they have been approved by the private certifier.

Note—

Under IPA, section 5.7.4, the local government must make the documents required to be given to it under this section available for public inspection and purchase.

87 Local government acknowledgement

The local government must, when the private certifier complies with section 86(1), immediately give the certifier a document acknowledging the fee mentioned in subsection 86(1)(c) has been received.

88 When applicant is to be given the approval documents

- (1) This section applies only if the private certifier approves the application.
- (2) The private certifier must not give the applicant any of the approval documents for the application until the certifier has received the acknowledgment under section 87 from the local government.

Maximum penalty—50 penalty units.

- (3) The private certifier must give the applicant the approval documents within 5 business days after receiving the acknowledgement.

Note—

See also section 132.³⁵

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

Division 1 **Building work for demolition or removal**

89 **Application of div 1**

This division applies to a building development approval for building work to which the demolition/removal completion condition applies.

90 **Relevant period under IPA, s 3.5.21 for development approval**

- (1) For IPA, the period under the demolition/removal completion condition is taken to be the relevant period under IPA, section 3.5.21³⁶ for the development approval.
- (2) The period can not be extended under IPA.

91 **Lapsing of building development approval**

- (1) This section applies despite IPA section 3.5.21.

35 Section 132 (Effect of building certifier not complying with Act if no penalty provided)

36 IPA, section 3.5.21 (When approval lapses if development not started)

- (2) The building development approval lapses if the demolition/removal completion condition has not been complied with by the end of the period under the demolition/removal completion condition.
- (3) However, if section 92 applies, the approval does not lapse until the local government decides not to take any action under that section.

92 Local government may complete particular work if condition not complied with

- (1) This section applies if the building development approval lapses and the building work is other than demolition.
- (2) The local government may take the action it considers necessary to complete the building work.
- (3) If the local government takes action under subsection (2), until the local government completes the action—
 - (a) the approval is taken not to have lapsed; and
 - (b) the local government is taken to be the person entitled to the benefit of the approval.
- (4) The action is taken to have been authorised under the approval.
- (5) In taking the action the local government may use all or part of any security given to it for the carrying out of the building work.

93 Releasing security

- (1) The local government may at any time, having regard to the progress of the building work, refund or release part of any security given to it for the carrying out of the building work.
- (2) The local government must release all or any remaining part of the security if—
 - (a) the demolition/removal completion condition is complied with; or
 - (b) the building development approval lapses.

Division 2 Other building work

94 Application of div 2

- (1) This division applies if a condition of a building development approval requires the development, or an aspect of the development, to be completed by a particular time (the *condition time*).
- (2) However, this division does not apply to a building development approval for building work to which the demolition/removal completion condition applies.

Note—

For general provisions about when a development approval lapses, what conditions may be imposed and when a condition of a building development approval may be amended, see IPA, chapter 3, part 5, divisions 5 and 6.

95 Reminder notice requirement for lapsing

- (1) Despite IPA, chapter 3, part 5, divisions 5 and 6 and the condition, the approval only lapses if—
 - (a) the assessment manager has, under this section, given the owner of the building a reminder notice about the lapsing; and
 - (b) the time (the *lapsing time*) chosen by the assessment manager and stated in the reminder notice for the completion of the development or aspect has passed; and
 - (c) the development or aspect was not completed before the lapsing time.
- (2) The lapsing time may be after, but must not be before, the condition time.
- (3) The reminder notice must—
 - (a) be given no more than 6 months, but at least 3 months, before the lapsing time; and
 - (b) state each of the following—
 - (i) the condition;

- (ii) the lapsing time;
 - (iii) that the approval will lapse unless the development or aspect is completed by the lapsing time;
 - (iv) that if, under IPA, the relevant period under IPA, section 3.5.21³⁷ for the building development approval is extended past the lapsing time stated in the notice the lapsing time will, under section 96, be taken to be when the extended period ends.
- (4) Only 1 reminder notice may be given under this section.
- (5) Subject to section 96, the assessment manager can not change the lapsing time.

96 Extension of lapsing time because of application to extend relevant period under IPA, s 3.5.21

- (1) This section applies if—
- (a) a reminder notice has been given under section 95; and
 - (b) before the lapsing time stated in the notice, a request is made under IPA to extend the relevant period under IPA, section 3.5.21 for the relevant building development approval.
- (2) For section 95—
- (a) the lapsing time is taken to have been extended until the request has been decided; and
 - (b) if the relevant period is extended past the lapsing time stated in the notice, the lapsing time is taken to be when the extended period ends.

97 Restriction on private certifier (class A) extending relevant period under IPA, s 3.5.21 more than once

- (1) This section applies if the assessment manager is a private certifier (class A) and, under IPA, the relevant period under

³⁷ IPA, section 3.5.21 (When approval lapses if development not started)

IPA, section 3.5.21³⁸ for the building development approval has already been extended.

- (2) The private certifier may further extend the period only if the private certifier has consulted with the local government.
- (3) Subsection (2) applies despite IPA chapter 3, part 5, divisions 5 and 6.

Chapter 5 Inspections, building classification and the use of buildings

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

98 Application of pt 1

This part applies to a building certifier for a building development approval who is a local government building certifier or a private certifier (class A), if the building is—

- (a) a single detached class 1a building;
- (b) a class 10 building or structure.

99 Obligation to give owner inspection documentation on final inspection

- (1) This section applies if at the inspection of the final stage of building work, the building certifier is satisfied, on an

38 IPA, section 3.5.21 (When approval lapses if development not started)

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inspection carried out under best industry practice, that the work complies with the building development approval.

Note—

There is a right of appeal to a building and development tribunal against a decision by a building certifier about inspection of building work the subject of a building development approval. See section 124 and IPA, section 4.2.12A.³⁹

- (2) The building certifier must ensure the owner of the building is, within the required period, given—
- (a) a final inspection certificate for the building work; and
 - (b) a copy of any other inspection documentation for inspection of the building work.

Maximum penalty—40 penalty units.

- (3) In this section—

required period means the period that ends 5 business days after—

- (a) if the inspection documentation includes any certificates relied on by the building certifier—the certifier accepts the certificates; or
- (b) otherwise—all of the building work is inspected.

³⁹ Section 124 (Building certifier's obligation to give information notice about particular decisions) and IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

Part 2 **Certificates of classification for other buildings**

Division 1 **Preliminary**

100 **Application of pt 2**

This part applies to a building certifier for a building development approval who is a local government building certifier or a private certifier (class A), unless the building is—

- (a) a single detached class 1a building;
- (b) a class 10 building or structure.

101 **Meaning of *substantially completed***

- (1) A building has been *substantially completed* when—
- (a) all wet areas are waterproof as required under the building assessment provisions; and
 - (b) reticulated water is connected to and provided throughout the building; and
 - (c) all sanitary installations are installed as required under the building assessment provisions; and
 - (d) the local government has issued a compliance certificate under the *Plumbing and Drainage Act 2002* stating the plumbing work, drainage work and on-site sewerage work for the building has been completed under that Act; and
 - (e) all fire safety installations are operational and installed as required under the building assessment provisions; and
 - (f) all health and safety matters relating to the building comply with the building assessment provisions; and
 - (g) electricity supply is connected to the building to the extent necessary for it to be used under the BCA classification sought; and

- (h) the building is weatherproof as required under the building assessment provisions; and
 - (i) the building is structurally adequate as required under the building assessment provisions; and
 - (j) all means of access and egress to the building comply with the building assessment provisions; and
 - (k) if the relevant development approval includes conditions advised or required by a referral agency and the conditions are about the building work for the building—the conditions have been complied with.
- (2) In this section—
- building* includes alterations to all or part of an existing building.

Division 2 Giving of certificate

102 Obligation to give certificate of classification on inspection after particular events

- (1) This section applies if—
- (a) the building certifier has inspected the building and—
 - (i) decided that it has been substantially completed; or
 - (ii) given written consent to the occupation of part of the building before all of it has been substantially completed; or
 - (iii) if the development is alterations to an existing building—decided that they have been substantially completed; and
 - (b) if there is any fire safety installation installed in the building—the applicant has given the building certifier—
 - (i) a list of all of the installations; and
 - (ii) drawings showing their location; and
 - (c) any requirement under the building assessment provisions or a condition of the building development

approval for a referral agency inspection of the building has been complied with or has ceased to apply.

- (2) The building certifier must, as soon as practicable, ensure the owner of the building is given a certificate of classification by a building certifier that complies with the requirements under section 103 for a certificate of classification (the *certificate requirements*).

Maximum penalty—20 penalty units.

- (3) If a requirement mentioned in subsection (1)(c) applies, the certificate must not be given until the requirement has been complied with or it has ceased to apply.

Notes—

- 1 There is a right of appeal to a building and development tribunal against a decision by a building certifier to whom this part applies not to give a certificate of classification because the relevant building has not been substantially completed. See section 124 and IPA, section 4.2.12A.⁴⁰
- 2 See also section 132.⁴¹

103 Certificate requirements

A certificate of classification must—

- (a) be signed in the approved form; and
- (b) state the building's classification, having regard to the use for which it was designed, built or adapted; and
- (c) if a part of the building is classified differently to another part—state the part to which each classification relates; and

⁴⁰ Section 124 (Building certifier's obligation to give information notice about particular decisions) and IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

⁴¹ Section 132 (Effect of building certifier not complying with Act if no penalty provided)

- (d) if the development uses a building solution under the BCA and the solution restricts the use or occupation of the building—state the restriction; and
- (e) if the development uses an alternative solution—list the performance requirements that have been used.

104 Interim certificate if building is remote

- (1) This section applies if, because of the remoteness of the building's location, it is not practicable for the building certifier to inspect the building to decide whether it has been substantially completed.
- (2) The building certifier may give the owner of the building an interim certificate of classification for the building pending the carrying out of the inspection.
- (3) The interim certificate must—
 - (a) comply with the certificate requirements; and
 - (b) state that it is an interim certificate; and
 - (c) state when it will expire under subsection (5).
- (4) The interim certificate may be based on information given to the building certifier by or for the owner of the building.
- (5) The interim certificate expires when the earlier of the following happens—
 - (a) the inspection is carried out and the owner is, under section 102⁴² given a certificate of classification;
 - (b) the end of 6 months after the interim certificate is given;
 - (c) its cancellation by the building certifier.
- (6) For subsection (5)(c), the interim certificate may be cancelled only on the ground that the basis on which it was issued was incorrect.

42 Section 102 (Obligation to give certificate of classification on inspection after particular events)

105 Certificates for a building occupied in stages

- (1) This section applies if—
 - (a) the building is unfinished; and
 - (b) its owner has been given a certificate of classification for part of it; and
 - (c) the building certifier has consented to the occupation of a further part of the building.
- (2) The building certifier must ensure the owner is given a further certificate of classification for the further part.
- (3) The further certificate must comply with the certificate requirements.

Note—

See also section 132.⁴³

**Division 3 Miscellaneous provisions about
certificates of classification****106 Term of certificate of classification**

A certificate of classification for the building, other than an interim certificate given under section 104, continues in force until and unless it is replaced under section 113.⁴⁴

107 Building certifier's obligation to give referral agency certificate and other documents

- (1) This section applies if—
 - (a) under a building development approval a referral agency must be given a notice to inspect a building; and

43 Section 132 (Effect of building certifier not complying with Act if no penalty provided)

44 Sections 104 (Interim certificate if building is remote) and 113 (Obligation of building certifier approving BCA classification change to give new certificate of classification)

- (b) a building certifier gives a certificate of classification for the building.
- (2) The building certifier must, within 10 business days after giving the certificate, give the referral agency—
 - (a) a copy of the certificate; and
 - (b) a copy of plans and specifications showing the aspects of the completed building work within the agency's jurisdiction other than plans and specifications given to the agency under IPA, section 3.5.15(5); and
 - (c) if the agency is QFRS—
 - (i) a list of all fire safety installations installed in the building; and
 - (ii) drawings showing the location of the fire safety installations.

Maximum penalty—40 penalty units.

108 Additional obligations if certificate of classification given by private certifier (class A)

If a private certifier (class A) gives a certificate of classification the certifier must—

- (a) give the local government for the building development application a copy within 5 business days; and
- (b) keep a copy for at least 5 years.

Maximum penalty—40 penalty units.

Part 3 Changes to BCA classification

109 What is a *BCA classification change* to a building

A *BCA classification change* to a building is—

- (a) a change to the use for which the building was designed, built or adapted to be used to an extent that alters its BCA classification; or

- (b) if, under section 103(d),⁴⁵ a certificate of classification for the building states a restriction on its use or occupation—a change in circumstances that affects the way the building complies with the restriction.

Example of BCA classification change—

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

110 Restriction on making BCA classification change

The owner of a building must ensure a BCA classification change is not made to the building unless—

- (a) a building certifier who is either of the following has approved the change and the building as changed complies with the building assessment provisions—
- (i) a local government building certifier;
 - (ii) a private certifier (class A); or
- (b) the change has been approved under section 112.

Maximum penalty—165 penalty units.

111 Provision for applying to local government to obtain approval for BCA classification change

- (1) The owner of a building may apply to the local government for an approval mentioned in section 110(a).
- (2) The application must—
 - (a) be in the approved form; and
 - (b) include enough information about the proposed change to allow a local government building certifier to comply with the certificate requirements.
- (3) The local government building certifier must decide to grant or refuse the approval.

⁴⁵ Section 103 (Certificate requirements)

- (4) This section does not prevent a private certifier (class A) engaged by the owner from granting an approval mentioned in section 110(a).
- (5) Subject to section 112, a local government building certifier or private certifier (class A) must not approve a BCA classification change to a building unless the building as changed complies with the building assessment provisions.
- (6) Despite subsections (3) and (4), if the building assessment provisions or a condition of a building development approval provide for a referral agency inspection of the building about the BCA classification change, the approval must not be granted until the requirement has been complied with or it has ceased to apply.

112 Concessional approval for particular existing buildings

- (1) This section applies only to a building in existence before 14 December 1993.
- (2) A building certifier who is either of the following may approve a BCA classification change for the building or part of the building without the building or part as changed having to comply with the building assessment provisions, other than the BCA, parts E1 and E4⁴⁶—
 - (a) a local government building certifier;
 - (b) a private certifier (class A).
- (3) However, the change may be approved only if the building certifier considers that the building or part—
 - (a) will be structurally sound and capable of withstanding the loadings likely to arise from its use under the new BCA classification; and
 - (b) will reasonably provide for—
 - (i) the safety of persons in the building if there is a fire, including, for example, means of egress; and
 - (ii) the prevention and suppression of fire; and

⁴⁶ BCA, parts E1 (Fire fighting equipment) and E4 (Emergency lighting, exit signs and warning systems)

(iii) the prevention of the spread of fire.

- (4) Also, if the building contains a special fire service the building certifier must not approve the change unless the certifier has first received from QFRS a report on the suitability of the service.
- (5) The approval may impose the conditions the building certifier considers necessary about any of the matters mentioned in—
 - (a) the BCA, part E1 or E4; or
 - (b) subsection (3).

113 Obligation of building certifier approving BCA classification change to give new certificate of classification

- (1) This section applies if a building certifier approves a BCA classification change to a building.
- (2) The building certifier must ensure the owner of the building is given a certificate of classification for the building that complies with the certificate requirements.

Note—

See also section 132.⁴⁷

- (3) The certificate replaces any existing certificate of classification for the building.

Part 4 Restrictions on the use of buildings

114 No occupation or use of particular buildings without certificate of classification

- (1) This section applies if—

⁴⁷ Section 132 (Effect of building certifier not complying with Act if no penalty provided)

- (a) the building the subject of a building development approval is not—
 - (i) a single detached class 1a building; or
 - (ii) a class 10 building or structure; and
 - (b) a certificate of classification has not been given for the building.
- (2) A person must not occupy or use the building unless the person has a reasonable excuse.
Maximum penalty—165 penalty units.
- (3) The owner of the building must, unless the owner has a reasonable excuse, ensure the building is not occupied or used by someone else.
Maximum penalty—165 penalty units.

115 Occupation and use of building must comply with relevant BCA and QDC provisions

- (1) A person must not, unless the person has a reasonable excuse, occupy or use a building if the building does not comply with the following for the use or occupation—
- (a) any relevant BCA provisions for its class of building;
 - (b) any relevant QDC provisions for the building.
- Maximum penalty—165 penalty units.
- (2) For subsection (1), the relevant BCA provisions for the class of building and the relevant QDC provisions for the building are—
- (a) if there is a building development approval for the building, the provisions of the BCA for the class and the provisions of the QDC for the building in force—
 - (i) generally—when the approval was granted; or
 - (ii) if, under this Act, the provisions, as they were in force at an earlier time applied to building assessment work for the approval—at the earlier time; or

- (b) otherwise, any provisions of the BCA for the class and the provisions of the QDC for the building in force when building work for the building started.
- (3) However, the provisions are subject to—
- (a) any variation of them under this Act; and
- (b) any local law or local planning instrument that, under this Act, applied to the building work for the building.
- (4) To remove any doubt, it is declared that subsection (1) applies even if a building development approval for the building is contrary to the provisions mentioned in subsection (1).

116 Exception for use of government buildings for emergency

- (1) This section applies if—
- (a) an emergency situation exists, or is likely to exist, justifying the use of a government building for the situation or likely situation; and
- (b) the building is structurally adequate and reasonably suitable for the emergency use; and
- (c) the emergency use is, other than for sections 114 and 115, lawful.

Examples of emergency situation—

- a cyclone
- local flooding
- a dangerous situation under the *Petroleum and Gas (Production and Safety) Act 2004*

- (2) For section 114 and 115, the use or occupation of the government building is a reasonable excuse.
- (3) Subsection (2) does not limit what may be a reasonable excuse for section 114 or 115.
- (4) In this section—

government building means a building owned or occupied by or for the State, including by State instrumentalities and government owned corporations.

117 Enforcement action required

- (1) If there is a contravention of section 114 for a building, the assessment manager must take appropriate enforcement action against its owner.
- (2) However, subsection (1) does not apply if the assessment manager is satisfied only building work of a minor nature is needed before a certificate of classification can be given for the building.
- (3) If a private certifier (class A) gives the enforcement notice and the owner does not comply with it, the certifier must give the local government notice of that fact.

118 Restriction on use of buildings built on or after 1 April 1976

The owner of a building built after 1 April 1976 must ensure its use complies with its classification as stated in the last certificate of classification for the building.

Maximum penalty—165 penalty units.

119 Further restriction on occupation of building for residential purposes

A person must not use a building, other than a class 1, 2, 3 or 4 building, for residential purposes unless the use is approved by the local government for the building.

Maximum penalty—165 penalty units.

Part 5 Miscellaneous provisions**120 BCA classification as special structure**

A building or structure that can not, under the BCA, part A3, be given a BCA classification must be classified as a special structure.

121 Doubtful BCA classifications

- (1) This section applies if there is a doubt as to a building's BCA classification.
- (2) The BCA classification must be either of the following classifications a building certifier considers appropriate—
 - (a) a class of building mentioned in the BCA, part A3;
 - (b) a special structure.

122 Building certifier's obligation to give owner inspection documentation if building development approval lapses

If a building development approval lapses, the building certifier must ensure the owner of the building is, within 5 business days after the lapsing, given a copy of the inspection documentation for inspection of the building work.

Maximum penalty—80 penalty units.

Note—

For the lapsing of building development approvals, see chapter 4, part 7 and IPA, chapter 3, part 5, divisions 5 and 6.

123 Certificate of classification for particular buildings built before 30 April 1998

- (1) This section applies to a building if it was built before 30 April 1998.
- (2) The owner of the building may apply to the local government for a local government building certifier to give the owner a certificate of classification for the building.
- (3) The application must be written and include enough information about building's use to allow the local government building certifier to comply with the certificate requirements.
- (4) If the application complies with subsection (3), the local government building certifier must ensure the owner is given the certificate of classification that complies with the certificate requirements.

124 Building certifier's obligation to give information notice about particular decisions

- (1) This section applies if—
 - (a) a building certifier to whom part 1 applies decides not to give a final inspection certificate for the relevant building work because the work does not comply with the building development approval; or
 - (b) a building certifier to whom part 2 applies decides not to give a certificate of classification for the relevant building because the building has not been substantially completed; or
 - (c) a building certifier decides to refuse an application under this chapter; or
 - (d) a private certifier (class A) decides to refuse to approve a BCA classification change for a client of the certifier; or
 - (e) under section 112,⁴⁸ a building certifier decides to approve a BCA classification change with a condition mentioned in section 112(5).
- (2) The building certifier must give the applicant or client an information notice about the decision.
- (3) For subsection (1), a failure to decide an application within 20 business days is taken to be a decision to refuse the application.

48 Section 112 (Concessional approval for particular existing buildings)

Chapter 6 Provisions about private certifiers and other building certifiers

Part 1 General provisions about building certifiers

Division 1 Regulation of the performance of building certifying functions

125 Person must not perform building certifying functions without licence

A person must not perform a building certifying function unless the person is a building certifier.

Maximum penalty—165 penalty units.

126 Building certifier performing building certifying function must be appropriately licensed

A building certifier must not perform a building certifying function unless the certifier is appropriately licensed to perform the function.

Maximum penalty—165 penalty units.

127 Building certifier's duty to act in public interest in performing building certifying function

- (1) A building certifier who is not a private certifier must, in performing building certifying functions, always act in the public interest.

Notes—

- 1 See also section 132.⁴⁹
 - 2 For the corresponding provision for private certifiers, see section 136.
- (2) For subsection (1), the occasions when a building certifier does not act in the public interest in performing building certifying functions include, but are not limited to, when the certifier—
- (a) seeks, accepts or agrees to accept a benefit (whether for the certifier's benefit or someone else) as a reward or inducement to act other than under this Act;
 - (b) acts in a way contrary to a function of the certifier under this Act or IPA;
 - (c) falsely claims to be appropriately licensed to carry out building assessment work of a particular type;
 - (d) acts outside the scope of the certifier's powers under this Act or IPA;
 - (e) contravenes the code of conduct;
 - (f) acts in a way, in relation to the certifier's practice, that is grossly negligent or grossly incompetent.

128 Building certifier must not perform building certifying function if there is a conflict of interest

- (1) A building certifier who is not a private certifier must not perform a building certifying function if, in performing the function, the certifier has a conflict of interest.

Note—

See also section 132.

- (2) For subsection (1), the occasions when a building certifier has a conflict of interest include, but are not limited to, when the certifier—

⁴⁹ Section 132 (Effect of building certifier not complying with Act if no penalty provided)

- (a) is to carry out the building work the subject of the building certifying function; or
- (b) is engaged by the owner of the building or the builder to perform a function other than—
 - (i) a building certifying function; or
 - (ii) to manage a development application; or
 - (iii) give regulatory advice about any matter; or
- (c) has a direct or indirect pecuniary interest in the building.

