



# **Building Act 1975**

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## Queensland

# Building Act 1975

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# Building Act 1975

**An Act to regulate building development approvals, building work, building classification, building certifiers and pool safety inspectors, and to provide for particular matters about swimming pool safety and sustainable buildings, 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 or accepted development for the Planning Act.
- (2) Chapter 3 imposes requirements, in addition to those under the Planning Act, 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
  - (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 occupancy for other buildings; and
  - (c) regulates the making of BCA classification or use 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 7A makes provision about fire safety for particular residential care buildings.
- (8) Chapter 8 provides for matters about swimming pool safety, including the regulation of swimming pool fencing.

- 
- (9) Chapter 8A regulates the effect of particular instruments in relation to stated matters for class 1a, 2 or 10a buildings.
  - (10) Chapter 8B provides for the designation of land as a transport noise corridor for particular building assessment work.
  - (11) Chapter 9 provides for the giving of show cause and enforcement notices for particular building work.

*Note—*

The QBCC Act also provides for enforcement action relating to 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.
- (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.

*Examples—*

- a management procedure under the fire safety standard relating to a budget accommodation building
- a management procedure under the fire safety standard (RCB) relating to a residential care building

## 6 **What is a *building development application***

- (1) A *building development application* is—
- (a) a development application for a development approval—
    - (i) if the local government is the assessment manager for the application—to the extent the application is for building work that, under the Planning Act, must be assessed against the building assessment provisions; and

*Note—*

For the functions of a local government in relation to building development applications, see section 51.

- (ii) if a private certifier is the assessment manager for the application—for building work; or
- (b) a change application, other than a minor change application, to change a development approval—
- (i) if the development approval approves building work—in relation to the building work; or



- 
- (ii) otherwise—to approve building work.
- (2) However, if a local government is the responsible entity for a change application, the application is a building development application only to the extent the building work mentioned in subsection (1)(b)(i) or (ii) must, under the Planning Act, be assessed against the building assessment provisions.
- (3) In this section—
- minor change application* means a change application for a minor change to a development approval, as defined in the Planning Act.

## 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, a referral 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 referral 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 occupancy 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 under the Planning Act, section 48(1).
- (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.

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

- (1) The *Building Code of Australia* (or *BCA*) is the document called ‘National Construction Code’, volume 1 and volume 2 (including the Queensland Appendixes) published by the entity known as the Australian Building Codes Board (the *board*).
- (2) The reference to the document called ‘National Construction Code’ in subsection (1) includes the edition of the code 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’ that are prescribed by regulation.
- (2) A regulation made under this section must state the day on which the part or aspect of the part takes effect.
- (3) The chief executive must publish the Queensland Development Code on the department’s website.

**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 a performance 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 14H 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 to which the application relates;
  - (c) the building—the building to which the application relates;
  - (d) the development—the development to which the application relates;
  - (e) the assessment manager—
    - (i) if the application is a development application—the assessment manager for the application; or
    - (ii) if the application is a change application—the responsible entity for the application;
  - (f) a referral agency—a referral 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 or responsible entity 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;
- (d) a regulated pool—the area in which the pool is situated.

## **18 Reference to local government in provision about building development application**

If—

- (a) a provision of this Act about a building development application refers to the local government; and
- (b) under the Planning Act, an entity other than the local government or a private certifier is the assessment manager;

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

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**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.

## **Chapter 2      When building work is assessable development or accepted development**

*Notes—*

- 1 For the development assessment process under the Planning Act and offences against the Planning Act, including development offences, see the Planning Act, chapters 3 and 5.
- 2 See chapters 3 and 4 for other provisions for applying for and obtaining a building development approval and for assessing building work.

**20 Building work that is assessable development for the Planning Act**

All building work is assessable development, unless the building work is accepted development under section 21(2) or a regulation made under the Planning Act.

## 21 Building work that is accepted development for the Planning Act

- (1) Subsection (2) applies to the extent a regulation made under the Planning Act prescribes that this Act may declare building work to be accepted development.
- (2) Building work is declared to be accepted development for the Planning Act if—
  - (a) the building work is prescribed by regulation; and
  - (b) if the regulation states that the building work must comply with the relevant provisions—the building work complies with the relevant provisions for the building work.
- (3) Building work that is accepted development under a regulation made under the Planning Act or subsection (2) is *accepted building work*.
- (4) Subsection (2) is subject to section 37.
- (5) In this section—

*relevant provisions*, for building work, means—

  - (a) if alternative provisions under section 33, or provisions as varied under section 44 (*varied provisions*), apply to all or part of the building work—
    - (i) the alternative provisions or varied provisions; and
    - (ii) any relevant deemed-to-satisfy provision under the BCA or relevant acceptable solution under the QDC for the work, other than the QDC residential design and siting provisions; and
    - (iii) any other building assessment provision applying to the work; or
  - (b) if no alternative provisions under section 33, or varied provisions, apply to all or part of the building work—
    - (i) any relevant deemed-to-satisfy provision under the BCA or relevant acceptable solution under the QDC for the work; and



- (ii) any other building assessment provision applying to the work.

## Chapter 3      **Additional requirements for building development applications**

*Note—*

For the general requirements for development applications and change applications, see the Planning Act, sections 51 and 79.

### Part 1              **Requirements for supporting documents**

#### 23      **Operation of pt 1**

This part imposes requirements for documents (*supporting documents*) that under the Planning Act 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
  - (b) is a licensed builder; or
  - (c) under the *Queensland Building and Construction Commission 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.
- (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);
    - (ii) a development permit, PDA development permit, preliminary approval or referral agency's response mentioned in section 83(1);
  - (b) if the application relates to a relevant authorisation that has not lapsed or been withdrawn—how the application is consistent with the authorisation;

- (c) if the application relates to development mentioned in section 84(2)(a)(i) that may affect the position, height or form of the building work—how the building work is consistent with the provisions mentioned in section 84(2)