(3) In this section—

builder means the person who will be carrying out the building work the subject of the building certifying function.

building work includes—

- (a) the preparation of the design of all or part of the building; or
- (b) carrying out all or part of building work.

owner means the owner of the building.

the building means the building or structure the subject of building assessment work to be carried out under the building certifying functions.

Division 2 Code of conduct

129 Code of conduct

- (1) The *code of conduct* is the document called ‘Code of Conduct for Building Certifiers’ made by the chief executive on 20 October 2003 and tabled in the Legislative Assembly on 14 November 2003, as amended or replaced from time to time under this section.
- (2) The chief executive may amend or replace the document mentioned in subsection (1) or any amendment or replacement of it.
- (3) However, the amendment or replacement does not take effect until it is approved under a regulation.

- (4) A reference to the code of conduct is taken to include any amendment or replacement under subsection (2) that has taken effect.

130 Tabling and inspection of amendment or replacement not part of or attached to regulation

- (1) This section applies if—
- (a) a regulation made under section 129 approves an amendment or replacement of the code of conduct; and
 - (b) the amendment or replacement is not part of, or attached to, the regulation.
- (2) The Minister must, within 14 sitting days after the regulation is notified in the gazette, table a copy of the amendment or replacement in the Legislative Assembly.
- (3) A failure to comply with subsection (2) does not invalidate or otherwise affect the regulation.

131 Access to code of conduct

The chief executive must make the code of conduct available for inspection as if it were a document that, under IPA, chapter 5, part 7,⁵⁰ the chief executive must make available for inspection.

Division 3 Miscellaneous provisions

132 Effect of building certifier not complying with Act if no penalty provided

- (1) This section applies if—
- (a) a building certifier does not comply with a provision of this Act about building or private certifying functions; and
 - (b) no penalty is stated for the failure to comply.

⁵⁰ IPA, chapter 5, part 7 (Public access to planning and development information)

Examples of provisions mentioned in subsection (1)—

48, 88, 102, 105, 127, 128, 137 and 139

- (2) The failure to comply is not an offence.
- (3) For the definition of *unsatisfactory conduct* in schedule 2, the failure is taken to be conduct that is contrary to a function under this Act.

133 Additional functions of BSA for building certification

As well as its functions under the *Queensland Building Services Authority Act 1991*, BSA has the following functions under this Act—

- (a) under part 3, to license individuals as building certifiers and give private certification and development approval endorsements;
- (b) to monitor compliance with this chapter by building certifiers;
- (c) to carry out audits of building and private certifying functions;
- (d) under part 3, to investigate written complaints made to it about alleged unsatisfactory conduct or professional misconduct by building certifiers or former building certifiers;
- (e) to take disciplinary action against building certifiers or former building certifiers for unsatisfactory conduct or professional misconduct;
- (f) to give the chief executive, at least once each year, a list of building certifiers and a summary of disciplinary action taken against building certifiers;
- (g) under part 3, to keep a register of building certifiers.

Part 2 Private certifiers

Division 1 Regulation of private certifying functions

134 Restriction on performing functions of private certifier (class A)

A person must not perform a function under section 48⁵¹ unless the person is a private certifier (class A).

Maximum penalty—165 penalty units.

135 Restriction on private certifier performing functions for building development applications

- (1) A private certifier must not perform a private certifying function for a building development application unless the certifier is appropriately licensed to carry out the type of building assessment work required for the application.

Maximum penalty—165 penalty units.

- (2) In performing a private certifying function, a private certifier must comply with the building assessment provisions, chapter 5 and this chapter.

Maximum penalty—165 penalty units.

136 Offence for private certifier not to act in public interest in performing private certifying function

- (1) A private certifier must, in performing a private certifying function, always act in the public interest.

Maximum penalty—1665 penalty units.

- (2) For subsection (1), the occasions when a private certifier does not act in the public interest in performing a private certifying function include, but are not limited to, when the certifier—

51 Section 48 (Functions of private certifier (class A))

- (a) seeks, accepts or agrees to accept a benefit (whether for the certifier's benefit or someone else) as a reward or inducement to act other than under this Act;
- (b) acts in a way contrary to a function of the certifier under this Act or IPA;
- (c) falsely claims to be appropriately licensed to carry out building assessment work of a particular type;
- (d) acts outside the scope of the certifier's powers under this Act or IPA;
- (e) contravenes the code of conduct;
- (f) acts in a way, in relation to the certifier's practice, that is grossly negligent or grossly incompetent.

137 Private certifier must not perform private certifying function if there is a conflict of interest

- (1) A private certifier must not perform a private certifying function if, in performing the function, the certifier has a conflict of interest.

Note—

See also section 132.⁵²

- (2) For subsection (1), the occasions when a private certifier has a conflict of interest in performing a private certifying function include, but are not limited to, when the certifier—
- (a) is to carry out the building work the subject of the building certifying function; or
 - (b) is engaged by the owner of the building or the builder to perform a function other than—
 - (i) a building certifying function; or
 - (ii) to manage a development application; or
 - (iii) give regulatory advice about any matter; or
 - (c) has a direct or indirect pecuniary interest in the building.

⁵² Section 132 (Effect of building certifier not complying with Act if no penalty provided)

(3) In this section—

builder means the person who will be carrying out the building work the subject of the private certifying function.

building work includes—

- (a) the preparation of the design of all or part of the building; or
- (b) carrying out all or part of building work.

owner means the owner of the building.

the building means the building or structure the subject of building assessment work to be carried out under the private certifying function.

Division 2 Engagement of private certifiers

138 Power to contract to perform private certifying functions

- (1) Subject to sections 140 and 141—
 - (a) a private certifier may enter into a contract to perform private certifying functions; and
 - (b) a person or public sector entity (a ***private certifier employer***) who employs private certifiers may enter into a contract to provide the services of any of the private certifiers to perform private certifying functions for others.
- (2) However, a local government can not enter into a contract mentioned in subsection (1)(b).
- (3) Subsection (2) does not prevent a local government from performing functions required of it under section 51.
- (4) A contract made under subsection (1) is an ***engagement*** of the private certifier or certifiers who, under the contract, are to perform private certifying functions.
- (5) The person for whom private certifying functions are agreed to be performed under an engagement of a private certifier is the certifier's ***client***.

139 General restrictions on private certifier entering into engagement

A private certifier must not enter into an engagement as a private certifier if, under the engagement, the certifier is to perform private certifying functions that, if performed, will, or are likely to, contravene section 136 or 137.⁵³

Note—

See also section 132.⁵⁴

140 Restriction on engagement of private certifier (class B)

- (1) This section applies to any of the following persons (the *service provider*) who proposes to enter into an engagement of a private certifier for a building development application—
 - (a) a private certifier (class B);
 - (b) a private certifier employer who does not employ any private certifier (class A).
- (2) The service provider must not enter into the engagement unless the service provider has disclosed in writing to the proposed client that the private certifier proposed to be engaged can not decide whether to grant or refuse a development approval for the application.

Maximum penalty—20 penalty units.

- (3) If the engagement is entered into, the service provider may enter into a written agreement with any of the following persons to decide whether the development approval is to be granted or refused—
 - (a) a private certifier (class A);
 - (b) a private certifier employer who employs a private certifier (class A).

53 Section 136 (Offence for private certifier not to act in public interest when performing private certifying function) or 137 (Private certifier must not perform private certifying function if there is a conflict of interest)

54 Section 132 (Effect of building certifier not complying with Act if no penalty provided)

141 Requirements for engagement of private certifier

- (1) An engagement of a private certifier must be written and state the fees payable by the client to the certifier or, for an engagement of a private certifier employer, the employer.
- (2) The mere making of a building development application to a private certifier does not, of itself, constitute an engagement of the certifier by the applicant.

142 Engagement of private certifier (class A) taken to include inspection and certification

If a private certifier (class A) is engaged to assess a building development application, the certifier is taken to have also been engaged to inspect and certify building work authorised by a development approval issued because of the application.

143 Notice of engagement to local government

If a private certifier is engaged by a client to perform private certifying functions for a building or building assessment work, the certifier must, within 5 business days after the engagement starts—

- (a) give notice of the engagement to the local government; and
- (b) if the owner of the building is not the client or the applicant under the relevant building development application, give the owner notice of—
 - (i) the private certifier's name; and
 - (ii) the details, in an approved form, of the responsibilities of the private certifier performing the work.

Maximum penalty—40 penalty units.

144 Restriction on discontinuing engagement

- (1) This section applies if—
 - (a) a party to an engagement of a private certifier may, under the engagement, discontinue it; and

- (b) the party takes whatever action is required under the engagement to discontinue it.
- (2) The discontinuance does not take effect until all other parties to the engagement have been given notice in the approved form of the discontinuance.
- (3) The private certifier must, within 5 business days after the discontinuance takes effect under subsection (2), give the local government a copy of the notice.

145 Effect of transfer of functions for building development approval to local government or replacement private certifier

- (1) This section applies if, for building work authorised by a building development approval, the engagement of a private certifier (the *original certifier*) is discontinued and—
 - (a) a replacement private certifier (the *replacement*) is engaged to inspect and certify the work; or
 - (b) if a replacement private certifier has not been engaged under paragraph (a)—a local government building certifier for the approval (also the *replacement*) must, under section 51⁵⁵ inspect and certify the work.
- (2) The replacement is not liable for building certifying functions performed by the original certifier.
- (3) The replacement may, in performing building certifying functions for the approval, accept and, without further checking, rely and act on any inspection documentation given by or for the original certifier.

146 Agreed fee recoverable despite valid refusal of particular actions

- (1) This section applies if—

⁵⁵ Section 51 (Function to act on building development application or development approval unless private certifier (class A) engaged)

- (a) a client engages a private certifier to perform a private certifying function and the certifier has carried out work under the engagement; and
 - (b) the certifier has refused to do any of the following for the work because the building assessment provisions or an applicable code under IDAS have not been complied with, or for another valid reason—
 - (i) approve a building development application;
 - (ii) issue a building development approval;
 - (iii) give a certificate of classification;
 - (iv) certify building work.
- (2) The client must, despite the refusal, pay the private certifier the fee for the work agreed to under the engagement with the certifier.

Division 3 Record-keeping and related requirements

147 Building development applications and approval documents

- (1) This section applies if—
- (a) a private certifier is engaged for a building development application; and
 - (b) the building development approval applied for is granted.
- (2) The private certifier must, for at least 5 years from the relevant day, keep a copy of the application and the approval documents for the application.

Maximum penalty—20 penalty units.

- (3) In this section—

relevant day means—

- (a) for a private certifier (class A)—the latest of the following days—

- (i) the day a final inspection certificate for the building work or a certificate of classification for the building is given;
 - (iii) if the approval for the building work lapses—the day the approval lapsed; or
- (b) for a private certifier (class B)—the day the private certifier gave the compliance certificate for the building work.

148 Obligation to give inspection documentation to owner of building

- (1) This section applies if the engagement of a private certifier for building work is discontinued before the giving of a final inspection certificate for the relevant building work or a certificate of classification for the relevant building.
- (2) The private certifier must, within the following period, give the owner of the building a copy of the inspection documentation for inspection of the building work—
 - (a) if the inspection documentation includes a certificate relied on by the private certifier—within 5 business days after the certifier accepts the certificates;
 - (b) otherwise—within 5 business days after the engagement is discontinued.

Maximum penalty—80 penalty units.

149 Obligation to give inspection documentation and any reminder notice to local government

- (1) A private certifier must give the local government a copy of all inspection documentation prepared by or for the certifier for building work within 5 business days after the earlier of the following to happen—
 - (a) the giving of a final inspection certificate for the building work or a certificate of classification for the relevant building;
 - (b) the discontinuance of the engagement of the private certifier;

(c) the lapsing of the building development approval.

Maximum penalty—40 penalty units.

(2) However, if the inspection documentation includes certificates relied on by the private certifier, subsection (1) does not apply until 5 business days after the certifier accepted all the certificates.

(3) If the building development approval lapses, the private certifier must, within 5 business days after the lapsing, also give the local government a copy of the relevant reminder notice given under section 95.

Maximum penalty—40 penalty units.

150 Obligation to keep inspection documentation

A private certifier must keep all inspection documentation for building work for which the certifier is engaged for at least 5 years after the building work is completed.

Maximum penalty—20 penalty units.

Part 3 Licensing of building certifiers

Division 1 Licence levels and their roles

151 Levels

BSA must, in exercising its power under division 2 to issue a licence to a building certifier, issue the licence at 1 of the following levels—

- (a) a building surveyor;
- (b) an assistant building surveyor;
- (c) a building surveying technician.

152 Role of building surveyor

A building surveyor may perform building certifying functions for all classes of buildings and structures.

153 Role of assistant building surveyor

An assistant building surveyor may only—

- (a) without the supervision of a building surveyor—perform building certifying functions on buildings and structures having a rise of no more than 3 storeys and a total floor area no more than 2000m²; or
- (b) under the supervision of a building surveyor—help in assessing and inspecting all classes of buildings and structures.

154 Role of building surveying technician

(1) A building surveying technician may only—

- (a) if employed by a local government, other than a designated local government—perform building certifying functions on buildings or structures having a rise of no more than 2 storeys and a total floor area no more than 500m²; or
- (b) otherwise—under the supervision of a building surveyor or assistant building surveyor, help in assessing and inspecting buildings or structures having a rise of no more than 2 storeys and a total floor area no more than 500m².

(2) In this section—

designated local government means each of the following—

- (a) the city council for Brisbane, Bundaberg, Cairns, Caloundra, Gladstone, Gold Coast, Hervey Bay, Ipswich, Logan, Mackay, Maryborough, Redcliffe, Rockhampton, Thuringowa, Toowoomba or Townsville;
- (b) the shire council for Beaudesert, Burnett, Caboolture, Calliope, Cooloola, Crow's Nest, Douglas, Livingstone, Mareeba, Maroochy, Noosa, Pine Rivers, Redland or Whitsunday.

Division 2 Applying for and obtaining licence

155 Who may apply

An individual may apply to BSA for a licence only if the individual holds a current accreditation issued by an accreditation standards body.

156 Requirements for licence application

The application must—

- (a) be in the approved form; and
- (b) state the level of licence applied for; and
- (c) be accompanied by each of the following—
 - (i) the application fee prescribed under a regulation;
 - (ii) the licence fee for the licence prescribed under a regulation;
 - (iii) evidence of the applicant's identity;
 - (iv) a copy of the applicant's certificate of accreditation from an accreditation standards body for the level of licence applied for.

157 Decision on licence application

- (1) Subject to section 187,⁵⁶ BSA must consider the application and decide to—
 - (a) license the applicant at the level of licensing for which the applicant applied; or
 - (b) refuse to license the applicant.
- (2) However, BSA may decide to license the applicant only if it is satisfied the applicant is a suitable person to hold a licence.
- (3) BSA may impose conditions on the licence.

⁵⁶ Section 187 (BSA may seek information from applicants about suitability)

158 Steps after making decision

- (1) If BSA decides to license the applicant, it must issue the licence to the applicant.
- (2) If BSA decides to refuse to license the applicant or to impose conditions on any licence issue to the applicant, it must give the applicant an information notice about the decision.

159 Duration of licence

Subject to section 168,⁵⁷ a licence remains in force for 1 year, unless it is earlier cancelled, suspended or surrendered under this Act.

Division 3 Private certification endorsements**160 Endorsements**

Subject to section 163, BSA may endorse on a building certifier's licence that the certifier may—

- (a) perform building certifying functions as a private certifier (a *private certification endorsement*); and
- (b) if the licence has a private certification endorsement—perform the function under section 48⁵⁸ of issuing building development approvals (a *development approval endorsement*).

161 Who may apply for endorsement

- (1) A building certifier may apply for a private certification or development approval endorsement at any time.
- (2) A person who has applied for a licence may, together with or after the making of the licence application, apply for a private certification or development approval endorsement on the licence if it is issued.

57 Section 168 (Existing licence taken to be in force while application is being considered)

58 Section 48 (Functions of private certifier (class A))

162 Requirements for endorsement application

The application must be in the approved form and accompanied by the fee prescribed under a regulation.

163 Restrictions on making endorsement

- (1) A private certification endorsement may be made only if the applicant—
 - (a) has the insurance for private certification prescribed under a regulation; and
 - (b) is a building surveyor or assistant building surveyor.
- (2) A development approval endorsement may be made only if the applicant has satisfactorily completed the course, prescribed under a regulation, about issuing building development approvals.

164 Notice of refusal

If BSA decides to refuse the application, it must give the applicant an information notice about the decision.

Division 4 Renewals**165 Notice of expiry of licence**

- (1) BSA must, at least 20 business days before each building certifier's licence expires, give the certifier notice of the expiry.
- (2) The notice must state—
 - (a) the day the licence will expire; and
 - (b) that, if the building certifier wishes to renew the licence, the certifier must, on or before the expiry day—
 - (i) apply to renew the licence; and
 - (ii) pay the licence fee prescribed under a regulation for the period of the renewed licence; and
 - (c) how to apply to renew the licence.

166 Automatic expiry on failure to apply for renewal

- (1) If a building certifier does not apply to renew the certifier's licence on or before the day the licence expires, the licence expires at the end of the day.
- (2) Subsection (1) applies whether or not BSA has complied with section 165 in relation to the expiry.

167 Applying for renewal

- (1) A building certifier may apply to BSA to renew the certifier's licence.
- (2) However, the application can not be made—
 - (a) after the licence expires; or
 - (b) if the building certifier is, under section 155,⁵⁹ not qualified to apply for a licence.
- (3) The application must be in the approved form and accompanied by—
 - (a) the licence fee prescribed under a regulation; and
 - (b) evidence of the applicant's identity; and
 - (c) evidence that the applicant continues to holds accreditation from an accreditation standards body for the level of licence; and
 - (d) if the applicant's licence has private certification endorsement and the applicant is applying to continue the endorsement—evidence that the applicant has the insurance for private certification prescribed under a regulation.

168 Existing licence taken to be in force while application is being considered

- (1) If an application is made under section 167 to renew a licence, the licence is taken to continue in force from the day it would, apart from this section, have expired until the application is decided.

⁵⁹ Section 155 (Who may apply)

- (2) Subsection (1) does not apply if the licence is earlier cancelled, suspended or surrendered under this Act.

169 Decision on renewal application

- (1) Subject to section 187,⁶⁰ BSA must consider the application and decide to—
- (a) renew the licence at the level of licensing for which the applicant applied; or
 - (b) refuse to renew the licence.
- (2) However, BSA may decide to renew the licence only if it is satisfied the applicant is still a suitable person to hold a licence.

170 Steps after making decision

- (1) If BSA decides to renew the licence, it must issue the renewed licence to the applicant.
- (2) If BSA refuses to renew the licence, it must give the applicant an information notice about the decision.

Division 5 Cancellation and suspension of, and other changes to, licences and cancellation of endorsements

Subdivision 1 BSA's powers

171 Power to amend, cancel or suspend licence

- (1) BSA may, on the ground that a building certifier is not a suitable person to hold a licence, do either of the following in relation to the certifier's licence—
- (a) amend it to impose or remove a condition;
 - (b) cancel or suspend it.

⁶⁰ Section 187 (BSA may seek information from applicants about suitability)

- (2) The power under subsection (1) may be exercised at any time after BSA has complied with subdivision 2.

172 Power to change licence level

- (1) If BSA is satisfied a building certifier no longer holds accreditation from an accreditation standards body for the level of certifier's licence, it may do either of the following in relation to the certifier's licence—
- (a) amend it to impose or remove a condition or change the certifier's level of licensing;
 - (b) cancel or suspend it.
- (2) The power under subsection (1) may be exercised at any time after BSA has complied with subdivision 2.

173 Cancellation of endorsement of licence to act as private certifier

If BSA is satisfied a private certifier does not have the insurance for private certification prescribed under a regulation, it must—

- (a) give the certifier a show cause notice that it proposes to cancel the endorsement; and
- (b) subject to any submissions made under subdivision 2—amend the licence by cancelling the endorsement.

174 Notice of particular events to interstate licensing authorities and other entities

- (1) This section applies if any of the following (the *event*) happens in relation to a building certifier's licence—
- (a) it is cancelled or suspended;
 - (a) it is amended under this subdivision.
- (2) As soon as practicable after the happening of the event, BSA must give notice of the event to the authority in any other State or New Zealand of which it is aware the building certifier has a licence (however called) that is the same, or substantially the same, as a licence under this part.

- (3) Also, BSA may give notice of the event to all or any of the following—
 - (a) each accreditation standards body;
 - (b) any employer of or person who has appointed the building certifier to perform building or private certifying functions;
 - (c) another entity BSA reasonably believes needs to know about the event.
- (4) A notice under this section may include the information BSA considers appropriate in the circumstances.

Subdivision 2 Show cause notice procedure

175 Show cause notice

- (1) If BSA believes grounds exist to act under subdivision 1, it must, before taking the action, give the relevant building certifier a notice (a *show cause notice*).
- (2) The show cause notice must state each of the following—
 - (a) the proposed action;
 - (b) the grounds for taking the proposed action;
 - (c) the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is to the licence—the proposed amendment;
 - (e) if the proposed action is to suspend—the proposed suspension period;
 - (f) that the building certifier may, within a stated period (the *show cause period*), make submissions about why the proposed action should not be taken.
- (3) The show cause period must end at least 20 business days after the building certifier is given the show cause notice.
- (4) The proposed suspension period may be fixed by reference to the happening of a stated event.

Example—

If the ground for taking the proposed action is a failure to carry out a statutory obligation relating to a building or private certifying functions, the proposed suspension period could be until the obligation is complied with.

176 Submissions about show cause notice

- (1) The building certifier may, within the show cause period, make submissions to BSA about the show cause notice.
- (2) BSA must consider the submissions.

177 Decision on proposed action

- (1) After considering the submissions for the show cause notice, BSA must decide whether to take the proposed action.
- (2) If the proposed action is to cancel the building certifier's licence, BSA may instead decide to suspend it for a stated period.

178 Notice and taking effect of decision

- (1) If BSA decides not to take the proposed action, it must give the building certifier notice of the decision.
- (2) If BSA decides to take the proposed action, it must give the building certifier an information notice about the decision.
- (3) A decision to take the proposed action, takes effect when the information notice is given.

Division 6 General provisions about licences**179 Register of building certifiers**

- (1) BSA must keep a register of building certifiers.
- (2) The register may be kept in the way BSA considers appropriate, including, for example, in an electronic form.
- (3) The register must contain the following particulars for each building certifier—

- (a) their name, licence number and business contact details;
 - (b) the following information about their licence—
 - (i) its day of issue and expiry;
 - (ii) any endorsements on the licence;
 - (iii) its level;
 - (iv) if conditions are imposed on the licence—the conditions;
 - (c) details of their eligibility for licensing as a building certifier;
 - (d) if, under section 204(1),⁶¹ BSA decides the building certifier has engaged in unsatisfactory conduct—
 - (i) details of the decision; and
 - (ii) if the decision was that the building certifier has engaged in unsatisfactory conduct—details of the further decision required under section 204(4);
 - (e) if the Commercial and Consumer Tribunal makes an order about the building certifier—details of the order, other than any details identified in the order as details not to be included in the register.
- (4) Particulars recorded under subsection (3)(d) must be removed from the register 5 years after they were recorded in the register.
- (5) Particulars recorded under subsection (3)(e) must be removed from the register at the end of the period during which the order states the details are to be included in the register.

180 Access to register

BSA must—

- (a) make the register available for inspection by anyone while its office is open for business; and

61 Section 204 (Decision after investigation or audit completed)

- (b) give, on payment of any reasonable fee requested by it, anyone who asks for it a copy of all or part of the information held in the register; and
- (c) place, on its website, a link to the register.

181 Surrendering licence

- (1) A building certifier may surrender the certifier's licence by notice to BSA.
- (2) The surrender takes effect—
 - (a) on the day the notice is given to BSA; or
 - (b) if a later day of effect is stated in the notice—on the later day.
- (3) The building certifier must, unless the certifier has a reasonable excuse, return the licence to BSA within 10 business days after the day the surrender takes effect.

Maximum penalty for subsection (3)—10 penalty units.

182 Obtaining replacement licence

- (1) A building certifier may apply to BSA in the approved form for the replacement of the certifier's licence if it has been damaged, destroyed, lost or stolen.
- (2) If BSA is satisfied the licence has been damaged, destroyed, lost or stolen, BSA must—
 - (a) replace it with another licence; and
 - (b) give the applicant the replacement licence.

183 Obligation of building certifier to give notice of change in particular circumstances

- (1) This section applies if a building certifier—
 - (a) changes address; or
 - (b) holds, in another State or New Zealand, a licence (however called) that is the same, or substantially the same, as a licence under this part and the licence is cancelled or suspended; or

- (c) is, after the issuing of the building certifier's licence under this part, convicted of a relevant offence.
- (2) The building certifier must give BSA notice of the change, cancellation, suspension or conviction within 20 business days after it happened.

Maximum penalty—

- (a) if the offence relates to subsection (1)(a)—1 penalty unit; or
- (b) if the offence relates to subsection (1)(b) or (c)—40 penalty units.

Division 7 Miscellaneous provisions

184 Accreditation standards bodies

- (1) An *accreditation standards body* is—
 - (a) AIBS; and
 - (b) any other entity prescribed under a regulation to be an accreditation standards body.
- (2) An entity may be prescribed under subsection (1)(b) only if it has identifiable competence and expertise in issuing accreditation to building certifiers.

185 Function of accreditation standards body

- (1) The function of an accreditation standards body is to issue accreditation to individuals proposing to apply to be building certifiers.
- (2) For subsection (1), an accreditation standards body must—
 - (a) set educational and experiential standards for each level of licensing as a building certifier; and
 - (b) ensure the standards comply with the national accreditation framework for building certifiers; and
 - (c) establish a professional development scheme approved by the chief executive.

(3) In this section—

national accreditation framework means the framework, as amended from time to time, approved by the body known as the Australian Building Codes Board.

186 Criteria for deciding suitability of applicants and licensees

- (1) This section applies if, under this part, BSA is considering whether an applicant for, or for the renewal of, a licence or a licence holder is a suitable person to hold a licence.
- (2) BSA must consider each of the following—
 - (a) whether the applicant or holder has been convicted of a relevant offence;
 - (b) whether the applicant or holder has previously been refused a licence, or has had a licence suspended or cancelled, under this Act or another relevant Act;
 - (c) whether the applicant or holder has, under another relevant Act, been disqualified from holding a licence under that Act;
 - (d) dealings in which the applicant or holder has been involved and the standard of honesty and integrity demonstrated in the dealings;
 - (e) any failure by the applicant or holder to carry out statutory obligations relating to building or private certifying functions, and the reasons for the failure;
 - (f) whether the applicant or holder holds a current accreditation issued by an accreditation standards body;
 - (g) all other relevant circumstances.

187 BSA may seek information from applicants about suitability

- (1) This section applies to an application for, or to renew, a licence.
- (2) BSA may, by notice to the applicant, require the applicant to give it, within a stated reasonable period, documents or

information BSA reasonably considers is needed to establish that the applicant is a suitable person to hold a licence.

- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

188 Refund of particular licence fees accompanying applications

If an application for, or to renew, a licence is refused or withdrawn, BSA must refund the applicant the licence fee that accompanied the application.

189 Appeals to Commercial and Consumer Tribunal about decisions under pt 3

- (1) This section applies if a person is given, or is entitled to be given, an information notice about a decision of BSA under this part.
- (2) The person may appeal against the decision to the Commercial and Consumer Tribunal.
- (3) The appeal must be started within 20 business days after the latest of the following—
 - (a) if the applicant has been given an information notice about the decision—the day the notice is given;
 - (b) if paragraph (a) does not apply—the day the applicant became aware of the decision.

Part 4 Complaints, investigations and disciplinary proceedings relating to building certifiers

Division 1 Complaints

190 Making a complaint against a building certifier

- (1) A person may make a complaint to BSA about a building certifier if the person believes the building certifier has engaged in unsatisfactory conduct or professional misconduct.
- (2) A complaint must—
 - (a) be in writing; and
 - (b) contain particulars of the allegations on which it is founded; and
 - (c) be verified by statutory declaration.
- (3) BSA may require the complainant to give further particulars of the complaint.
- (4) BSA may dismiss any complaint without taking further action under this division if the further particulars are not given or if the complaint or the further particulars are not verified by statutory declaration.
- (5) BSA must not disclose to another person unproved complaints against a building certifier.

191 Building certifier must be advised of complaint

- (1) After receiving the complaint, BSA must, by notice—
 - (a) inform the building certifier of the nature of the complaint; and
 - (b) invite the building certifier to make, within the time stated in the notice, representations to BSA about the complaint.
- (2) The time stated in the notice must be at least 5 business days after the notice is given.

- (3) If BSA makes a decision about the complaint under section 204, BSA must have regard to the representations when making the decision.

192 BSA may recommend mediation to resolve complaint

- (1) If BSA considers a complaint about a building certifier is capable of resolution by mediation, BSA must give the complainant and the building certifier a notice stating—
 - (a) that BSA considers the complaint is capable of resolution by mediation; and
 - (b) attendance at, and participation in, mediation is voluntary; and
 - (c) that either party may withdraw from the mediation at any time; and
 - (d) when the mediation ends; and
 - (e) the effect of giving BSA a certificate about the mediation.
- (2) BSA may recommend the complainant and the building certifier enter into a process of mediation to resolve the complaint as soon as practicable and before BSA investigates the complaint.

193 Mediation process

- (1) If, at mediation, the parties agree to a resolution to the complaint, the agreement must be signed by, or for, each party and by the mediator (the *mediation agreement*).
- (2) Mediation ends on the earlier of the following—
 - (a) if a party withdraws from mediation—the day the party withdraws;
 - (b) if the parties agree the mediation has ended—the day the parties agree mediation has ended;
 - (c) if there is a mediation agreement—the day the agreement is signed;

- (d) unless BSA extends the period and advises parties in writing of the extension—20 business days after notice is given under section 192.
- (3) As soon as practicable after mediation has ended, the mediator must give BSA a certificate about the mediation in the approved form.
- (4) If the parties sign an agreement, the complaint is taken to be withdrawn.

194 Investigation of complaint

- (1) This section applies if—
 - (a) BSA does not recommend the complainant and the building certifier enter into mediation; or
 - (b) BSA recommends the complainant and the building certifier enter into mediation and the complaint is not resolved when the mediation ends.
- (2) BSA must conduct an investigation into the complaint as soon as practicable.
- (3) BSA may deal with 1 or more complaints about a building certifier in the same investigation.
- (4) If during an investigation BSA is satisfied there is a matter about which another complaint could have been made against the building certifier, BSA may deal with the matter in its investigation as if a complaint had been made about the matter.

Division 2 Investigations

195 BSA may require documents to be produced

- (1) For investigating a complaint or conducting an audit, BSA may, by notice given to a building certifier, require the building certifier to produce a document to BSA, or a person authorised by BSA (an *auditor*).
- (2) The notice may also state—

- (a) a time and place by which the document must be produced; or
 - (b) that the document must be verified by statutory declaration.
- (3) The time for compliance stated in the notice must be a reasonable time.
 - (4) The building certifier must comply with the notice, unless the building certifier has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

196 Issue of identity card to auditor

- (1) BSA must issue an identity card to each auditor.
- (2) The identity card must—
 - (a) contain a recent photo of the auditor; and
 - (b) contain a copy of the auditor's signature; and
 - (c) identify the person as an approved auditor under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

197 Production or display of identity card

- (1) In exercising a power under this Act in relation to another person, an auditor must—
 - (a) produce his or her identity card for the person's inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the auditor must produce the identity card for the person's inspection at the first reasonable opportunity.

198 Inspection of documents

An auditor may inspect any document produced to BSA and copy it or any part of it.

199 Power to enter and inspect building site relating to complaint or audit

- (1) For investigating a complaint or conducting an audit, an auditor may enter and inspect a building site to which the complaint or audit relates.
- (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 magistrate; or
 - (c) done when building work is being carried out at the building site.
- (3) However, an entry and inspection carried out only under subsection (2)(c) must not include a part of a building in which a person resides.
- (4) For the purpose of asking the person in control of the building site for consent to enter, the auditor may, without the person's consent or a warrant enter the site to the extent that is reasonable to contact the person.
- (5) An auditor may apply to a magistrate for a warrant under this section for a particular building site.
- (6) The application must be sworn and state the grounds on which it is sought.
- (7) If the magistrate requires further information about the grounds on which the warrant is sought, the magistrate must not issue the warrant unless the auditor or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.
- (8) The magistrate may issue the warrant only if the magistrate is satisfied there is a proper reason for entering and inspecting the building site.
- (9) The warrant must state—

- (a) that the auditor may, with necessary and reasonable help and force, enter and inspect the building site; and
- (b) the hours of the day when entry may be made; and
- (c) the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect.

200 Procedure before entry

- (1) This section applies if an auditor is, under section 199, intending to enter a building site, other than to the extent mentioned in section 199(4).
- (2) Before entering the building site, the auditor must do or make a reasonable attempt to do each of the following things—
 - (a) identify himself or herself to a person present at the building site who is an occupier of the building site, in the way stated in section 197;
 - (b) if the entry is being made under a warrant—give the person a copy of the warrant;
 - (c) tell the person the auditor is, under section 199, permitted to enter the building site;
 - (d) give the person an opportunity to allow the auditor immediate entry to the building site without using force.
- (3) However, the auditor need not comply with subsection (2) if the auditor believes on reasonable grounds that complying with the subsection may frustrate or otherwise prevent the investigation of the complaint or the conduct of the audit.

201 Cooperating with investigation or audit

- (1) A building certifier who is being investigated or audited by BSA must assist in and cooperate with the investigation or audit.
- (2) A building certifier engages in professional misconduct if the building certifier, without reasonable excuse—
 - (a) fails to comply with subsection (1) or section 195; or
 - (b) misleads or obstructs BSA in the exercise of any function under this division.

202 False or misleading statements

- (1) A person must not, in relation to an investigation or audit under this part, state anything to BSA that the person knows is false or misleading in a material particular.

Maximum penalty—165 penalty units.

- (2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, false or misleading.

203 False or misleading documents

- (1) A person must not, in relation to an investigation or audit under this part, give BSA a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—165 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells BSA, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to BSA.
- (3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, false or misleading.

204 Decision after investigation or audit completed

- (1) After investigating a complaint or conducting an audit, BSA must decide whether or not the building certifier has engaged in unsatisfactory conduct or professional misconduct.
- (2) BSA must give the building certifier and the complainant (if any) an information notice about the decision taken under subsection (1).
- (3) If BSA is aware that the building certifier is employed or has been appointed by someone else to perform building or

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private certifying functions, it must give the employer or appointor a copy of the notice.

- (4) If BSA decides the building certifier has engaged in unsatisfactory conduct, BSA must decide to do 1 or more of the following—
- (a) reprimand the building certifier;
 - (b) impose the conditions it considers appropriate on the building certifier's licence;
 - (c) direct the building certifier to complete to the satisfaction of BSA the educational courses stated by BSA;
 - (d) direct the building certifier to report on his or her practice as a building certifier at the times, in the way and to the persons stated by BSA;
 - (e) require the building certifier to take all necessary steps to ensure the certification of building work—
 - (i) complies with this Act; or
 - (ii) for other assessable development related to the building work—is not inconsistent with all other necessary development approvals that apply to the work; or
 - (iii) for self-assessable development that may affect the position, height or form of building work—is not inconsistent with the requirements for the self-assessable development;
 - (f) direct the building certifier to take necessary enforcement action under this or another Act, including, for example, by requiring the building certifier to issue an enforcement notice to the builder of the building work or owner of the building;
 - (g) if BSA is satisfied the building certifier is generally competent and diligent—advise the building certifier it does not intend to take any further action.
- (5) BSA must—
- (a) give an information notice about its decision under subsection (4) to the building certifier; and

- (b) if the decision is made after investigating a complaint—give the complainant a copy of the notice.
- (6) If BSA decides the building certifier has engaged in professional misconduct, BSA must apply to the Commercial and Consumer Tribunal to start a disciplinary proceeding against the building certifier.
- (7) Subsection (4) does not prevent BSA taking the matter the subject of the investigation into consideration at a later time as part of a pattern of conduct that may result in a disciplinary proceeding against the building certifier.
- (8) Subsections (4) and (6) do not prevent BSA from starting a proceeding to prosecute the building certifier for an offence against this Act.
- (9) In this section—

assessable development see IPA, schedule 10.

self-assessable development means all development declared under a local planning instrument to be self-assessable development.

205 Review of BSA's decision

- (1) This section applies if a building certifier or complainant is dissatisfied with BSA's decision under section 204(1) or (4).
- (2) The building certifier or complainant may apply to the Commercial and Consumer Tribunal for a review of the decision as if it were a reviewable decision under the Tribunal Act.
- (3) The application must be made within 20 business days after the day the building certifier or complainant receives notice of the decision.

Division 3 Show cause notice for disciplinary proceedings

206 Show cause notice

- (1) If a local government reasonably believes proper grounds exist for applying to the Commercial and Consumer Tribunal to start a disciplinary proceeding against a building certifier, the local government must before making the application give the building certifier a notice (a *show cause notice*).
- (2) The show cause notice must—
 - (a) state the grounds for making the application; and
 - (b) outline the facts and circumstances forming the basis for the grounds; and
 - (c) invite the building certifier to show within a stated period (the *show cause period*) why the application should not be made.
- (3) The show cause period must be a period ending not less than 20 business days after the show cause notice is given to the building certifier.

207 Representations and decision

- (1) The building certifier may make written representations about the show cause notice to the local government in the show cause period.
- (2) After considering the representations for the show cause notice, the local government must decide to—
 - (a) take no further action; or
 - (b) apply to the Commercial and Consumer Tribunal to start a disciplinary proceeding against the building certifier.
- (3) The local government must give the building certifier notice of its decision and the reasons for the decision.

Division 4 Disciplinary proceedings

208 Commercial and Consumer Tribunal may conduct disciplinary proceeding

- (1) The Commercial and Consumer Tribunal may, on application by BSA or the local government, conduct a disciplinary proceeding to decide whether proper grounds for taking disciplinary action against a building certifier are established.
- (2) For subsection (1), proper grounds exist for taking disciplinary action if the building certifier has behaved in a way that constitutes professional misconduct.

209 Application of Tribunal Act to disciplinary proceeding

Subject to this division, the Tribunal Act applies to the disciplinary proceeding as if it were a proceeding under section 105⁶² of that Act.

210 Notification of disciplinary proceeding

- (1) If BSA makes the application, BSA must notify the local government of the application.
- (2) If the local government makes the application, it must notify BSA of the application.
- (3) The applicant must file a copy of the notification in the Commercial and Consumer Tribunal.

211 Orders relating to current building certifier

- (1) If the Commercial and Consumer Tribunal decides that proper grounds exist for taking disciplinary action against a building certifier who is licensed at the time of the decision, the tribunal may make 1 or more of the orders mentioned in subsections (2) to (7).
- (2) The tribunal may make an order—
 - (a) reprimanding the building certifier; or

62 Tribunal Act, section 105 (Tribunal may conduct disciplinary proceeding)

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- (b) imposing conditions it considers appropriate on the building certifier's licence; or
 - (c) directing the building certifier to complete the educational courses stated in the order; or
 - (d) directing the building certifier to report on his or her practice as a building certifier at the times, in the way and to the persons stated in the order; or
 - (e) suspending the building certifier's licence for the term the tribunal considers appropriate; or
 - (f) cancelling the building certifier's licence; or
 - (g) disqualifying, indefinitely or for a stated period, the building certifier from obtaining a licence as a building certifier from BSA.
- (3) The tribunal may make an order requiring the building certifier—
- (a) to ensure the certification of building work complies with, for example—
 - (i) this or another Act; or
 - (ii) any relevant development approval; or
 - (iii) a local planning instrument; or
 - (b) to direct necessary enforcement action be taken under this or another Act, for example, by requiring the building certifier to issue an enforcement notice to the builder of the building works or owner of the building.
- (4) The tribunal may, in relation to building work that is defective or incomplete as a result of the professional misconduct, make an order that the building certifier—
- (a) at the building certifier's cost, have the work rectified or completed by a person who is appropriately licensed; or
 - (b) pay the complainant or another person an amount sufficient to rectify or complete the work.
- (5) The tribunal may make an order imposing a penalty on the building certifier of not more than—
- (a) for a first finding of professional misconduct—an amount equivalent to 80 penalty units; or

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- (b) for a second finding of professional misconduct—an amount equivalent to 120 penalty units; or
 - (c) for a subsequent finding of professional misconduct—an amount equivalent to 160 penalty units.
- (6) If a corporation or local government employed the building certifier to perform building certification work and the corporation or local government did not take all reasonable steps to ensure the building certifier did not engage in professional misconduct, the tribunal may—
- (a) make an order under subsection (3) or (4) as if the corporation or local government were the building certifier; or
 - (b) make an order imposing a penalty on the corporation of not more than—
 - (i) for a first time that the corporation did not take all reasonable steps—an amount equivalent to 80 penalty units; or
 - (ii) for a second time that the corporation did not take all reasonable steps—an amount equivalent to 120 penalty units; or
 - (iii) for a subsequent time that the corporation did not take all reasonable steps—an amount equivalent to 160 penalty units.
- (7) The tribunal may make any other order it considers appropriate.
- (8) If the tribunal makes an order under subsection (5) or (6)(b), the tribunal must order that the amount be paid to the person bringing the disciplinary proceedings.
- (9) The tribunal may make an order under subsection (6) or, if the order affects the corporation or local government, under subsection (7), only if the corporation or local government has been joined as a party to the proceeding under section 53⁶³ of the Tribunal Act.

63 Tribunal Act, section 53 (Inclusion of parties)

212 Orders relating to former building certifier

- (1) This section applies if the Commercial and Consumer Tribunal decides that proper grounds exist for taking disciplinary action against a former building certifier.
- (2) The tribunal may make 1 or more of the orders mentioned in subsections (3) to (8).
- (3) The tribunal may make an order requiring the former building certifier to—
 - (a) have another person who is appropriately licensed take all necessary steps to ensure the certification of building work complies with—
 - (i) this or another Act; or
 - (ii) any relevant development approval; or
 - (iii) a local planning instrument; or
 - (b) pay the complainant or another person an amount sufficient to complete the certification work.
- (4) The tribunal may, in relation to building work carried out that is defective or incomplete as a result of the professional misconduct, make an order that the former building certifier—
 - (a) at the building certifier's cost, have the work rectified or completed by a person who is appropriately licensed; or
 - (b) pay the complainant or another person an amount sufficient to rectify or complete the work.
- (5) The tribunal may make an order imposing a penalty on the former building certifier of not more than—
 - (a) for a first finding of professional misconduct—an amount equivalent to 80 penalty units; or
 - (b) for a second finding of professional misconduct—an amount equivalent to 120 penalty units; or
 - (c) for a subsequent finding of professional misconduct—an amount equivalent to 160 penalty units.
- (6) If a corporation or local government employed the former building certifier to perform building certification work and the corporation or local government did not take all

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reasonable steps to ensure the former building certifier did not engage in professional misconduct, the tribunal may—

- (a) make an order under subsection (3) or (4) as if the corporation or local government were the building certifier; or
 - (b) make an order imposing a penalty on the corporation of not more than—
 - (i) for a first time that the corporation did not take all reasonable steps—an amount equivalent to 80 penalty units; or
 - (ii) for a second time that the corporation did not take all reasonable steps—an amount equivalent to 120 penalty units; or
 - (iii) for a subsequent time that the corporation did not take all reasonable steps—an amount equivalent to 160 penalty units.
- (7) The tribunal may make an order that the former building certifier must—
- (a) not be licensed or re-licensed by BSA for the period stated in the order; or
 - (b) never be licensed or re-licensed by BSA.
- (8) The tribunal may make any other order it considers appropriate.
- (9) If the tribunal makes an order under subsection (5) or (6)(b), the tribunal must order the amount be paid to the person bringing the disciplinary proceedings.
- (10) The tribunal may make an order under subsection (6) or, if the order affects the corporation or local government, under subsection (8), only if the corporation or local government has been joined as a party to the proceeding under section 53⁶⁴ of the Tribunal Act.

64 Tribunal Act, section 53 (Inclusion of parties)

213 Consequences of failure to comply with Commercial and Consumer Tribunal's orders and directions

The Commercial and Consumer Tribunal may, in a disciplinary proceeding against a building certifier, order that the building certifier's licence be suspended or cancelled if the building certifier fails to comply with an order or direction of the tribunal within the time allowed by the tribunal.

214 Recording details of orders

An order may state—

- (a) the period in which the details of the order are to be included in the register for the person; and
- (b) the details of the order, if any, that the Commercial and Consumer Tribunal decides are not to be included in the register.

Chapter 7 Fire safety for budget accommodation buildings

Note—

Chapters 2 and 3 contain special provisions for obtaining building development approval for budget accommodation buildings. See sections 27, 46(4), 59 and 63.⁶⁵

Part 1 Interpretation

215 Definitions for ch 7

In this chapter—

⁶⁵ Sections 27 (Application for building work for budget accommodation building), 46 (Concurrence agencies may carry out building assessment work within their jurisdiction), 59 (Discretion for building development applications for particular budget accommodation buildings) and 63 (Restriction on granting building development application for budget accommodation building)

budget accommodation building see section 216.

fire safety standard see section 217(1).

fire safety system, for a building, means the building's features, and procedures established for the building, providing for all or any of the following—

- (a) warning the building's occupants about a fire emergency;
- (b) safe evacuation of the building's occupants;
- (c) extinguishing or restricting the spread of fire in the building.

216 Meaning of *budget accommodation building*

- (1) A *budget accommodation building* is a building—
 - (a) whose occupants have shared access to a bathroom or sanitary facilities, other than a laundry; and
 - (b) that provides accommodation of a following type for 6 or more persons—
 - (i) boarding house, backpacker or other hostel, guesthouse or similar type accommodation;
 - (ii) bed and breakfast, farmstay or hotel accommodation;
 - (iii) accommodation for persons who have an intellectual or physical disability and require full time or part time care.
- (2) However, each of the following is not a budget accommodation building—
 - (a) a building used as a class 1a building or class 2 building;
 - (b) a hotel that does not provide accommodation to paying guests;
 - (c) a motel building in which individual beds can not be let;
 - (d) a building that can only be let as a whole;
 - (e) a building—

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- (i) in which an employer provides, under, or as an incident of, an employer-employee relationship, accommodation to persons other than backpackers or fruit-pickers; and
 - (ii) in which no one is accommodated other than—
 - (A) a person provided accommodation as mentioned in subparagraph (i); or
 - (B) the employer; or
 - (C) the employer's spouse or other relatives;
 - (f) a building that is, or forms part of—
 - (i) a corrective services facility under the *Corrective Services Act 2006*; or
 - (ii) a detention centre under the *Juvenile Justice Act 1992*;
 - (g) a facility in which residential care under the *Aged Care Act 1997* (Cwlth) is provided by an approved provider under that Act;
 - (h) a building—
 - (i) that is, or is located within or is part of, an educational institution; or
 - (ii) in which an educational institution provides accommodation only for its students;
 - (i) a class 9a building, other than a building the primary use of which is to provide accommodation (rather than medical supervision) to persons with an intellectual or physical disability;
 - (j) a building used as a womens' refuge or shelter that is not used for any other type of accommodation;
 - (k) a building in which the only accommodation provided is to lifesavers;
 - (l) a building in which the only accommodation provided is recreational accommodation for camps for school groups, girl guides, scouts or similar groups.
- (3) For subsection (1)(b), evidence that the building has beds available for use by persons is evidence that it provides

accommodation to persons, whether or not the persons are present at the building.

(4) In this section—

bathroom or sanitary facilities, for a building, means—

- (a) bathroom or sanitary facilities located in the building; or
- (b) bathroom or sanitary facilities located elsewhere that are used in relation to the occupation of the building.

Example for paragraph (b)—

an outhouse used by occupants of the building

class 1a building means a building that, under the 2004 edition of the BCA, part A3.2, is classified as a class 1a building.

Editor's note—

BCA (2004 edition), part A.3.2 (Classifications)—

‘**Class 1a**—a single dwelling being—

- (i) a detached house; or
- (ii) one or more attached dwellings, each being a building, separated by a *fire-resisting* wall, including a row house, terrace house, town house or villa unit; ...’

class 2 building means a building that, under the 2004 edition of the BCA, part A3.2, is classified as a class 2 building.

Editor's note—

BCA (2004 edition), part A.3.2 (Classifications)—

‘**Class 2:** a building containing 2 or more sole-occupancy units each being a separate dwelling. ...’

class 9a building means a building that, under the 2004 edition of the BCA, part A3.2, is classified as a class 9a building.

Editor's note—

BCA (2004 edition), part A.3.2 (classifications)—

‘**Class 9a**—a *health-care building*; including those parts of the building set aside as a laboratory; ...’

BCA (2004 edition), part A1.1 (Definitions)—

‘**Health-care building** means a building whose occupants or patients undergoing medical treatment generally need physical assistance to evacuate the building during an emergency and includes—

- (a) a public or private hospital; or
- (b) a nursing home or similar facility for sick or disabled persons needing full-time care; or
- (c) a clinic, day surgery or procedure unit where the effects of the predominant treatment administered involve patients becoming non-ambulatory and requiring supervised medical care on the premises for some time after the treatment.

educational institution means any of the following—

- (a) a State educational institution under the *Education (General Provisions) Act 2006*;
- (b) a school that is provisionally accredited, or accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*;
- (c) a TAFE institute under the *Vocational Education, Training and Employment Act 2000*;
- (d) a university.

farmstay, for accommodation, means accommodation at a farm for paying guests of the farm.

Part 2 Fire safety standard

217 Fire safety standard

- (1) The ***fire safety standard*** is—
 - (a) the QDC, part 14;⁶⁶ and
 - (b) any other standard prescribed under a regulation for ensuring that all the occupants of a budget accommodation building may be safely evacuated in the event of a fire in the building.
- (2) Without limiting subsection (1), a prescribed standard may provide for all or any of the following for the building—
 - (a) the allowable number of occupants;

66 QDC, part 14 (Fire safety in budget accommodation buildings)

- (b) the provision and maintenance of fire safety systems;
- (c) training programs for occupants and persons employed in the building about—
 - (i) fire management and prevention; or
 - (ii) emergency evacuation.

218 Guidelines for fire safety standard

- (1) The chief executive may issue guidelines about ways of complying with the fire safety standard.
- (2) Before issuing the guidelines, the chief executive must consult with any entity the chief executive considers appropriate.

Part 3 Budget accommodation buildings built, approved or applied for, before 1 January 1992

219 Application of pt 3

This part applies to a budget accommodation building only if—

- (a) construction of the building started before 1 January 1992; or
- (b) construction of the building was—
 - (i) approved, under this Act, before 1 January 1992; and
 - (ii) started on or after 1 January 1992; or
- (c) an application for approval to construct the building—
 - (i) was made, under this Act, before 1 January 1992; and
 - (ii) the approval was given on or after 1 January 1992.

220 Owner must ensure building conforms with fire safety standard

The owner of a budget accommodation building must ensure the building conforms with—

- (a) the provisions of the fire safety standard about emergency lighting and early warning systems within—
 - (i) 1 year after the standard commences; or
 - (ii) the longer period approved for the building under section 221; and
- (b) the remaining provisions of the standard within—
 - (i) 3 years after the standard commences; or
 - (ii) the longer period approved for the building under section 221.

Maximum penalty—165 penalty units.

221 Approval of longer period for conformity with fire safety standard

- (1) The owner of a budget accommodation building may make written application to the local government to approve a period for the building under section 220(a)(ii) or (b)(ii).
- (2) The local government may—
 - (a) consult with any other entity the local government considers appropriate in deciding the application; and
 - (b) grant the application only if the local government is satisfied undue hardship would be caused to the building's occupants if the application were refused.
- (3) The local government may grant the application with or without the reasonable conditions the local government considers appropriate.
- (4) Within 20 business days after receiving the application, the local government must—
 - (a) decide the application; and
 - (b) give the owner an information notice about the decision.

- (5) The owner must comply with each condition imposed on the approval.

Maximum penalty for subsection (5)—165 penalty units.

Note—

There is a right of appeal to a building and development tribunal against the decision on the application or a failure to decide the application. See IPA, section 4.2.12A.⁶⁷

222 Advice as to conformity with fire safety standard

- (1) The owner of a budget accommodation building may make written application to the local government for advice as to whether the building conforms with the fire safety standard.
- (2) Within 20 business days after receiving the application, the local government must—
- (a) decide if the building conforms with the fire safety standard; and
 - (b) give the owner notice of the decision.
- (3) If the local government decides the building does not conform with the fire safety standard, the notice must be, or include, an information notice about the decision.
- (4) The notice must also state what must be done by the owner to make the building conform with the standard.
- (5) The owner must comply with the notice.

Maximum penalty for subsection (5)—165 penalty units.

- (6) Subsection (3) does not limit the power of the local government under sections 248 and 249.⁶⁸

223 Stay of operation of local government decision

The lodging of a notice of appeal about a local government decision mentioned in section 222(3) stays the operation of the decision until—

⁶⁷ IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

⁶⁸ Sections 248 (Enforcement notices) and 249 (Specific requirements of enforcement notices)

- (a) a building and development tribunal, on the application of the local government, decides otherwise; or
- (b) the appeal is withdrawn; or
- (c) the appeal is dismissed.

224 Local government decisions

- (1) This section applies to a decision made, or notice of which is given, by a local government, after the period stated in section 221(4) or 222(2).
- (2) The decision is not invalid merely because it was made, or the notice was given, after the period.

Part 4 All budget accommodation buildings

225 Application of pt 4

This part applies to a budget accommodation building regardless of when it was, or is, built.

226 Obligation about fire safety management plan

- (1) This section applies if—
 - (a) the owner of a budget accommodation building prepares a fire safety management plan for a development application for the building; and
 - (b) a development approval is given for the application.
- (2) The owner must ensure the fire safety management plan is updated as soon as practicable, but not later than 1 month, after a change in circumstances affecting the plan's compliance with the fire safety standard.

Maximum penalty for subsection (2)—100 penalty units.

- (3) A change in circumstances mentioned in subsection (2) includes, for example, a change in the fire safety standard.

- (4) The owner must ensure the current fire safety management plan is implemented.

Maximum penalty for subsection (4)—100 penalty units.

227 Accessing fire safety management plan

The owner of a budget accommodation building must ensure a copy of the building's current fire safety management plan is kept in the building and is available for inspection, free of charge, by occupants and other members of the public whenever the building is open for business.

Maximum penalty—20 penalty units.

228 Random inspection of buildings for which development approval is given

- (1) This section applies to a budget accommodation building if—
- (a) a development approval is given for building work for the building after the commencement of this section; and
 - (b) the building work involves an alternative solution for performance requirements under the BCA that includes fire safety management procedures as a condition of the use and occupation of the building.
- (2) The local government must, at least once every 3 years, inspect the building to ensure the owner of the building is complying with this part in relation to the building.
- (3) An inspection under subsection (2) may be made—
- (a) at any time the office of the local government is open for business; and
 - (b) without notice.
- (4) The local government must keep—
- (a) a register of all buildings to which subsection (2) applies; and
 - (b) a record of each inspection it makes under subsection (2); and

- (c) for each inspection—details about whether or not the owner is complying with this part.
- (5) The local government must not charge a fee for an inspection made under subsection (2).

Part 5 Miscellaneous

229 **Obligations of entities about guidelines for fire safety standard and fire safety management plans**

- (1) In carrying out a function or power conferred on an entity under this Act or another local government Act, the entity must have regard to—
 - (a) for a matter relating to the fire safety standard—the information in the fire safety standard guidelines; or
 - (b) for a matter relating to the fire safety management plan—the information in the fire safety management plan guidelines.
- (2) In ensuring a budget accommodation building conforms with the fire safety standard, the owner of the building must have regard to the information in the fire safety standard guidelines.
- (3) In preparing a fire safety management plan for a budget accommodation building, the owner of the building must have regard to the information in—
 - (a) the fire safety standard guidelines; and
 - (b) the fire safety management plan guidelines.
- (4) In this section—

fire safety management plan guidelines means the guidelines made under the *Fire and Rescue Service Act 1990*, section 104FD.⁶⁹

⁶⁹ *Fire and Rescue Service Act 1990*, section 104FD (Guidelines for preparing fire safety management plans)

fire safety standard guidelines means the guidelines made under section 218.

local government Act means a local government Act within the meaning of the *Local Government Act 1993*, section 3.

230 Local government's fire safety record-keeping obligations

A local government must keep the following records until the building to which the record relates is demolished or removed—

- (a) for each application made to the local government under section 221—all documents relating to the application;
- (b) for each inspection made by the local government under section 228—a record of the inspection.⁷⁰

231 Owner's fire safety record-keeping obligation

- (1) The owner of a budget accommodation building to which section 228 applies must, as required under this section, keep complete and accurate records for the building showing the owner is complying with the fire safety standard.

Maximum penalty—20 penalty units.

- (2) The records must include—
 - (a) if the building work for the building involved an alternative solution for performance requirements under the BCA⁷¹— the records required under the alternative solution; and

⁷⁰ Sections 221 (Approval of longer period for conformity with fire safety standard) and 228 (Random inspection of buildings for which development approval is given)

⁷¹ BCA, part A1 (Interpretation), section A1.1 (Definitions)—

Alternative Solution means a *Building Solution* which complies with the *Performance Requirements* other than by reason of satisfying the *Deemed-to-Satisfy Provisions*.

- (b) if the local government imposes conditions on an approval given under section 221(3)⁷²—details of how the building complies with the conditions.
- (3) The records must be kept until the building is demolished or removed, unless the owner has a reasonable excuse.

Chapter 8 Swimming pool fencing

Note—

For appeals in relation to this chapter, see IPA, section 4.2.12A.⁷³

232 Definitions for ch 8

In this chapter—

construct, an outdoor swimming pool on residential land, includes install or place the pool on the land.

Examples—

- 1 A person constructs an outdoor swimming pool on residential land if the person installs the pool above ground level on the land.
- 2 A person constructs an outdoor swimming pool on residential land if the pool is a portable one and the person places it on the land.

fencing standards see section 233.

pool owner see section 234.

233 Meaning of *fencing standards*

- (1) The ***fencing standards***, for an outdoor swimming pool on residential land, are—
 - (a) for a pool constructed before the commencement of this section—the requirements, including standards, applying under this Act for the fencing of the pool immediately before the commencement; or

⁷² Section 221 (Approval of longer period for conformity with fire safety standard)

⁷³ IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

- (b) for a pool constructed on or after the commencement of this section—the standards prescribed under a regulation for the fencing of the pool.
- (2) However, if on the commencement of this section an existing outdoor swimming pool on residential land is not fenced or the fencing does not comply substantially with the fencing standards under subsection (1)(a) for the fencing of the pool immediately before the commencement, the **fencing standards** for the pool are the standards prescribed under subsection (1)(b).

234 Meaning of *pool owner*

- (1) The owner of residential land on which there is an outdoor swimming pool is the ***pool owner*** of the pool.
- (2) However, if the occupier of residential land, or that part of the land, on which an outdoor swimming pool is situated is the owner of the pool but not the owner of the land, the occupier, and not the owner of the land, is the ***pool owner*** of the pool.

235 Outdoor swimming pool must be fenced

- (1) The pool owner of an outdoor swimming pool on residential land must ensure—
 - (a) the pool has, around the pool, fencing complying with the fencing standards for the pool; and
 - (b) the fencing is kept in good condition.

Maximum penalty—165 penalty units.

- (2) However, if the pool's fencing no longer complies with subsection (1)(a) only because the owner or occupier of adjoining land has constructed or placed something on the adjoining land, the pool owner of the pool is not required to construct additional fencing or change existing fencing to comply with subsection (1)(a).

236 Resuscitation sign for outdoor swimming pool

- (1) This section applies to an outdoor swimming pool on residential land if the pool is constructed after the commencement of this section.
- (2) The pool owner of the pool must, in the way prescribed under a regulation, ensure that there is always displayed for the pool a resuscitation sign complying with the requirements for a resuscitation sign prescribed under a regulation.

Maximum penalty—20 penalty units.

- (3) In this section—

resuscitation sign means a sign showing procedures for providing first aid, including, for example, expired air resuscitation and external cardiac compression.

237 Replacing fencing

If a fence around a pool owner's outdoor swimming pool on residential land has been demolished or removed, or is in substantial disrepair to the extent that it is impracticable to keep the fencing in good condition as required under section 235(1)(b), the pool owner must ensure—

- (a) there is constructed around the pool a new fence complying with the fencing standards for the pool, as if the pool were a pool constructed at the time the new fence is required to be constructed; and
- (b) a building certifier has provided a certificate in the approved form stating the fencing complies with the fencing standards for the pool.

Maximum penalty—20 penalty units.

238 Warning sign required before constructing outdoor swimming pool

- (1) This section applies to the construction of an outdoor swimming pool on residential land.
- (2) Each relevant person must ensure that—

- (a) before the construction starts, a warning sign, complying with the requirements for a warning sign prescribed under a regulation, is displayed on the land in the way prescribed under a regulation; and
- (b) the warning sign is displayed until—
 - (i) fencing complying with the fencing standards for the pool has been constructed; and
 - (ii) a building certifier certifies the fencing complies with the fencing standards for the pool.

Maximum penalty—20 penalty units.

- (3) In this section—

relevant person means—

- (a) the person who is, or is to become, the pool owner of the pool; or
- (b) the builder of the pool.

239 Constructing outdoor swimming pool

- (1) This section applies to a person if—
- (a) an outdoor swimming pool has been constructed, or is being constructed, on residential land; and
 - (b) the pool has not been filled with water to a depth of 300mm or more; and
 - (c) the person—
 - (i) is, or is to become, the pool owner of the pool (the *owner*); or
 - (ii) has contracted with the owner to carry out the construction of the pool.
- (2) The person must, unless the person has a reasonable excuse, ensure that, before the pool is filled with water to a depth of 300mm or more—
- (a) fencing that complies with the fencing standards for the pool is constructed around the pool; and

- (b) a building certifier has provided a certificate in the approved form stating the fencing complies with the fencing standards for the pool.

Maximum penalty—165 penalty units.

240 Application for exemption from fencing

- (1) A person may apply to the local government for an exemption from complying with the fencing standards for an outdoor swimming pool on residential land if the person is—
 - (a) the pool owner of the pool; or
 - (b) if the pool is still to be constructed—the person who is to be the pool owner of the pool.
- (2) If an application for exemption is made under this section, the local government must decide the application within 5 business days after the application is made.
- (3) The local government may grant the exemption only if it is satisfied that—
 - (a) a person with a disability is, or is to become, an occupier of the land; and
 - (b) it would be physically impracticable for the person, because of the person's disability, to access the pool if it had fencing complying with the fencing standards for the pool.
- (4) The local government may require the applicant to produce medical evidence to support the application.
- (5) The local government may grant the exemption on conditions it considers necessary or desirable to prevent a young child accessing the pool.

241 Steps to be taken after application decided

- (1) As soon as practicable after making its decision on an application for exemption under section 240, the local government must give the applicant an information notice about the decision.

- (2) If the local government grants the exemption, the fencing standards for the pool continue to apply for the pool to the extent the exemption does not apply.
- (3) The exemption ends if—
 - (a) the applicant stops being the pool owner for the pool; or
 - (b) the person because of whom the exemption was granted is no longer an occupier of the land; or
 - (c) it would no longer be physically impracticable for the person because of whom the exemption was granted to access the pool if it had fencing complying with the fencing standards for the pool.
- (4) If the exemption is granted on conditions, the applicant must comply with each condition attached to the exemption.

Maximum penalty for subsection (4)—165 penalty units.

Note—

There is a right of appeal to a building and development tribunal against the decision on the application or a failure to decide the application. See IPA, section 4.2.12A.⁷⁴

242 Revocation of exemption

- (1) This section applies if—
 - (a) a local government has, under section 240, previously granted an applicant an exemption; and
 - (b) the local government is satisfied 1 or more of the following applies—
 - (i) the decision on the application for the exemption was based on a false or misleading particular given by the applicant;
 - (ii) the exemption has ended under section 241(3);
 - (iii) the exemption was subject to conditions and there has been a contravention of a condition.

⁷⁴ IPA, section 4.2.12A (Appeals for building and plumbing and drainage matters)

- (2) The local government must give the applicant a show cause notice inviting the applicant to show cause why the decision should not be revoked.
- (3) After considering any representations made to it under the show cause notice, the local government may, by a further notice (a **revocation notice**) given to the applicant, revoke the decision previously given.
- (4) The revocation notice must be, or be accompanied by, an information notice about the decision to give the notice and state—
 - (a) that the applicant must ensure the pool has, around the pool, fencing complying with the fencing standards for the pool; and
 - (b) the day by which the applicant must comply with the notice.
- (5) The applicant must comply with the revocation notice.
Maximum penalty—165 penalty units.
- (6) If the applicant fails to comply with the notice, the failure is taken to be a failure to perform work under the *Local Government Act 1993*, section 1066.⁷⁵

243 Register of exemptions

The local government must—

- (a) keep a register of exemptions it grants under this chapter that are still in force; and
- (b) make the register available for inspection and purchase as if it were a document that, under IPA, chapter 5, part 7,⁷⁶ the local government must make available for inspection and purchase.

⁷⁵ *Local Government Act 1993*, section 1066 (Performing work for owner or occupier)

⁷⁶ IPA, chapter 5, part 7 (Public access to planning and development information)

244 Advice as to compliance

- (1) The pool owner of an outdoor swimming pool on residential land may make written application to the local government for written advice as to whether the fencing around the pool complies with section 235(1).
- (2) If an application is made under subsection (1), the local government must—
 - (a) decide if the fencing complies with section 235(1); and
 - (b) give the pool owner an information notice about its decision within 10 business days after receiving the application.
- (3) The information notice must also advise the pool owner what must be done to make the fencing comply with section 235(1).
- (4) The pool owner must comply with the notice.
Maximum penalty—165 penalty units.
- (5) Subsection (3) does not limit the power of the local government under sections 248 and 249.

245 Access to outdoor swimming pools must be kept secure

The occupier of residential land on which there is an outdoor swimming pool must ensure that any gate or door giving access to the pool is kept securely closed at all times when the gate or door is not in use.

Maximum penalty—165 penalty units.

246 Apportionment of cost of constructing dividing fence

- (1) The cost of constructing, altering, repairing, replacing and maintaining an outdoor swimming pool fence consisting of the whole or part of a dividing fence is, to the extent it is attributable to work done to comply with section 235(1), to be borne—
 - (a) by the owner of the residential land on which the pool is constructed; or
 - (b) if the work or part of the work is done to comply with this part in relation to more than 1 parcel of residential

land—equally by the owners of the parcels of land where the pools are constructed.

- (2) Subsection (1) applies despite the *Dividing Fences Act 1953*.
- (3) A local law about the construction of fencing around swimming pools does not limit the discretion of a Magistrates Court under the *Dividing Fences Act 1953*.

Chapter 9 **Show cause and enforcement notices**

Note—

For who may decide whether enforcement action ought to be taken for a building development approval, see sections 10 and 48⁷⁷ and IPA, chapter 4, part 3, divisions 2 and 3.⁷⁸

247 Show cause notices

- (1) A notice (a *show cause notice*) inviting a person to show cause why an enforcement or revocation notice should not be given to the person must—
 - (a) be in writing; and
 - (b) outline the facts and circumstances forming the basis for the belief that an enforcement or revocation notice should be given to the person; and
 - (c) state that representations may be made about the show cause notice; and
 - (d) state how the representations may be made; and
 - (e) state where the representations may be made or sent; and
 - (f) state—

77 Sections 10 (What is a *building certifying function*) and 48 (Functions of private certifier (class A))

78 IPA, chapter 4, part 3, divisions 2 (Show cause notices) and 3 (Enforcement notices)

- (i) a day and time for making the representations; or
 - (ii) a period within which the representations must be made.
- (2) The day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.

248 Enforcement notices

- (1) A local government may give a notice (an *enforcement notice*) to the owner of a building, structure or building work if the local government reasonably believes the building, structure or building work—
- (a) was built before the commencement of this section without, or not in accordance with, the approval of the local government; or
 - (b) is dangerous; or
 - (c) is in a dilapidated condition; or
 - (d) is unfit for use or occupation; or
 - (e) is filthy, infected with disease or infested with vermin.
- (2) A local government may also give an enforcement notice to a person who does not comply with a particular matter in this Act.
- (3) However, before a local government gives a person an enforcement notice, the local government must give the person a show cause notice.
- (4) Subsection (4) applies only if the matter, about which the local government is proposing to give the enforcement notice, is not of a dangerous or minor nature.
- (5) An enforcement notice given under this section is taken to be an enforcement notice given under IPA, section 4.3.11.⁷⁹

79 IPA, section 4.3.11 (Giving enforcement notice)

249 Specific requirements of enforcement notices

- (1) Without limiting specific requirements an enforcement notice may impose, an enforcement notice may require a person to do any of the following—
 - (a) to apply for a development permit;
 - (b) to do, or not to do, another act to ensure building work complies with the approval of the local government given before the commencement of this section;
 - (c) to repair or rectify the building or structure;
 - (d) to secure the building or structure (whether by a system of supports or in another way);
 - (e) to fence off the building or structure to protect persons;
 - (f) to cleanse, purify and disinfect the building or structure;
 - (g) to demolish or remove the building or structure;
 - (h) to comply with this Act for a particular matter.
- (2) However, a person may be required to demolish or remove the building or structure only if the local government reasonably believes it is not possible and practical to take steps to comply with subsection (1)(c) to (f).

250 Appeals against enforcement notices

- (1) A person who is given an enforcement notice under section 248 may appeal to a building and development tribunal as if the appeal were an appeal under IPA.
- (2) The appeal must be started within—
 - (a) if the notice is given in relation to a dangerous building or structure—5 business days; or
 - (b) if the notice is given for any other purpose—20 business days after the enforcement notice is given to the person.

251 Register of notices given

- (1) Each local government must keep the register maintained under this section before the commencement of the *Building and Integrated Planning Amendment Act 1998*.

- (2) A local government may remove from the register all entries and details relating to a notice when the requirements of the notice have been complied with.

252 Action local government may take if enforcement notice not complied with

If an enforcement notice is given under section 248(1)(b) to (e) or (2) to an owner and the owner fails to perform the work required to be performed under the notice, the failure is taken to be a failure mentioned in the *Local Government Act 1993*, section 1066.⁸⁰

253 Removal of persons in buildings to be demolished

- (1) This section applies if it is necessary or desirable to remove any person from a building or other structure that is to be wholly or partly demolished by a local government under this Act.
- (2) For the purpose of removing any person from a building or other structure referred to in subsection (1)—
- (a) any officer of the local government concerned who is authorised in writing in that behalf by the chief executive officer of the local government may, without other authority than this Act, enter upon such building or other structure and all parts of the building or structure and upon the land on which it stands; and
 - (b) any officer may remove from such building or other structure all persons found in the building or structure, using such force as is reasonably necessary for the purpose.
- (3) An officer of a local government mentioned in subsection (2) is a public official for the *Police Powers and Responsibilities Act 2000*.

80 *Local Government Act 1993*, section 1066 (Performing work for owner or occupier)

Chapter 10 General provisions

254 **Approved forms**

The chief executive may approve forms for use under this Act.

255 **Information to be supplied by the State**

If building work mentioned in IPA, schedule 8, part 2 is carried out by or on behalf of the State or a public sector entity, the State must give to the local government the information prescribed under a regulation.

256 **Prosecution of offences**

- (1) A prosecution in respect of an offence against this Act shall be by way of summary proceeding under the *Justices Act 1886* upon complaint laid within 12 months after the commission of the offence or within 6 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.
- (2) The person who may, for an offence against this Act, make a complaint is—
 - (a) for an offence against chapter 6—the general manager of BSA; or
 - (b) for another offence—a local government or a person authorised by a local government.
- (3) It shall not be necessary to prove the authority of the complainant in any proceeding in respect of an offence against this Act.
- (4) Despite subsection (2), BSA is the only person who may lay a complaint for an offence against—
 - (a) chapter 6; or
 - (b) a provision of a regulation that is—
 - (i) made for chapter 6; and
 - (ii) declared under a regulation to be a provision to which this subsection applies.

- (5) All penalties recovered as a result of proceedings mentioned in subsection (4) must be paid to BSA.

257 Liability for corporation's default

Where an offence against this Act is committed by a body corporate each member of the governing body of that body corporate shall be taken to have committed the offence and may be punished for the offence accordingly, in addition to the body corporate, unless the member proves that the member had no knowledge of the commission of the offence or could not have prevented its commission by the exercise of reasonable diligence.

258 Guidelines

The chief executive may make guidelines for matters within the scope of this Act to help compliance with this Act.

259 Access to guidelines

The chief executive must make any guidelines under section 218 or 258 available for inspection and purchase as if they were a document that, under IPA, chapter 5, part 7,⁸¹ the chief executive must make available for inspection and purchase.

260 Evidentiary aids

- (1) This section applies to a proceeding under, or in relation to, this Act or the *Queensland Building Services Authority Act 1991*.
- (2) A certificate purporting to be signed by the general manager of BSA stating any of the following matters is evidence of the matter—
- (a) a stated document is a copy of, or an extract from or part of—
 - (i) a licence; or

81 IPA, chapter 5, part 7 (Public access to planning and development information)

- (ii) the register; or
- (iii) the BCA; or
- (iv) the QDC; or
- (v) another document kept or made under this Act;
- (b) an edition of the BCA was the current edition of the BCA at a stated time or during a stated period;
- (c) a particular version of the QDC was in force at a stated time or during a stated period;
- (d) a particular part of the QDC was in force at a stated time or during a stated period;
- (e) on a stated day, or during a stated period, a licence—
 - (i) was, or was not in force; or
 - (ii) was, or was not, subject to a stated condition; or
 - (iii) was, or was not, cancelled or suspended.

261 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may make provision with respect to—
 - (a) building work; and
 - (b) the occupation of buildings; and
 - (c) the performance of building certifying functions and private certifying functions; and
 - (d) the licensing of building certifiers; and
 - (e) the fees payable under the Act; and
 - (f) flammable and combustible liquids; and
 - (g) the records required for this Act; and
 - (h) fixing a penalty for an offence against a regulation (including different penalties for successive offences against a regulation) of a fine of not more than 165 penalty units.

Chapter 11 Savings and transitional provisions

Part 1 Transitional provision for Local Government Act 1993

262 Swimming pool fencing compliance—hardship

- (1) This section applies if—
 - (a) before the commencement of this section, a local authority, under section 49H(11)(b) of the *Local Government Act 1936*, extended the time for an owner to comply with section 49H(4) of that Act; and
 - (b) immediately before the commencement of this section, the extension was still in force.
- (2) The extension continues, in accordance with its terms, as an extension of time for the owner to comply with section 235.
- (3) The local government concerned may at any time, and subject to the reasonable conditions it considers appropriate, extend the time for the owner to comply with section 235 if—
 - (a) the owner files a written application for an extension with the local government while a previously given extension is still in force; and
 - (b) the local government is satisfied that compliance within the time provided for in the previously given extension would cause the owner financial hardship.

Part 2

Transitional provisions for Building and Integrated Planning Amendment Act 1998

263 References to Standard Building Law etc.

A reference in an Act or document to the *Standard Building By-laws 1991*, the Standard Building By-laws (however described), Standard Building Law or the repealed *Standard Building Regulation 1993* is a reference to this Act.

264 Existing referees

A person who, immediately before the commencement of this section, was a referee under this Act is, until the end of the term for which the person was appointed under this Act, taken to be a referee appointed under IPA, section 4.2.36.

265 Existing registrar

The person who, immediately before the commencement of this section, was the registrar under this Act is taken to be the registrar appointed under IPA, section 4.2.8.

266 Lawfully constructed buildings and structures protected

If a building or structure was lawfully constructed before the commencement of this section, it can not be altered or removed under this Act unless the building or structure is—

- (a) dangerous; or
- (b) in a dilapidated condition and unfit for use or occupation; or
- (c) filthy; or
- (d) is infected with disease; or
- (e) is infested with vermin.

Part 3 **Transitional provisions for Building Amendment Act 2003**

267 **Definitions for pt 3**

In this part—

amending Act means the *Building Amendment Act 2003*.

commencing day means the day the amending Act, section 12, commences.

unamended Act means this Act as in force before the commencing day.

268 **Existing exemption from fencing swimming pool**

- (1) This section applies if, immediately before the commencing day—
 - (a) an application for an exemption from complying with the unamended Act, section 14(2),⁸² had been granted to a person under the unamended Act, section 15;⁸³ and
 - (b) the decision had not been revoked under the unamended Act, section 16.⁸⁴
- (2) On and from the commencing day, the unamended Act continues to apply for the exemption as if the unamended Act had not been amended by the amending Act.
- (3) If the exemption was subject to a condition, the exemption is taken to be subject to the same condition.

269 **Undecided application for exemption from fencing swimming pool**

- (1) This section applies if—

82 Section 14 (Outdoor swimming pools must be fenced) of the unamended Act

83 Section 15 (Application for exemption from fencing) of the unamended Act

84 Section 16 (Revocation of decisions or previous variations) of the unamended Act

- (a) a person has, under the unamended Act, section 15, applied to the local government for exemption from complying with the unamended Act, section 14(2); and
 - (b) immediately before the commencing day, the application had not been decided.
- (2) The unamended Act continues to apply to the application, and to any exemption, including any condition of the exemption, applying as a result of granting the exemption, as if the unamended Act had not been amended by the amending Act.

270 When resuscitation sign for outdoor swimming pool not required

- (1) This section applies to an outdoor swimming pool constructed on residential land if—
- (a) the lawful carrying out of the work started before the commencing day; or
 - (b) approval to carry out the work was given before the commencing day, but the work does not start before the commencing day; or
 - (c) application to carry out the work was made before the commencing day, but the application was not decided before the commencing day.
- (2) Section 236⁸⁵ does not apply to the pool.

271 Revocation of decisions or previous variations

The unamended Act, section 16, continues to apply to the following as if it had not been repealed by the amending Act—

- (a) a decision made under the unamended Act, section 15;
- (b) a variation given under section 30M as in force immediately before the commencement of the *Building and Integrated Planning Amendment Act 1998*, part 2.

85 Section 236 (Resuscitation sign for outdoor swimming pool)

Part 4 **Transitional provisions for Plumbing and Drainage Act 2002**

272 **Definitions for pt 4**

In this part—

amending Act means the *Plumbing and Drainage Act 2002*, part 11.

building certifier includes a former building certifier.

commencing day means the day the *Plumbing and Drainage Act 2002*, section 191, commences.

unamended Act means the *Building Act 1975* as in force immediately before the commencing day.

273 **Swimming pool fences for existing tourist resort complexes exempted**

- (1) This section applies to a tourist resort complex if, immediately before the commencement of this section—
 - (a) the land used for the tourist resort complex was, under section 4 and schedule 2 of the repealed *Building Regulation 2003*, specified for section 13(3)(a) as in force immediately before the commencement; and
 - (b) the tourist resort complex is not required to construct fencing around a swimming pool on the land.
- (2) A local law is of no effect if it requires the construction of fencing around the swimming pool on the land, provided the land is not land prescribed under a regulation as land to which this subsection is no longer to apply.
- (3) In this section—

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

274 Unsatisfactory conduct and professional misconduct

- (1) If the Commercial and Consumer Tribunal is deciding whether or not proper grounds exist for taking disciplinary action against a building certifier, the tribunal may take into account conduct of the building certifier before or after the commencing day.
- (2) If BSA is deciding whether or not to apply to the tribunal to start a disciplinary proceeding against a building certifier, BSA may take into account conduct of the building certifier before or after the commencing day.
- (3) If BSA is deciding whether or not a building certifier has engaged in unsatisfactory conduct, BSA may take into account conduct of the building certifier before or after the commencing day.

275 Appeals to chief executive against accrediting body's decision

- (1) If—
 - (a) a person has appealed to the chief executive under the unamended Act against a decision of the accrediting body; and
 - (b) the appeal has not been decided before the commencing day;the chief executive may decide the appeal as if the unamended Act were not amended by the amending Act.
- (2) If—
 - (a) a person could have appealed to the chief executive under the unamended Act against a decision of the accrediting body; and
 - (b) the person has not appealed before the commencing day;the person may apply to the Commercial and Consumer Tribunal for a review of the decision under section 205⁸⁶ as if the decision of the accrediting body were a decision of BSA.

86 Section 205 (Review of BSA's decision)

276 Appeal to the court against chief executive's decision

(1) If—

- (a) a person has appealed to the court under the unamended Act against a decision of the chief executive; and
- (b) the appeal has not been decided before the commencing day;

the court may decide the appeal as if the unamended Act were not amended by the amending Act.

(2) If—

- (a) a person could have appealed to the court under the unamended Act against a decision of the chief executive; and
- (b) the person has not appealed before the commencing day;

the person may appeal against the decision under the unamended Act as if the unamended Act were not amended by the amending Act.

277 Orders relating to building certifiers

- (1) This section applies if the Commercial and Consumer Tribunal makes an order under section 211(5) or 212(5) for a building certifier.
- (2) In making the order, the tribunal may disregard any previous finding of professional misconduct against the building certifier made by an accrediting body before the commencing day.
- (3) However, if the building certifier has, before the commencing day, been prosecuted under section 256 for an offence against this Act and found guilty, the tribunal may take the offence into account when making the order.

Part 5

Transitional provisions for Building and Other Legislation Amendment Act 2006

278 Undecided building development applications

A building development application must be decided as if the *Building and Other Legislation Amendment Act 2006* had not been enacted if—

- (a) the application is a properly made application; and
- (b) immediately before the commencement of this section the application had not been decided.

279 Exclusion of reminder notice requirement for existing building development approvals

Section 95 does not apply to a building development approval in force immediately before the commencement of this section.

280 Consequential amendments to the QDC

Section 13(3) does not apply to an amendment to the QDC under section 13(2) if the amendment is consequential to the *Building and Other Legislation Amendment Act 2006* or the repeal of the *Standard Building Regulation 1993*.

Examples—

amendments to the QDC to omit redundant references to the repealed regulation or replace references to provisions of the regulation with provisions of the Act that correspond, or substantially correspond, to them

281 Consequential amendments to code of conduct

Section 129(3) does not apply to an amendment of the code of conduct if the amendment is consequential to the *Building and Other Legislation Amendment Act 2006* or the repeal of the *Standard Building Regulation 1993*.

Examples—

amendments to the code to omit redundant references to the repealed regulation or replace references to provisions of the regulation with provisions of the Act that correspond, or substantially correspond, to them

282 Local government building surveying technicians

- (1) This section applies if—
 - (a) a building surveying technician was, immediately before 21 October 2003, employed by a local government as a building certifier; and
 - (b) the local government is a designated local government under section 154.
- (2) Despite section 154(1)(a),⁸⁷ the building surveying technician may, until 20 October 2010, perform building certifying functions on the buildings or structures mentioned in that paragraph.

283 Existing rainwater tank provisions in planning schemes

- (1) This section applies to a rainwater tank provision in force immediately before 1 September 2006.
- (2) The provision is taken to be a building assessment provision and to have been a building assessment provision since 1 September 2006.
- (3) If the provision does not comply with the acceptable solutions for rainwater tanks under QDC, part 25, unless the provision is earlier repealed, it expires on—
 - (a) if, before 1 July 2007, a day is prescribed under a regulation—the prescribed day; or
 - (b) otherwise—1 July 2007.
- (4) The reference in subsection (3) to QDC, part 25 is a reference to that part, as amended or replaced from time to time by any

⁸⁷ Section 154 (Role of building surveying technician)

amendment or replacement of it approved under section 13 after the commencement of this section.

- (5) This section applies despite sections 30 and 32.
- (6) In this section—

rainwater tank provision means a provision of a planning scheme that requires the installation of a rainwater tank for a building that is the subject of relevant building work.

relevant building work means the construction of a class 1 building that, under the *Water Act 2000*, is in a service area for a retail water service.

Schedule 1 The QDC as at the commencement of s 13

section 13(1)

Part or aspect	Date published by department
1—Workplaces	23 August 2002
2—Workplaces involving spray painting	23 August 2002
3—Detention centres	23 August 2002
4—Retail meat premises	23 August 2002
7—Private health facilities	23 August 2002
11—Design and siting standard for single detached housing on lots under 450m ² , but only— (a) the words under the heading ‘application’; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c).	1 March 2006
12—Design and siting standard for single detached housing on lots 450m ² and over, but only— (a) the words under the heading ‘application’; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c).	1 March 2006
14—Fire safety in budget accommodation buildings	22 August 2005
15—Higher risk personal appearance services	1 July 2004
20—Residential services building standard	23 August 2002

Schedule 1 (continued)

Part or aspect	Date published by department
21—Pastoral Workers' Accommodation	1 July 2003
22—Child care centres	23 November 2005
25—Rainwater tanks	2 August 2006
28—Tents	2 April 2004
29—Sustainable buildings	1 March 2006
31—Floating buildings	2 August 2006

Schedule 2 Dictionary

section 4

accreditation standards body see section 184(1).

advice agency means an advice agency under IPA.

AIBS means the Australian Institute of Building Surveyors.

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

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

alternative solution means a material, system, method of building or other thing, other than the following, intended to be used by a person to comply with relevant performance requirements—

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

another relevant Act means any of the following—

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

appropriately licensed for—

- (a) a building certifying function—means licensed under chapter 6, part 3, division 1 at a level that allows the licensee to carry out that function; or

Schedule 2 (continued)

- (b) a private certifying function—means licensed as mentioned in paragraph (a) and endorsed under chapter 6, part 3, division 3, in a way that allows the licensee to carry out that function.

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

- (a) the decision notice or negotiated decision notice for the application;
- (b) a copy of the plans, drawings and specifications and other documents and information lodged by the applicant, stamped approved or otherwise endorsed by the assessment manager;
- (c) a list of required fire safety installations and required special fire services applying to the building work;
- (d) certificates relied on to decide the application;
- (e) a list, in the approved form, of any of the following information relied on to decide the application—
- (i) the physical characteristics and location of infrastructure related to the application;
- (ii) local government easements, encumbrances or estates or interests in land likely to be relevant to the application;
- (iii) site characteristic information likely to affect the assessment of the application;

Examples—

- design levels of proposed road or footway works
- design or location of stormwater connections
- design or location of vehicle crossings
- details of any heritage listed buildings
- discharge of swimming pool backwash water
- flood level information
- limitations on driveway gradients

Schedule 2 (continued)

- limitations on the capacity of sewerage, stormwater and water supply services
 - location of any erosion control districts
 - location of contaminated land
 - location of land-slip areas
 - location of mine subsidence areas
- (f) if the application relates to building work that uses an alternative solution and the assessment manager approved the application on the basis of the alternative solution—the statement required under section 68A.

approved form means a form approved under section 254.

assessable development see the IPA, schedule 10.⁸⁸

assessment manager see section 11.

assistant building surveyor means a building certifier who, under section 151, is licensed as an assistant building surveyor.

auditor see section 195(1).

BCA see section 12.

BCA classification, for a building, means its classification under BCA.

Note—

For the classifications under the BCA, see BCA, part A3.

BCA classification change see section 109.

BSA means the Queensland Building Services Authority established under the *Queensland Building Services Authority Act 1991*.

budget accommodation building see section 216.

build includes—

- (a) starting or continuing to build; and

Schedule 2 (continued)

- (b) doing, or starting or continuing to do, work in the course of or for building; and
- (c) performing structural work or altering or adding to a building; and
- (d) moving a building from 1 position to a different position (whether on the same allotment, another allotment or partly on the same and partly on another allotment).

building—

- 1 A *building* is a fixed structure that is wholly or partly enclosed by walls and is roofed.
- 2 The term includes a floating building and any part of a building.

building and development tribunal means a building and development tribunal established under IPA, section 4.2.1.

building assessment provisions see section 30(1).

building assessment work see section 7.

building certifier see section 8.

building certifying function see section 10.

Building Code of Australia see section 12.

building development application see section 6.

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

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

building surveying technician means a building certifier who, under section 151, is licensed as a building surveying technician.

building surveyor means a building certifier who, under section 151, is licensed as a building surveyor.

building work see section 5.

Schedule 2 (continued)

certificate of classification—

- 1 a *certificate of classification*, for a building or structure, is a certificate about its BCA classification, given under chapter 5, that, under section 106, is still in force.
- 2 The term includes an interim certificate of classification given under section 104.

certificate requirements see section 102(2).

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

class, for a building or structure, means its particular BCA classification.

client, of a private certifier, see section 138(5).

code of conduct see section 129(1).

Commercial and Consumer Tribunal means the Commercial and Consumer Tribunal under the Tribunal Act.

complaint, for chapter 6, means a complaint made under chapter 6, part 4 about a building certifier or former building certifier.

compliance certificate see section 10(b).

complies, with the BCA or QDC, see section 14.

concurrency agency means a concurrency agency under IPA.

condition time, for chapter 4, part 7, division 2, see section 94(1).

construct, for chapter 8, see section 232.

convicted, of a relevant offence—

- 1 *Convicted*, of a relevant offence, is a conviction, other than a spent conviction, for an offence—
 - (a) under this Act or another relevant Act; or
 - (b) involving fraud or dishonesty; or

Schedule 2 (continued)

- (c) against a law of another State if the act or omission that constitutes the offence would, if it happens in Queensland, be an offence under this Act or another relevant Act; or
 - (d) committed anywhere in Australia before this section commenced that, apart from the non-commencement of this section, would have been an offence mentioned in paragraph (a) or (b).
- 2 For paragraph 1—
- (a) a conviction includes a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded; and
 - (b) a spent conviction is a conviction—
 - (i) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
 - (i) that is not revived as prescribed by section 11 of that Act.

court means the Planning and Environment Court.

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

demolition/removal completion condition see section 71(4).

development application see IPA, schedule 10.

development approval see IPA, schedule 10.

development approval endorsement see section 160(b).

development permit see IPA, section 3.1.5(3).⁸⁹

dividing fence has the meaning given by the *Dividing Fences Act 1953*.

⁸⁹ IPA, section 3.1.5 (Approvals under this Act)

Schedule 2 (continued)

enforcement action means the giving, under chapter 9, of a show cause notice and an enforcement notice and taking action under IPA, chapter 4 part 3, divisions 2 and 3.⁹⁰

enforcement notice see section 248(1).

engagement, of a private certifier, see section 138(4).

fencing standards, for chapter 8, see section 232.

final inspection certificate, for building work, see section 10(d)(ii).

fire safety installation—

1 A **fire safety installation**, for a building or structure, means any of the following items for the building or structure—

(a) structural features—

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

(b) fire protection systems—

- air-handling systems
- fire detection and alarm systems
- smoke and heat venting systems
- smoke exhaust systems

⁹⁰ IPA, chapter 4, part 3 (Development offences, notices and orders)

Schedule 2 (continued)

- special automatic fire suppression systems (including foam, deluge and gas flooding systems)
 - sprinklers (including wall-wetting sprinklers)
 - stairwell pressurisation systems
- (c) fire fighting equipment—
- fire extinguishers (portable)
 - fire hose reels
 - fire hydrants (including hydrant boosters)
 - fire mains
- (d) occupant safety features—
- emergency lifts
 - emergency lighting
 - emergency power supply
 - emergency warning and intercommunication systems
 - exit door hardware
 - exit signs
 - fire doors
 - smoke proof doors
 - solid core doors
- (e) other features—
- services provided under conditions imposed under section 79
 - services required under BCA, clause E1.10
 - vehicular access for large isolated buildings.

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

Schedule 2 (continued)

fire safety management plan see the *Fire and Rescue Service Act 1990*, section 104FC.

fire safety standard see section 217(1).

fire safety system, for chapter 7, see section 215.

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

former building certifier means an individual who—

- (a) was a building certifier when a building certifying function, the subject of a complaint, was performed; but
- (b) is not licensed when—
 - (i) the complaint, or the decision taken about the complaint under section 204(1), is made; or
 - (ii) the Commercial and Consumer Tribunal makes an order under section 212.

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

imposed condition see section 69(4).

indoor swimming pool means a swimming pool completely enclosed by the walls of a building or a swimming pool on a deck or roof top of a building if the pool is, under the usual ways of entering or leaving the building, only accessible from the inside of the building.

information notice, about a decision, means a notice stating—

- (a) the decision, and the reasons for it; and
- (b) all rights of appeal against the decision under this Act or IPA; and
- (c) how the rights are to be exercised.

inspection documentation, for inspection of building work, means the following documents given for the building work—

Schedule 2 (continued)

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

IPA means the *Integrated Planning Act 1997*.

IPA Regulation means the *Integrated Planning Regulation 1998*.

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

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

local government building certifier for—

- (a) a building—means a building certifier appointed or employed by the local government for the building; or
- (b) a building development application or development approval—means a building certifier appointed or employed by the local government for the application or approval.

local planning instrument see IPA, schedule 10.⁹¹

negotiated decision notice see IPA, section 3.5.17(2).⁹²

notice means a written notice.

outdoor swimming pool means a swimming pool other than an indoor swimming pool.

owner, of a building or structure, means—

91 IPA, schedule 10 (Dictionary)

92 IPA, section 3.5.17 (Changing conditions and other matters during the applicant's appeal period)

Schedule 2 (continued)

- (a) if the building or structure is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the primary thoroughfare body corporate; or
- (b) if the building or structure is subject to the *Mixed Use Development Act 1993*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the community body corporate; or
- (c) subject to paragraphs (a) and (b), if the building or structure is subject to the *Building Units and Group Titles Act 1980*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate; or
- (d) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for a single community titles scheme—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate for the scheme; or
- (e) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for 2 or more community titles schemes—
 - (i) for a single lot in the building or structure—the registered proprietor; or

Schedule 2 (continued)

- (ii) for 2 or more lots in the building or structure—the body corporate for the community titles scheme that is a principal scheme; or
- (f) if the building or structure is part of a time-sharing scheme and the name and address of a person has been notified under the *Local Government Act 1993*, section 1124⁹³—the person; or
- (g) if the building or structure is on land being bought from the State for an estate in fee simple under the *Land Act 1994*—the buyer; or
- (h) if the building or structure is on land granted in trust or reserved and set apart and placed under the control of trustees under the *Land Act 1994*—the trustees of the land; or
- (i) if paragraphs (a) to (h) do not apply—the person for the time being entitled to receive the rent for the building or structure or would be entitled to receive the rent for the building or structure if the building or structure were let to a tenant at a rent.

performance requirements means any of the following—

- (a) the performance requirements under the BCA;
- (b) the performance criteria under the QDC;
- (c) a requirement for the assessment of building work for which a discretion may need to be exercised under this Act.

planning scheme see IPA, section 2.1.1.

pool owner, for chapter 8, see section 232.

portable wading pool means a pool that—

- (a) is capable of being filled with water to a depth of no more than 450mm; and
- (b) has a volume of no more than 2000L; and

93 *Local Government Act 1993*, section 1124 (Notice of time share scheme to local government)

Schedule 2 (continued)

(c) has no filtration system.

private certification endorsement see section 160(a).

private certifier see section 9(1).

private certifier (class A) see section 9(2).

private certifier (class B) see section 9(3).

private certifier employer see section 138(1)(b).

private certifying functions see section 47(3).

professional misconduct, for a building certifier or former building certifier, includes the following—

(a) conduct that—

- (i) shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building certifying functions; and
- (ii) compromises the health or safety of a person or the amenity of a person's property or significantly conflicts with a local planning scheme; and

Example of significantly conflicts with a local planning scheme—

The approved building work compromises the outcomes sought by the planning scheme.

(iii) is contrary to a function under this Act or another Act regulating building certifiers (including private certifiers for building work), including, for example—

- (A) disregarding relevant and appropriate matters; and
- (B) acting outside the scope of the building certifier's powers; and
- (C) acting beyond the scope of the building certifier's competence; and
- (D) contravening the code of conduct; and

Schedule 2 (continued)

- (E) falsely claiming the building certifier has the qualifications, necessary experience or licence to be engaged as a building certifier;
- (b) seeking, accepting or agreeing to accept a benefit, whether for the benefit of the building certifier or another person, as a reward or inducement to act in contravention of—
 - (i) this Act; or
 - (ii) another Act regulating building certifiers, including private certifiers for building work;
- (c) failing to comply with an order of the BSA or the Commercial and Consumer Tribunal;
- (d) fraudulent or dishonest behaviour in performing building certifying functions;
- (e) other improper or unethical conduct;
- (f) repeated unsatisfactory conduct.

properly made application, for a building development application, means a building development application that—

- (a) is a properly made development application under IPA; and
- (b) complies with any relevant additional requirements under chapter 3 for building development applications.

public sector entity means—

- (a) a department or part of a department; or
- (b) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

QDC see section 13.

QDC boundary clearance and site cover provisions means the aspects, mentioned in schedule 1, of parts 11 and 12 of the document called ‘Queensland Development Code’, published by the department.

Schedule 2 (continued)

QFRS means the Queensland Fire and Rescue Service established under the *Fire and Rescue Service Act 1990*.

Queensland Development Code see section 13.

referral agency means a referral agency under IPA.

register, when used as a noun, means the register of building certifiers that BSA keeps under section 179.

residential land means land on which a class 1 or 2 building is constructed, or is to be constructed, and includes land—

- (a) adjacent to the land; and
- (b) in the same ownership as the land; and
- (c) used in association with the land.

revocation notice see section 242(3).

self-assessable building work see section 21(1).

show cause notice, for—

- (a) chapter 6, part 3—see section 175(1); or
- (b) chapter 9—see section 247(1).

show cause period, for—

- (a) chapter 6, part 3—see section 175(2)(f); or
- (b) chapter 6, part 4—see section 206(2)(c).

site works means each of the following—

- (a) building work of a type mentioned in section 5(1)(b) or (c);
- (b) drainage for the building work, other than drainage that is plumbing work or drainage work under the *Plumbing and Drainage Act 2002*.

special fire service means any of the following—

- (a) fire mains (other than fire mains that connect only fire hose reels;
- (b) fire hydrants;
- (c) sprinklers (including wall-wetting sprinklers);

Schedule 2 (continued)

- (d) special automatic fire suppression systems (including foam, deluge and gas flooding systems);
- (e) fire detection and alarm systems (other than stand-alone smoke alarms not required to be interconnected or connected to a fire indicator panel);
- (f) fire control centres;
- (g) stairwell pressurisation systems;
- (h) air-handling systems used for smoke control;
- (i) smoke and heat venting systems;
- (j) smoke exhaust systems;
- (k) emergency warning and intercommunication systems;
- (l) emergency lifts;
- (m) vehicular access for large isolated buildings;
- (n) services provided under conditions imposed under section 79;
- (o) services required under the BCA, clause E1.10.

special structure means a structure that can not be classified under the BCA, part A3.

State includes territory.

structure includes a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure.

substantially completed, for a building, see section 101.

supporting documents, for a building development application, see section 23.

swimming pool means an excavation or structure—

- (a) capable of being filled with water to a depth of 300mm or more; and
- (b) capable of being used for swimming, bathing, wading, paddling or some other human aquatic activity; and

Schedule 2 (continued)

- (c) solely or principally used, or designed, manufactured or adapted to be solely or principally used, for the purposes mentioned in paragraph (b) despite its current use;

and includes a spa pool, spa tub or similar thing (whether portable or fixed) and a wading pool (other than a portable wading pool), but does not include—

- (d) a fish pond or pool solely or principally used, or designed, manufactured or adapted to be solely or principally used, for ornamental purposes; or
- (e) a dam or tank solely or principally used, or designed, manufactured or adapted to be solely or principally used, for aquaculture, marine research or storage of water; or
- (f) a watercourse; or
- (g) a portable wading pool.

Tribunal Act means the *Commercial and Consumer Tribunal Act 2003*.

unsatisfactory conduct, for a building certifier or former building certifier, includes the following—

- (a) conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building or private certifying functions;
- (b) conduct that is contrary to a function under this Act or another Act regulating building certifiers (including private certifiers for building work), including, for example—
 - (i) disregarding relevant and appropriate matters; and
 - (ii) acting outside the scope of the building certifier's powers; and
 - (iii) acting beyond the scope of the building certifier's competence; and
 - (iv) contravening the code of conduct;

Schedule 2 (continued)

- (c) conduct that is of a lesser standard than the standard that might reasonably be expected of the building certifier by the public or the building certifier's professional peers.

variation application see section 38(1).

watercourse means—

- (a) a canal, creek, river or stream in which water flows permanently or intermittently; or
- (b) an ocean, a lake or other collection of water (whether permanent or intermittent).

young child means a child under the age of 5 years.

Endnotes

1 Index to 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 December 2006. Future amendments of the Building Act 1975 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

Key	Explanation	Key	Explanation
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	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1991 Act No. 52 1991 SL No. 181	1 January 1992	1 June 1992
2	1993 Act No. 76	26 March 1994	26 March 1994
2A	1995 Act No. 57	28 November 1995	26 June 1996
2B	1997 Act No. 28	13 July 1997	12 August 1997
3	1998 Act No. 13	30 April 1998	30 April 1998
3A	1998 Act No. 31	12 October 1998	3 November 1998
3B	2000 Act No. 4	16 March 2000	23 March 2000
3C	2000 Act No. 5	4 September 2000	10 October 2000
3D	2001 Act No. 100	19 December 2001	2 January 2002

Reprint No.	Amendments included	Effective	Notes
3E	2002 Act No. 7	1 July 2002	
3F	2002 Act No. 77	7 February 2003	R3F withdrawn, see R4
4	—	7 February 2003	

Reprint No.	Amendments included	Effective	Notes
4A rv	2003 Act No. 53	1 October 2003	
4B rv	2002 Act No. 77	14 November 2003	
	2003 Act No. 64		
4C rv	2004 Act No. 53	29 November 2004	
4D rv	2002 Act No. 77 (amd	14 December 2004	
	2003 Act No. 30;		
	2003 Act No. 64)		
4E	2005 Act No. 14	22 April 2005	
4F	2005 Act No. 23	19 May 2005	
4G	2006 Act No. 11	30 March 2006	
4H	2006 Act No. 29	28 August 2006	
4I	2006 Act No. 36	1 September 2006	Act renumbered
4J	—	3 September 2006	prov exp 2 September 2006 R4J withdrawn, see R5
5	—	3 September 2006	
5A	2006 Act No. 39	30 October 2006	
5B	2006 Act No. 49	10 November 2006	
5C	2006 Act No. 59	7 December 2006	R5C withdrawn, see R6
6	—	7 December 2006	

5 Tables in earlier reprints

Name of table	Reprint No.
Changed citations and remade laws	2
Changed names and titles	2
Corrected minor errors	1, 3
Obsolete and redundant provisions	2
Renumbered provisions	1

6 List of legislation

Building Act 1975 No. 11

date of assent 15 May 1975

pts 5–6 and 8 and sch commenced 1 April 1976 (proc pubd gaz 6 March 1976 p 886)

remaining provisions commenced 31 May 1975 (proc pubd gaz 31 May 1975 p 748)

amending legislation—

Building Act Amendment Act 1978 No. 47

date of assent 12 June 1978

commenced 21 September 1978 (proc pubd gaz 23 September 1978 p 245)

Builders' Registration and Home-owners' Protection Act 1979 No. 69 s 4(2)–(3)

date of assent 21 December 1979

commenced 19 May 1980 (proc pubd gaz 12 April 1980 p 1344)

Building Act Amendment Act 1981 No. 53

date of assent 12 June 1981

ss 1–2 commenced on date of assent

remaining provisions commenced 29 June 1981 (proc pubd gaz 27 June 1981 p 1710)

Building Act Amendment Act 1984 No. 45

date of assent 10 May 1984

ss 1–2 commenced on date of assent

ss 3, 5(c), 17, 23, 25 and 26 commenced 7 July 1984 (proc pubd gaz 7 July 1984 p 1608)

remaining provisions commenced 2 June 1984 (proc pubd gaz 2 June 1984 p 987)

Building Act Amendment Act 1984 (No. 2) No. 114

date of assent 18 December 1984

ss 1–2 commenced on date of assent

remaining provisions commenced 2 March 1985 (proc pubd gaz 23 February 1985 p 942)

Building Act Amendment Act 1987 No. 69

date of assent 1 December 1987

ss 1–2 commenced on date of assent

remaining provisions commenced 28 March 1988 (proc pubd gaz 26 March 1988 p 1735)

Public Service Management and Employment Act 1988 No. 52 s 44 sch 3

date of assent 12 May 1988

commenced 18 July 1988 (proc pubd gaz 16 July 1988 p 2876)

Local Government (Planning and Environment) Act 1990 No. 61 s 8.8 schs 1, 2

date of assent 18 September 1990

commenced 15 April 1991 (proc pubd gaz 6 April 1991 p 2009)

Local Government Act and Other Acts Amendment Act 1990 No. 107 pt 4

date of assent 18 December 1990

commenced 1 February 1991 (proc pubd gaz 19 January 1991 p 144)

Building Act Amendment Act 1991 No. 52

date of assent 10 September 1991

ss 1.1–1.2 commenced on date of assent

remaining provisions commenced 1 January 1992 (1991 SL No. 180)

Standard Building By-law (Swimming Pool Fencing) Order 1991 SL No. 75

pubd gaz 14 September 1991 pp 128–133

commenced 14 September 1991 (see s 2)

Standard Building By-laws Amendment Order 1991 SL No. 181

pubd gaz 21 December 1991 pp 2089–129

ss 1, 3 commenced on date of publication

remaining provisions commenced 1 January 1992 (see s 3)

Local Government Act 1993 No. 70 ss 1–2, 804 sch (this Act is amended, see amending legislation below)

date of assent 7 December 1993

ss 1–2 commenced on date of assent
 remaining provisions commenced 26 March 1994 (see s 2(5))

amending legislation—

Local Government Legislation Amendment Act 1994 No. 1 pt 3 (amends 1993 No. 70 above)

date of assent 24 February 1994
 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
 commenced on date of assent

Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 ss 1–2, 6 sch 2

date of assent 14 September 1994
 ss 1–2 commenced on date of assent
 remaining provisions commenced 18 November 1994 (1994 SL No. 399)

Electricity Act 1994 No. 64 ss 1–2, 293 sch 4

date of assent 1 December 1994
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 January 1995 (1994 SL No. 467)

Statute Law (Minor Amendments) Act 1995 No. 50 ss 1–3, sch

date of assent 22 November 1995
 commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2

date of assent 28 November 1995
 commenced on date of assent

Electricity Amendment Act 1997 No. 26 ss 1–2, 57 sch

date of assent 22 May 1997
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 1997 (1997 SL No. 177)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3

date of assent 22 May 1997
 ss 1–2 commenced on date of assent
 remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 2

date of assent 23 March 1998
 ss 1–2 commenced on date of assent
 ss 3, 9 (so far as it inserts the definitions “accrediting body”, “building certifier”, “court” and “private certifier”), 19 (so far as it inserts pt 6B div 1) commenced 30 March 1998 (1998 SL No. 55)
 remaining provisions commenced 30 April 1998 (1998 SL No. 55)

Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(5) pt 3

date of assent 3 September 1998
 ss 1–2 commenced on date of assent
 ss 59, 61, 65 commenced 12 October 1998 (1998 SL No. 270)

remaining provisions commenced 4 September 2000 (automatic commencement under AIA s 15DA(2)) (1999 SL No. 193 s 2)

Local Government and Other Legislation Amendment Act 2000 No. 4 ss 1, 2(5) pt 3 s 94 sch

date of assent 16 March 2000
commenced on date of assent (see s 2(5))

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3

date of assent 23 March 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Integrated Planning and Other Legislation Amendment Act 2001 No. 100 pts 1, 3

date of assent 19 December 2001
ss 1–2, 86, 88 commenced on date of assent (see s 2(1))
remaining provisions never proclaimed into force
Note—AIA s 15DA does not apply to this Act (see s 2(3))

Building and Other Legislation Amendment Act 2002 No. 7 pts 1–2

date of assent 19 April 2002
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2002 (2002 SL No. 171)

Plumbing and Drainage Act 2002 No. 77 ss 1–2, pt 11 (this Act is amended, see amending legislation below)

date of assent 13 December 2002
ss 1–2 commenced on date of assent
pt 11 hdg, ss 160, 166 commenced 7 February 2003 (2003 SL No. 14)
s 173 (to the extent it ins new s 30A) commenced 14 December 2004 (automatic commencement under AIA s 15DA(2) (2003 SL No. 273 s 2))
remaining provisions commenced 14 November 2003 (2003 SL No. 272)
amending legislation—

Commercial and Consumer Tribunal Act 2003 No. 30 ss 1–2, 169 sch 1 amdts 4–27 (amends 2002 No. 77 above)

date of assent 23 May 2003
ss 1–2 commenced on date of assent
remaining provisions commenced on 1 July 2003 (see s 2)

Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(3)(e), 136–138 (amends 2002 No. 77 above)

date of assent 16 October 2003
ss 1–2 commenced on date of assent
remaining provisions commenced on date of assent (see s 2(3)(e))

Building Amendment Act 2003 No. 53

date of assent 15 September 2003
ss 1–2 commenced on date of assent
remaining provisions commenced 1 October 2003 (2003 SL No. 232)

Integrated Planning and Other Legislation Amendment Act 2003 No. 64 ss 1, 2(4), pt 3

date of assent 16 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 14 November 2003 (2003 SL No. 271)

Statute Law (Miscellaneous Provisions) Act 2004 No. 53

date of assent 29 November 2004

commenced on date of assent

Tourism, Fair Trading and Wine Industry Development (Miscellaneous Provisions) Act 2005 No. 14

date of assent 22 April 2005

commenced on date of assent

Building Amendment Act 2005 No. 23

date of assent 19 May 2005

commenced on date of assent

Integrated Planning and Other Legislation Amendment Act 2006 No. 11 s 1, pt 3

date of assent 30 March 2006

commenced on date of assent

Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 28 August 2006 (2006 SL No. 213)

Building and Other Legislation Amendment Act 2006 No. 36 pts 1–2

date of assent 10 August 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 September 2006 (2006 SL No. 226)

Education (General Provisions) Act 2006 No. 39 ss 1, 2(3), 512(1) sch 1

date of assent 11 August 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 30 October 2006 (2006 SL No. 247)

Fire and Rescue Service Amendment Act 2006 No. 49 ss 1, 2(2), pt 4

date of assent 10 November 2006

commenced on date of assent (see s 2(2))

Wild Rivers and Other Legislation Amendment Act 2006 No. 59 pts 1, 3

date of assent 7 December 2006

commenced on date of assent

7 List of annotations

This reprint has been renumbered—see tables of renumbered provisions in endnote 9.

Title sub 1993 No. 70 s 804 sch

amd 1998 No. 13 s 4
sub 2006 No. 36 s 4

CHAPTER 1—PRELIMINARY

ch hdg ins 2006 No. 36 s 5

PART 1—INTRODUCTION

pt hdg sub 2006 No. 36 s 5

Short title

prov hdg sub 1998 No. 13 s 5

s 1 sub 2006 No. 36 s 5

Act binds all persons

s 2 prev s 2 om 1998 No. 13 s 6

pres s 2 sub 1978 No. 47 s 4

amd 1981 No. 53 s 4; 1984 No. 45 s 4; 1991 No. 52 s 2.3; 1993 No. 70 s 804
sch; 1994 No. 49 s 6 sch 2; 1994 No. 64 s 293 sch 4; 1997 No. 26 s 57 sch

sub 1998 No. 13 s 7; 2006 No. 36 s 5

Simplified outline of main provisions of Act

s 3 prev s 3 om 1991 No. 52 s 2.2

pres s 3 sub 1998 No. 13 s 9

Note—s 3 prev contained definitions for this Act. Definitions are now located
in the schedule—Dictionary. Annotations for definitions contained in s 3
are now located in the annotations for the schedule.

amd 2004 No. 53 s 2 sch

sub 2006 No. 36 s 5

PART 2—INTERPRETATION

pt hdg amd 1993 No. 70 s 804 sch

sub 1998 No. 13 s 10; 2006 No. 36 s 5

Division 1—Dictionary

div hdg ins 2006 No. 36 s 5

Definitions

s 4 amd 1984 No. 114 s 5

sub 1993 No. 70 s 804 sch; 1993 No. 76 s 3 sch 1

amd 1995 No. 57 s 4 sch 2

sub 1998 No. 13 s 10

amd 2002 No. 77 s 162

sub 2006 No. 36 s 5

Use of Crown buildings in emergency

s 4A ins 1991 No. 52 s 2.4

amd 1993 No. 70 s 804 sch

om 1998 No. 13 s 8

Division 2—Key definitions

div hdg ins 2006 No. 36 s 5

What is “building work”

s 5 prev s 5 om R1 (see RA s 39)

pres s 5 ins 1998 No. 13 s 10
sub 2006 No. 36 s 5

What is a “building development application”

s 6 prev s 6 om 1993 No. 76 s 3 sch 1
pres s 6 ins 2006 No. 36 s 5

What is “building assessment work”

s 7 prev s 7 om 1993 No. 76 s 3 sch 1
pres s 7 ins 2006 No. 36 s 5

Who is a “building certifier”

s 8 prev s 8 om R2 (see RA s 39)
pres s 8 ins 2006 No. 36 s 5

Private certifiers and their classes

s 9 prev s 9 sub 1978 No. 47 s 6
amd 1981 No. 53 s 5; 1984 No. 45 s 6; 1987 No. 69 s 4; 1990 No. 107 s 4.2
om 1993 No. 76 s 3 sch 1
pres s 9 ins 2006 No. 36 s 5

What is a “building certifying function”

s 10 prev s 10 om 1996 No. 76 s 3 sch 1
pres s 10 ins 2006 No. 36 s 5

Who is the “assessment manager” for a building development application

s 11 ins 2006 No. 36 s 5

**By-laws prescribing requirements as to erection of buildings of Class I and X under
Standard Building By-laws**

s 11A om 1987 No. 69 s 5

What is the “Building Code of Australia” (or “BCA”)

s 12 prev s 12 amd 1991 No. 52 s 2.14; 1993 No. 70 s 804 sch
sub 1998 No. 13 s 10
om 2006 No. 36 s 5
pres s 12 ins 2006 No. 36 s 5

By-laws Variation Subcommittee

s 12A om 1991 No. 52 s 2.6

Delegate member of By-laws Variation Subcommittee

s 12AA om 1991 No. 52 s 2.6

Variation of Standard Building By-laws

s 12B sub 1984 No. 45 s 10
amd 1991 No. 52 s 2.7; 1993 No. 70 s 804 sch
om 1998 No. 13 s 10

Constitution of building tribunal

s 12BA ins 1991 No. 52 s 2.8
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 10

Determination of application to vary

s 12C sub 1984 No. 45 s 11
 amd 1991 No. 52 s 2.9
 om 1998 No. 13 s 10

Effect of variation

s 12D ins 1981 No. 53 s 6
 amd 1984 No. 45 s 12; 1991 No. 52 s 2.10; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 10

Public notice of guidelines

prov hdg amd 1991 No. 52 s 2.11
s 12E orig s 12E ins 1981 No. 53 s 6
 amd 1984 No. 45 s 13; 1991 No. 52 s 2.11; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 10
 prev s 12E ins 2002 No. 7 s 4
 om 2006 No. 36 s 11

Access to guidelines

s 12F orig s 12F ins 1981 No. 53 s 6
 amd 1984 No. 45 s 14; 1991 No. 52 s 2.12
 om 1998 No. 13 s 10
 prev s 12F ins 2002 No. 7 s 4
 om 2006 No. 36 s 11

Effect of committee's decision

s 12G ins 1981 No. 53 s 6
 amd 1991 No. 52 s 2.13
 om 1998 No. 13 s 10

Appeals about conformity with fire safety standard

s 12K ins 2002 No. 7 s 4
 amd 2005 No. 14 s 2 sch
 om 2006 No. 36 s 16

Development approval for building work for budget accommodation buildings

s 12Q ins 2002 No. 7 s 4
 amd 2006 No. 11 s 84
 om 2006 No. 36 s 22

What is the "Queensland Development Code" (or "QDC")

s 13 prev s 13 ins 1993 No. 70 s 804 sch
 sub 1998 No. 13 s 12
 amd 2002 No. 77 s 165
 om 2006 No. 36 s 27
 pres s 13 ins 2006 No. 36 s 5

When building work "complies" with the BCA or QDC

s 14 ins 2006 No. 36 s 5

Interpretation

s 14A om 1991 No. 52 s 2.15

Modification of Standard Building By-Laws

s 14B om 1991 No. 52 s 2.15

By-laws (Expo '88) Variation Committee

s 14C om 1991 No. 52 s 2.15

Remuneration

s 14D om 1991 No. 52 s 2.15

Quorum

s 14E om 1991 No. 52 s 2.15

Presiding at meetings

s 14F om 1991 No. 52 s 2.15

Application of certain sections

s 14G om 1991 No. 52 s 2.15

Division 3—Other references

div hdg ins 2006 No. 36 s 5

References to changed BCA or QDC provisions 15 prev s 15 amd 1991 No. 52 s 2.17
om 1998 No. 13 s 11
pres s 15 ins 2006 No. 36 s 5**Reference in Act to applicants, development, assessment managers, referral agencies, building work or building certifiers**s 16 prev s 16 amd 1979 No. 69 s 4(2); 1984 No. 45 s 16; 1991 No. 52 s 2.18; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11
pres s 16 ins 2006 No. 36 s 5**Reference in Act to local government**s 17 prev s 17 om 1998 No. 13 s 11
pres s 17 ins 2006 No. 36 s 5**Reference to local government includes any other assessment manager under IPA**s 18 prev s 18 amd 1984 No. 114 s 9; 1991 No. 52 s 2.19
om 1998 No. 13 s 11
pres s 18 ins 2006 No. 36 s 5**Reference to a proposed building or structure**s 19 prev s 19 amd 1991 No. 52 s 2.20; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11
pres s 19 ins 2006 No. 36 s 5**Building tribunals**s 19A ins 1991 No. 52 s 2.21
om 1998 No. 13 s 11**Membership of building tribunal**s 19B ins 1991 No. 52 s 2.21
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Procedure of building tribunal

s 19C ins 1991 No. 52 s 2.22
om 1998 No. 13 s 11

Constitution of building tribunal

s 19D ins 1991 No. 52 s 2.22
om 1998 No. 13 s 11

Referee not to act as member of building tribunal in certain cases

s 19E ins 1991 No. 52 s 2.22
om 1998 No. 13 s 11

CHAPTER 2—WHEN BUILDING WORK IS ASSESSABLE, SELF-ASSESSABLE OR EXEMPT DEVELOPMENT

ch hdg ins 2006 No. 36 s 5

Building work that is assessable development for IPA

s 20 orig s 20 sub 1991 No. 52 s 2.23
om 1998 No. 13 s 11
prev s 20 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12
amd 2003 No. 53 s 9; 2005 No. 14 s 2 sch
om 2006 No. 36 s 32
pres ins 2006 No. 36 s 5

Building Industry Complaints Tribunal

s 20A om 1991 No. 52 s 2.24

Appointment of members of Tribunal

s 20B om 1991 No. 52 s 2.24

Term of Appointment of Tribunal member

s 20C om 1991 No. 52 s 2.24

Casual vacancies

s 20D om 1991 No. 52 s 2.24

Functions of Tribunal

s 20E om 1991 No. 52 s 2.24

Proceedings of Tribunal

s 20F om 1991 No. 52 s 2.24

Secretary to assist Tribunal

s 20G om 1991 No. 52 s 2.24

Building work that is self-assessable for IPA

s 21 prev s 21 om 1998 No. 13 s 11
pres s 21 ins 2006 No. 36 s 5

Building work that is exempt development for IPA

s 22 prev s 22 amd 1978 No. 47 s 7; 1987 No. 69 s 6; 1991 No. 52 s 2.25; 1995 No. 57 s 4 sch 2
om 1998 No. 13 s 11
pres s 22 ins 2006 No. 36 s 5

CHAPTER 3—ADDITIONAL REQUIREMENTS FOR BUILDING DEVELOPMENT APPLICATIONS**ch hdg** ins 2006 No. 36 s 5**PART 1—REQUIREMENTS FOR SUPPORTING DOCUMENTS****pt hdg** ins 2006 No. 36 s 5**Operation of pt 1****s 23** prev s 23 amd 1991 No. 52 s 2.26
om 1998 No. 13 s 11
pres s 23 ins 2006 No. 36 s 5**Required information for supporting documents****s 24** prev s 24 om 1998 No. 13 s 11
pres s 24 ins 2006 No. 36 s 5**General requirements for supporting documents****s 25** prev s 25 amd 1991 No. 52 s 2.27
om 1998 No. 13 s 11
pres s 25 ins 2006 No. 36 s 5**Requirements if alternative solution used****s 26** prev s 26 sub 1991 No. 52 s 2.28
om 1998 No. 13 s 11
pres s 26 ins 2006 No. 36 s 5**PART 2—OTHER REQUIREMENTS****pt hdg** ins 2006 No. 36 s 5**Application for building work for budget accommodation building****s 27** prev s 27 amd 1991 No. 52 s 2.29; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11
pres s 27 ins 2006 No. 36 s 5**Application to build swimming pool on residential land must include fencing****s 28** orig s 28 sub 1978 No. 47 s 8
amd 1984 No. 114 s 10
om 1998 No. 13 s 11
prev s 28 ins 1998 No. 13 s 19
sub 2002 No. 77 s 168
om 2006 No. 36 s 38
pres s 28 ins 2006 No. 36 s 5**Function of accreditation standards body****s 28A** orig s 28A ins 1978 No. 47 s 9
om 1998 No. 13 s 11
prev s 28A ins 2002 No. 77 s 169
om 2006 No. 36 s 38**Application must include required site works****s 29** orig s 29 amd 1991 No. 52 s 2.30
om 1998 No. 13 s 11
prev s 29 ins 1998 No. 13 s 19
amd 1998 No. 31 s 62

sub 2002 No. 77 s 171
 om 2006 No. 36 s 38
 pres s 29 ins 2006 No. 36 s 5

Application for licence

s 29A ins 2002 No. 77 s 172
 om 2006 No. 36 s 38

**CHAPTER 4—ASSESSMENT OF BUILDING DEVELOPMENT APPLICATIONS
 AND CARRYING OUT SELF-ASSESSABLE BUILDING WORK**

ch hdg ins 2006 No. 36 s 5

**PART 1—LAWS AND OTHER DOCUMENTS UNDER WHICH BUILDING
 WORK MUST BE ASSESSED**

pt hdg ins 2006 No. 36 s 5

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

div hdg ins 2006 No. 36 s 5

Relevant laws and other documents for assessment of building work

s 30 orig s 30 amd 1988 No. 52 s 44 sch 3; 1991 No. 52 s 2.31; 1993 No. 70 s 804
 sch
 om 1998 No. 13 s 11
 prev s 30 ins 1998 No. 13 s 19
 sub 1998 No. 31 s 63; 2002 No. 77 s 173
 om 2006 No. 36 s 38
 pres s 30 ins 2006 No. 36 s 5

Restrictions on building certifier without endorsement

s 30A prev s 30A ins 1978 No. 47 s 10
 amd 1984 No. 45 s 18; 1991 No. 52 s 2.32; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 11
 pres s 30A ins 2002 No. 77 s 173
 om 2006 No. 36 s 38

Keeping register

prov hdg amd 1991 No. 52 s 2.33
s 30B prev s 30B ins 1978 No. 47 s 10
 sub 1981 No. 53 s 7
 amd 1984 No. 45 s 19; 1984 No. 114 s 11; 1987 No. 69 s 7; 1991 No. 52 s
 2.33; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 11
 pres s 30B ins 2002 No. 77 s 173 (amd 2003 No. 30 s 169 sch 1)
 amd 2005 No. 14 s 2 sch
 om 2006 No. 36 s 38

Local government to tell applicant of planning law requirements

s 30BA ins 1984 No. 114 s 12
 sub 1993 No. 70 s 804 sch
 om 1998 No. 13 s 11

Times within which applications for approval to the carrying out of building work to be decided

s 30BB ins 1984 No. 114 s 12
 amd 1991 No. 52 s 2.34; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 11

When application for approval to the carrying out of building work to be refused

s 30BC ins 1984 No. 114 s 12
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 11

No right of objection under s 31

s 30BD ins 1984 No. 114 s 12
 amd 1991 No. 52 s 2.35
 om 1998 No. 13 s 11

Interpretation

s 30BE ins 1984 No. 114 s 12
 om 1993 No. 70 s 804 sch

Application of ss 30BA, 30BB and 30BC

s 30BF ins 1984 No. 114 s 12
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 11

Local government to consider amenity and aesthetics on applications to erect certain buildings

prov hdg amd 1991 No. 52 s 2.36
s 30BG ins 1987 No. 69 s 8
 amd 1991 No. 52 s 2.36; amd 1993 No. 70 s 804 sch; 1995 No. 57 s 4 sch 2
 om 1998 No. 13 s 11

Provision of security in certain cases

s 30BH ins 1991 No. 52 s 2.37
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 11

Inspection of register

s 30C prev s 30C ins 1981 No. 53 s 8
 amd 1984 No. 45 s 20; 1984 No. 114 s 13; 1991 No. 52 s 2.38; 1993 No. 70 s
 804 sch
 om 1998 No. 13 s 11
 pres s 30C ins 2002 No. 77 s 173
 om 2006 No. 36 s 38

Application of Act etc. to offshore building work

prov hdg amd 1984 No. 45 s 21
s 30D ins 1981 No. 53 s 9
 amd 1984 No. 45 s 21; 193 No. 70 s 804 sch
 om 1998 No. 13 s 11

Meaning of terms

s 30E ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Control of swimming pool fencing

s 30F ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Fencing of above-ground outdoor swimming pools

s 30I ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Incorporation of buildings as part of fencing—existing swimming pools

s 30J ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Incorporation of buildings as part of fencing—new swimming pools

s 30K ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Further provision about incorporation of class 10 building as part of fencing

s 30L ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Variations

s 30M ins 1993 No. 70 s 804 sch
amd 1995 No. 50 s 3 sch
om 1998 No. 13 s 12

Exemptions—waterfront land

s 30O ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Exemptions—land over 4000 m²

s 30P ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Exemptions—fencing enclosing swimming pool and existing building

s 30Q ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Effect of variation or exemption subject to conditions

s 30R ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Time for compliance

s 30T ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Liability of State for offences

s 30Y ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Offences

s 30Z ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Building assessment provisions form a code for IDAS

- prov hdg** amd 1987 No. 69 s 9
s 31 orig s 31 amd 1978 No. 47 s 12; 1981 No. 53 s 11; 1984 No. 45 s 22; 1987 No. 69 s 9; 1991 No. 52 s 2.39; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
prev s 31 ins 1998 No. 13 s 19
amd 2002 No. 77 s 174
om 2006 No. 36 s 38
pres s 31 ins 2006 No. 36 s 5

Local laws, planning schemes and local government resolutions that may form part of the building assessment provisions

- s 32** orig s 32 amd 1978 No. 47 s 13; 1984 No. 45 s 23; 1987 No. 69 s 10; 1991 No. 52 s 2.40; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
prev s 32 ins 1998 No. 13 s 19
sub 2002 No. 77 s 175
om 2006 No. 36 s 38
pres s 32 ins 1998 No. 13 s 10
sub 2006 No. 36 s 5

Tabling of code

- s 32A** ins 2002 No. 77 s 175
om 2006 No. 36 s 38

Notice of approval of code

- s 32B** ins 2002 No. 77 s 175
om 2006 No. 36 s 38

Alternative planning scheme provisions to QDC boundary clearance and site cover provisions for particular buildings

- prov hdg** sub 1991 No. 52 s 2.41
s 33 prev s 33 amd 1984 No. 45 s 24; 1987 No. 69 s 11; 1991 No. 52 s 2.41; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 33 ins 2006 No. 36 s 5

Relationship between IDAS and other building assessment provisions

- prov hdg** amd 1991 No. 52 s 2.42
s 34 prev s 34 amd 1991 No. 52 s 2.42; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 34 ins 2006 No. 36 s 5

Relationship between the BCA and the QDC

- prov hdg** amd 1991 No. 52 s 2.43
s 35 prev s 35 amd 1981 No. 53 s 12; 1984 No. 45 s 25; 1991 No. 52 s 2.43; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 35 ins 2006 No. 36 s 5

Amendment of notice of objection

- s 35A** ins 1981 No. 53 s 13
 amd 1991 No. 52 s 2.44
 om 1998 No. 13 s 13

When building assessment provisions must be applied

- prov hdg** amd 1991 No. 52 s 2.45; 2002 No. 77 s 182(1)
s 36 prev s 36 amd 1991 No. 52 s 2.45; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13
 pres s 36 ins 2006 No. 36 s 5

Constitution of building tribunal

- s 36AA** ins 1991 No. 52 s 2.47
 om 1998 No. 13 s 13

Objection to building tribunal

- prov hdg** amd 1991 No. 52 s 2.46
s 36A ins 1984 No. 45 s 26
 amd 1991 No. 52 s 2.46
 om 1998 No. 13 s 13

Procedure on objection

- s 36B** ins 1984 No. 45 s 26
 amd 1991 No. 52 s 2.48; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Reference to building tribunal

- s 36C** sub 1991 No. 52 s 2.49
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Powers of building tribunal

- prov hdg** amd 1991 No. 52 s 2.50
s 36D ins 1984 No. 45 s 26
 amd 1991 No. 52 s 2.50; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Disability of members of Tribunal

- s 36E** om 1991 No. 52 s 2.51

Constitution of panel

- s 36F** ins 1987 No. 69 s 12
 amd 1991 No. 52 s 2.52
 om 1998 No. 13 s 13

Duty of panel

- s 36G** ins 1987 No. 69 s 12
 amd 1991 No. 52 s 2.53; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Powers of panel

- s 36H** ins 1987 No. 69 s 12
 om 1998 No. 13 s 13

Decision of panel

s 36I ins 1987 No. 69 s 12
 amd 1991 No. 52 s 2.54; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Objection to decision

s 36J ins 1991 No. 52 s 2.55
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Institution of objection

s 36K ins 1991 No. 52 s 2.55
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Constitution of building tribunal

s 36L ins 1991 No. 52 s 2.55
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Duty of building tribunal

s 36M ins 1991 No. 52 s 2.56
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Powers of building tribunal

s 36N ins 1991 No. 52 s 2.56
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13

Notice of determination to be given to parties

s 36O ins 1991 No. 52 s 2.56
 om 1998 No. 13 s 13

Provision for changes to building assessment provisions

prov hdg amd 1991 No. 52 s 2.58
s 37 prev s 37 sub 1981 No. 53 s 14
 amd 1991 No. 52 s 2.58
 om 1998 No. 13 s 13
 pres s 37 ins 2006 No. 36 s 5

Division 2—Variation of how particular building assessment provisions apply

div hdg ins 2006 No. 36 s 5

Applying to vary how particular building assessment provision applies

s 38 prev s 38 amd 1978 No. 47 s 15; 1984 No. 45 s 27; 1991 No. 52 s 2.59; 1993
 No. 70 s 804 sch
 om 1998 No. 13 s 13
 pres s 38 ins 2006 No. 36 s 5

Applying for fast-track decision

s 39 prev s 39 amd 1991 No. 52 s 2.60
 om 1998 No. 13 s 13
 pres s 39 ins 2006 No. 36 s 5

Effect of variation application on IDAS process

- s 40** prev s 40 amd 1991 No. 52 s 2.61
om 1998 No. 13 s 13
pres s 40 ins 2006 No. 36 s 5

Deciding variation application

- s 41** prev s 41 amd 1991 No. 52 s 2.62; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 41 ins 2006 No. 36 s 5

Criteria for decision

- prov hdg** amd 1993 No. 70 s 804 sch
sub 2002 No. 77 s 188 (amd 2003 No. 30 s 169 sch 1)
amd 2005 No. 14 s 2 sch
- s 42** prev s 42 amd 1981 No. 53 s 15; 1984 No. 45 s 28; 1987 No. 69 s 13; 1991
No. 52 s 2.63; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 42 ins 2006 No. 36 s 5

Notice of decision

- prov hdg** amd 1993 No. 70 s 804 sch
- s 43** prev s 43 amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 43 ins 2006 No. 36 s 5

Effect of variation

- s 44** prev s 44 sub 1978 No. 47 s 16
om 1998 No. 13 s 13
pres s 44 ins 2006 No. 36 s 5

PART 2—PERSONS RESPONSIBLE FOR ASSESSING BUILDING DEVELOPMENT APPLICATIONS

- pt hdg** ins 2006 No. 36 s 5

Division 1—Who carries out building assessment work

- div hdg** ins 2006 No. 36 s 5

Generally a building certifier must assess

- s 45** prev s 45 amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 45 ins 2006 No. 36 s 5

Concurrence agencies may carry out building assessment work within their jurisdiction

- s 46** prev s 46 amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 46 ins 2006 No. 36 s 5

Fees for statutory functions

- s 46A** orig s 46A om 1981 No. 53 s 16
prev s 46A ins 2001 No. 100 s 88
amd 2002 No. 77 s 189 (never proclaimed into force and om 2003 No. 64 s
138)
om 2003 No. 64 s 113

Institution of reference to Minister

s 46B om 1981 No. 53 s 16

Powers of Minister

s 46C om 1981 No. 53 s 16

Division 2—Functions of private certifiers

div hdg ins 2006 No. 36 s 5

Operation of div 2

prov hdg orig s 47 prov hdg amd 1991 No. 52 s 2.79

s 47 orig s 47 amd 1984 No. 45 s 34; 1987 No. 69 s 14; 1991 No. 52 s 2.64; 1993

No. 70 s 804 sch

om 1998 No. 13 s 13

prev s 47 ins 1978 No. 47 s 23

sub 1993 No. 70 s 804 sch; 1998 No. 13 s 20

amd 2005 No. 14 s 2 sch

om 2006 No. 36 s 50

pres s 47 ins 2006 No. 36 s 5

Functions of private certifier (class A)

prov hdg amd 1987 No. 69 s 15; 1991 No. 52 s 2.65

s 48 prev s 48 amd 1987 No. 69 s 15; 1991 No. 52 s 2.65

om 1998 No. 13 s 13

pres s 48 ins 2006 No. 36 s 5

Functions of private certifier (class B)

prov hdg prev s 49 prov hdg amd 1993 No. 70 s 804 sch; 1998 No. 13 s 21(1)

s 49 orig s 49 amd 1981 No. 53 s 17; 1987 No. 69 s 16; 1991 No. 52 s 2.66

om 1998 No. 13 s 13

prev s 49 ins 1991 No. 52 s 2.80

amd 1993 No. 70 s 804 sch; 1998 No. 13 s 21(2)–(3)

om 2006 No. 36 s 52

pres s 49 ins 2006 No. 36 s 5

Restrictions on building certifying functions that a private certifier (class B) can perform

s 50 ins 2006 No. 36 s 5

Division 3—Functions of local government

div hdg ins 2006 No. 36 s 5

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

s 51 ins 2006 No. 36 s 5

Restriction on local government issuing building development approval

s 52 ins 2006 No. 36 s 5

Approval to be sought where building erected without approval

s 52A ins 1991 No. 52 s 2.70

amd 1993 No. 70 s 804 sch

om 1998 No. 13 s 15

Local government may rely on particular compliance certificates and other documents

- s 53 orig s 53 om R1 (see RA s 40)
 prev s 53 sub 1991 No. 52 s 2.71
 om 1998 No. 13 s 15
 prev s 53 ins 1998 No. 13 s 25
 om 2006 No. 36 s 56
 pres s 53 ins 2006 No. 36 s 5

Local government may rely on documents private certifier gives it for inspection or purchase

- s 54 prev s 54 amd 1978 No. 47 s 18; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 15
 pres s 54 ins 2006 No. 36 s 5

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

- div hdg ins 2006 No. 36 s 5

Power to decide what stage of IDAS application is to resume or start

- s 55 ins 2006 No. 36 s 5

PART 3—DISCRETIONARY MATTERS IN THE ASSESSMENT OF BUILDING DEVELOPMENT APPLICATIONS

- pt hdg ins 2006 No. 36 s 5

Building certifier's discretion—BCA

- prov hdg amd 1978 No. 47 s 20; 1991 No. 52 s 2.73
 s 56 prev s 56 amd 1978 No. 47 s 20; 1981 No. 53 s 18; 1991 No. 52 s 2.73
 om 1998 No. 13 s 17
 pres s 56 ins 2006 No. 36 s 5

Building certifier's or concurrence agency's discretion—QDC

- s 57 prev s 57 amd 1978 No. 47 s 21; 1991 No. 52 s 2.74
 om 1998 No. 13 s 17
 pres s 57 ins 2006 No. 36 s 5

Survey certificate

- prov hdg amd 1991 No. 52 s 2.75
 s 58 prev s 58 amd 1991 No. 52 s 2.75
 om 1998 No. 13 s 17
 pres s 58 ins 2006 No. 36 s 5

Discretion for building development applications for particular budget accommodation buildings

- s 59 ins 1998 No. 13 s 10
 sub 2006 No. 36 s 5

Building certifier may rely on particular compliance certificates and other documents

- s 60 ins 2006 No. 36 s 5

Alterations to safe existing work may be approved on basis of earlier building assessment provisions

- s 61 prev s 61 amd 1984 No. 45 s 32; 1991 No. 52 s 2.76
 om 1998 No. 13 s 19
 pres s 61 ins 2006 No. 36 s 5

PART 4—REQUIREMENTS FOR AND RESTRICTIONS ON ASSESSING OR APPROVING BUILDING DEVELOPMENT APPLICATIONS

- pt hdg ins 2006 No. 36 s 5

Requirement to consider any advice agency response

- s 62 prev s 62 amd 1984 No. 45 s 33
 om 1998 No. 13 s 19
 pres s 62 ins 2006 No. 36 s 5

Restriction on granting building development application for budget accommodation building

- s 63 ins 2006 No. 36 s 5

Notice given to body corporate taken to be given to proprietors

- s 63A ins 1991 No. 52 s 2.77
 om 1998 No. 13 s 19

Notice given to body corporate taken to be given to lot owners

- s 63B ins 1997 No. 28 s 295 sch 3
 om 1998 No. 13 s 19

Required report before assessing application for temporary building or structure with special fire service

- s 64 ins 2006 No. 36 s 5

Offences generally and penalty

- s 64C ins 1991 No. 52 s 2.80
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 20

Continuing offences

- s 64D ins 1991 No. 52 s 2.80
 om 1998 No. 13 s 20

Land subject to registered easement or statutory covenant

- s 65 ins 2006 No. 36 s 5

Special structures

- s 66 ins 2006 No. 36 s 5

Application for approval where building work commenced

- s 66A ins 1991 No. 52 s 2.81
 om 1998 No. 13 s 23

Certain applications not made unless fees paid

- s 66B ins 1991 No. 52 s 2.81
 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 23

Temporary building or structure that does not comply with other building assessment provisions

s 67 ins 2006 No. 36 s 5

Particular alterations not permissible

s 68 ins 2006 No. 36 s 5

Statement of reasons for approving alternative solution

s 68A ins 2006 No. 59 s 21

PART 5—CONDITIONS OF BUILDING DEVELOPMENT APPROVALS

pt hdg ins 2006 No. 36 s 5

Division 1—Conditions taken to be imposed

div hdg ins 2006 No. 36 s 5

Operation of div 1

s 69 prev s 69 om R1 (see RA s 40)
pres s 69 ins 2006 No. 36 s 5

Engineering drawings

s 70 prev s 70 om R1 (see RA s 40)
pres s 70 ins 2006 No. 36 s 5

When demolition, removal and rebuilding must start and be completed

prov hdg amd 1981 No. 53 s 19; (see RA s 39)
s 71 prev s 71 amd 1981 No. 53 s 19; 1993 No. 70 s 804 sch
om 1995 No. 57 s 4 sch 2
pres s 71 ins 2006 No. 36 s 5

Building work in erosion prone area

s 72 prev s 72 om R1 (see RA s 40)
pres s 72 ins 2006 No. 36 s 5

Obligation to make current drawing available for inspection

s 73 prev s 73 om 1990 No. 61 s 8.8(1) 1st sch
pres s 73 ins 2006 No. 36 s 5

Inspection and testing of special fire service installation

s 74 prev s 74 om 1990 No. 61 s 8.8(1) 1st sch
pres s 74 ins 2006 No. 36 s 5

Earthworks and retaining walls

prov hdg amd 1981 No. 53 s 20
s 75 prev s 75 amd 1981 No. 53 s 20
om 1995 No. 57 s 4 sch 2
pres s 75 ins 2006 No. 36 s 5

Drainage of buildings or land

s 76 ins 2006 No. 36 s 5

Building work over existing sanitary drainage

s 77 prev s 77 ins 1993 No. 70 s 804 sch
om R1 (see RA s 37)
pres s 77 ins 2006 No. 36 s 5

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div hdg ins 2002 No. 77 s 170
 om 2006 No. 36 s 38

Division 1A—Objections against failure by local governments to decide applications

div hdg ins 1984 No. 45 s 26
 om 1998 No. 13 s 13

Division 1B—Objections against decisions by local governments on amenity and aesthetics

div hdg ins 1987 No. 69 s 12
 om 1998 No. 13 s 13

Division 1C—Objection by the Commissioner of Fire Service

div hdg ins 1991 No. 52 s 2.55
 om 1998 No. 13 s 13

Division 2—Jurisdiction

div hdg orig div 2 hdg amd 1991 No. 52 s 2.57
 om 1998 No. 13 s 13
 prev div 2 hdg ins 1998 No. 13 s 19
 om 2006 No. 36 s 38

Division 3—Code of conduct for building certifiers

div hdg orig div 3 hdg om 1998 No. 13 s 13
 prev div 3 hdg ins 1998 No. 13 s 19
 sub 2002 No. 77 s 175
 om 2006 No. 36 s 38

Division 3A—References to Minister against referee's determination relating to amenity of neighbourhood or aesthetics

div hdg om 1981 No. 53 s 16

Division 4—Regulation of proceedings under Act

div hdg om 1998 No. 13 s 13

SCHEDULE 1—THE QDC AS AT THE COMMENCEMENT OF S 13

ins 2006 No. 36 s 69

SCHEDULE 2—DICTIONARY

- sch hdg** sub 2006 No. 36 s 70(1)
- sch 2** prev sch sub 1991 No. 52 s 2.82
amd 1991 SL No. 181
om 1993 No. 76 s 3 sch
pres sch 2 (prev sch) ins 2004 No. 53 s 2 sch
- Note—definitions for this Act were originally located in s 3.
- def “**accreditation standards body**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def “**accrediting auditor**” ins 1998 No. 13 s 9
om from prev s 3 2002 No. 77 s 161(1)
- def “**accrediting body**” ins 1998 No. 13 s 9
om from prev s 3 2002 No. 77 s 161(1)
- def “**advice agency**” ins 2006 No. 36 s 70(3)
- def “**AIBS**” ins 2006 No. 36 s 70(3)
- def “**allotment**” ins 2006 No. 36 s 70(3)
- def “**alterations**” ins 2006 No. 36 s 70(3)
- def “**alternative solution**” ins 2006 No. 36 s 70(3)
- def “**another relevant Act**” ins 2006 No. 36 s 70(3)
- def “**appropriately licensed**” ins 2006 No. 36 s 70(3)
- def “**approval documents**” ins 2006 No. 36 s 70(3)
amd 2006 No. 59 s 28(1)
- def “**approved form**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
- def “**area**” om from prev s 3 1993 No. 70 s 804 sch
- def “**assessable development**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
amd 2006 No. 59 s 28(2)
- def “**assessment manager**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def “**assistant building surveyor**” ins 2006 No. 36 s 70(3)
- def “**auditor**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
- def “**BCA**” ins 2006 No. 36 s 70(3)
- def “**BCA classification**” ins 2006 No. 36 s 70(3)
- def “**BCA classification change**” ins 2006 No. 36 s 70(3)
- def “**BSA**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
- def “**budget accommodation building**” ins 2006 No. 36 s 70(3)
- def “**build**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
- def “**building**” amd 1991 No. 52 s 2.5(a)
sub 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def “**building and development tribunal**” ins 2005 No. 14 s 2 sch
amd 2006 No. 36 s 70(4)
- def “**building assessment provisions**” ins 2006 No. 36 s 70(3)

- def **“building assessment work”** ins 2006 No. 36 s 70(3)
- def **“building certifier”** ins 1998 No. 13 s 9
sub 1998 No. 31 s 60(1)–(2); 2002 No. 77 s 161(1)–(2)
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def **“building certifying function”** ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def **“Building Code of Australia”** ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def **“building development application”** ins 2006 No. 36 s 70(3)
- def **“building development approval”** ins 2006 No. 36 s 70(3)
- def **“building site”** ins 2006 No. 36 s 70(3)
- def **“building surveying technician”** ins 2006 No. 36 s 70(3)
- def **“building surveyor”** ins 2006 No. 36 s 70(3)
- def **“building tribunal”** prev def ins 1991 No. 52 s 2.5(b)
om from prev s 3 1998 No. 13 s 9
- def **“building work”** ins 1984 No. 45 s 5(a)
amd 1991 No. 52 s 2.5(c); 1993 No. 70 s 804 sch
sub 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def **“by-law”** om from prev s 3 1993 No. 70 s 804 sch
- def **“certificate of classification”** ins 2006 No. 36 s 70(3)
- def **“certificate requirements”** ins 2006 No. 36 s 70(3)
- def **“certify”** ins 2006 No. 36 s 70(3)
- def **“Chairman”** ins 1978 No. 47 s 5
om from prev s 3 1998 No. 13 s 9
- def **“chairperson”** om from prev s 3 1993 No. 70 s 804 sch
- def **“class”** ins 2006 No. 36 s 70(3)
- def **“client”** ins 2006 No. 36 s 70(3)
- def **“code of conduct”** ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def **“Commercial and Consumer Tribunal”** ins 2005 No. 14 s 2 sch
- def **“Committee”** om from prev s 3 1998 No. 13 s 9
- def **“complaint”** ins 1998 No. 13 s 9
sub 2002 No. 77 s 161(1)–(2)
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def **“compliance certificate”** ins 2006 No. 36 s 70(3)
- def **“complies”** ins 2006 No. 36 s 70(3)
- def **“concurrence agency”** ins 2006 No. 36 s 70(3)
- def **“condition time”** ins 2006 No. 36 s 70(3)
- def **“construct”** ins 2003 No. 53 s 4(1)
reloc 2004 No. 53 s 2 sch
amd 2006 No. 36 s 70(7)
- def **“convicted”** ins 2006 No. 36 s 70(3)

- def “**court**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
- def “**decision notice**” ins 2006 No. 36 s 70(3)
- def “**demolition/removal completion condition**” ins 2006 No. 36 s 70(3)
- def “**development application**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
amd 2006 No. 36 s 70(4)
- def “**development approval**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
amd 2006 No. 36 s 70(4)
- def “**development approval endorsement**” ins 2006 No. 36 s 70(3)
- def “**development permit**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
amd 2006 No. 36 s 70(4)
- def “**Director**” sub 1993 No. 70 s 804 sch
om from prev s 3 1998 No. 13 s 9
- def “**disciplinary finding**” ins 1998 No. 13 s 9
om from prev s 3 2002 No. 77 s 161(1)
- def “**dividing fence**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
- def “**enforcement action**” ins 2006 No. 36 s 70(3)
- def “**enforcement notice**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
- def “**engagement**” ins 2006 No. 36 s 70(3)
- def “**erect**” om from prev s 3 1998 No. 13 s 9
- def “**fencing standards**” ins 2003 No. 53 s 4(1)
reloc 2004 No. 53 s 2 sch
amd 2006 No. 36 s 70(7)
- def “**final inspection certificate**” ins 2006 No. 36 s 70(3)
- def “**fire safety installation**” ins 2006 No. 36 s 70(3)
- def “**fire safety management plan**” reloc from s 215 2006 No. 36 s 8(4)
- def “**fire safety standard**” ins 2006 No. 36 s 70(3)
- def “**fire safety system**” ins 2006 No. 36 s 70(3)
- def “**floor area**” ins 2006 No. 36 s 70(3)
- def “**former building certifier**” ins 2002 No. 77 s 161(2) (amd 2003 No. 30 s 169 sch 1)
reloc 2004 No. 53 s 2 sch
amd 2005 No. 14 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def “**IDAS**” ins 2006 No. 36 s 70(3)
- def “**imposed condition**” ins 2006 No. 36 s 70(3)
- def “**indoor swimming pool**” ins 1998 No. 13 s 9
amd 2003 No. 53 s 4(2)
reloc 2004 No. 53 s 2 sch
amd 2006 No. 36 s 70(4A)
- def “**information notice**” ins 2006 No. 36 s 70(3)
- def “**inspection documentation**” ins 2006 No. 36 s 70(3)
- def “**interim development control provisions**” ins 1993 No. 70 s 804 sch
om from prev s 3 1998 No. 13 s 9
- def “**IPA**” ins 2006 No. 36 s 70(3)

- def **“IPA Regulation”** ins 2006 No. 36 s 70(3)
- def **“licence”** ins 2006 No. 36 s 70(3)
- def **“licensed builder”** ins 2006 No. 36 s 70(3)
- def **“local authority”** om from prev s 3 1993 No. 76 s 3 sch 1
- def **“local government”** ins 1998 No. 13 s 9
- reloc 2004 No. 53 s 2 sch
- om 2006 No. 36 s 70(2)
- def **“local government building certifier”** ins 2006 No. 36 s 70(3)
- def **“local planning instrument”** ins 2002 No. 77 s 161(2)
- reloc 2004 No. 53 s 2 sch
- amd 2006 No. 36 s 70(4)
- def **“Minister”** sub 1991 No. 52 s 2.5(d)
- om from prev s 3 1993 No. 76 s 3 sch 1
- def **“national accreditation framework”** ins 2002 No. 77 s 161(2)
- reloc 2004 No. 53 s 2 sch
- om 2006 No. 36 s 70(2)
- def **“negotiated decision notice”** ins 2006 No. 36 s 70(3)
- def **“notice”** ins 2006 No. 36 s 70(3)
- def **“outdoor swimming pool”** ins 1998 No. 13 s 9
- reloc 2004 No. 53 s 2 sch
- def **“owner”** sub 1998 No. 13 s 9
- amd 2000 No. 4 s 94 sch
- reloc 2004 No. 53 s 2 sch
- def **“performance requirements”** ins 2006 No. 36 s 70(3)
- def **“planning application”** ins 1993 No. 70 s 804 sch
- om from prev s 3 1998 No. 13 s 9
- def **“planning scheme”** ins 1993 No. 70 s 804 sch
- om from prev s 3 1998 No. 13 s 9
- ins 2006 No. 36 s 70(3)
- def **“planning scheme area”** ins 1993 No. 70 s 804 sch
- om from prev s 3 1998 No. 13 s 9
- def **“pool owner”** ins 2003 No. 53 s 4(1)
- reloc 2004 No. 53 s 2 sch
- amd 2006 No. 36 s 70(7)
- def **“portable wading pool”** ins 1998 No. 13 s 9
- reloc 2004 No. 53 s 2 sch
- def **“private certification endorsement”** ins 2006 No. 36 s 70(3)
- def **“private certifier”** ins 1998 No. 13 s 9
- reloc 2004 No. 53 s 2 sch
- sub 2006 No. 36 s 70(2)–(3)
- def **“private certifier (class A)”** ins 2006 No. 36 s 70(3)
- def **“private certifier (class B)”** ins 2006 No. 36 s 70(3)
- def **“private certifier employer”** ins 2006 No. 36 s 70(3)
- def **“private certifying functions”** ins 2006 No. 36 s 70(3)
- def **“professional misconduct”** ins 1998 No. 13 s 9
- sub 2000 No. 4 s 11; 2002 No. 77 s 161(1)–(2) (amd 2003 No. 30 s 169 sch 1)
- reloc 2004 No. 53 s 2 sch
- amd 2005 No. 14 s 2 sch
- def **“properly made application”** ins 2006 No. 36 s 70(3)

- def “**public sector entity**” ins 1998 No. 31 s 60(2)
reloc 2004 No. 53 s 2 sch
- def “**QDC**” ins 2006 No. 36 s 70(3)
- def “**QDC boundary clearance and site cover provisions**” ins 2006 No. 36 s 70(3)
- def “**QFRS**” ins 2006 No. 36 s 70(3)
- def “**Queensland Development Code**” ins 2006 No. 36 s 70(3)
- def “**referral agency**” ins 2006 No. 36 s 70(3)
- def “**register**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def “**Registrar**” ins 1991 No. 52 s 2.5(e)
om from prev s 3 1998 No. 13 s 9
- def “**residential land**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
amd 2006 No. 36 s 70(5)
- def “**revocation notice**” ins 1998 No. 13 s 9
amd 2003 No. 53 s 4(3)
reloc 2004 No. 53 s 2 sch
- def “**self-assessable building work**” ins 2006 No. 36 s 70(3)
- def “**self-assessable development**” ins 2002 No. 77 s 161(2) (never proclaimed into force and om from prev s 3 2002 No. 64 s 136)
- def “**show cause notice**” ins 1998 No. 13 s 9
sub 2002 No. 77 s 161(1)–(2)
reloc 2004 No. 53 s 2 sch
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- def “**show cause period**” ins 2002 No. 77 s 161(2)
reloc 2004 No. 53 s 2 sch
sub 2006 No. 36 s 70(2)–(3)
- def “**site works**” ins 2006 No. 36 s 70(3)
- def “**special fire service**” ins 2006 No. 36 s 70(3)
- def “**special structure**” ins 2006 No. 36 s 70(3)
- def “**Standard Building Law**” ins 1993 No. 70 s 804 sch
om from prev s 3 1998 No. 13 s 9
- def “**Standard Building Regulation**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
om 2006 No. 36 s 70(2)
- def “**State**” ins 2006 No. 36 s 70(3)
- def “**structure**” amd 1984 No. 45 s 5(b)
sub 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
- def “**substantially completed**” ins 2006 No. 36 s 70(3)
- def “**supporting documents**” ins 2006 No. 36 s 70(3)
- def “**swimming pool**” ins 1998 No. 13 s 9
reloc 2004 No. 53 s 2 sch
- def “**The Commissioner of Fire Service**” ins 1991 No. 52 s 2.5(f)
om from prev s 3 1998 No. 13 s 9
- def “**this Act**” ins 1991 No. 52 s 2.5(f)
om from prev s 3 1993 No. 76 s 3 sch 1

- def “**tourist resort complex**” ins 1998 No. 13 s 9
 - reloc 2004 No. 53 s 2 sch
 - om 2006 No. 36 s 70(2)
- def “**tribunal**” ins 1998 No. 13 s 9
 - reloc 2004 No. 53 s 2 sch
 - om 2005 No. 14 s 2 sch
- def “**tribunal**” ins 2002 No. 77 s 161(2) (amd 2003 No. 30 s 169 sch 1)
 - reloc 2004 No. 53 s 2 sch
 - om 2005 No. 14 s 2 sch
- def “**Tribunal**” ins 1984 No. 45 s 5(c)
 - om from prev s 3 1991 No. 52 s 2.5(g)
- def “**Tribunal Act**” ins 2002 No. 77 s 161(2) (amd 2003 No. 30 s 169 sch 1)
 - reloc 2004 No. 53 s 2 sch
- def “**underpinning**” ins 1991 No. 52 s 2.5(f)
 - om from prev s 3 1998 No. 13 s 9
- def “**unsatisfactory conduct**” ins 2002 No. 77 s 161(2)
 - reloc 2004 No. 53 s 2 sch
 - amd 2006 No. 36 s 70(6)
- def “**variation application**” ins 2006 No. 36 s 70(3)
- def “**watercourse**” ins 1998 No. 13 s 9
 - reloc 2004 No. 53 s 2 sch
- def “**young child**” ins 1998 No. 13 s 9
 - reloc 2004 No. 53 s 2 sch

8 List of forms notified or published in the gazette

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

Form 9 Version 1.08.2006—Application to vary the Building Act 1975

pubd gaz 1 September 2006 p 20

Form 10 Version 1.08.2006—Building and Development Tribunals Appeal Notice

pubd gaz 1 September 2006 p 20

Form 11 Version 1.08.2006—Certificate/Interim Certificate of Classification

pubd gaz 1 September 2006 p 20

Form 12 Version 2—Statement of Classification

pubd gaz 7 November 2003 p 754

Form 13 Version 1.08.2006—Application for Certificate of Classification for a building or structure built before 30 April 1998/Change of Classification

pubd gaz 1 September 2006 p 20

- Form 14 Version 2—Certificate of Classification for a building or structure built before 1 April 1976**
pubd gaz 7 November 2003 p 754
- Form 15 Version 1.08.2006—Compliance Certificate for building design or specification**
pubd gaz 1 September 2006 p 20
- Form 16 Version 1.08.2006—Inspection Certificate/Aspect Certificate/QBSA Licensee Aspect Certificate**
pubd gaz 1 September 2006 p 20
- Form 17 Version 1.08.2006 Final Inspection Certificate—swimming pools/swimming pool fencing**
pubd gaz 1 September 2006 p 20
- Form 18 Version 1.08.2006 Notice to owner that a private certifier has been engaged**
pubd gaz 1 September 2006 p 20
- Form 19 Version 1—Request for development information**
pubd gaz 7 November 2003 p 754
- Form 20 Version 1.08.2006—Lodgement of building work documentation**
pubd gaz 1 September 2006 p 20
- Form 21 Version 1.08.2006—Final Inspection Certificate**
pubd gaz 1 September 2006 p 20
- Form 22 Version 1.08.2006—Notice of discontinuance of engagement**
pubd gaz 1 September 2006 p 20
- Application for an exemption Version 1—QDC Part 25: Water Saving Targets**
pubd gaz 15 December 2006 p 1861

9 Tables of renumbered provisions

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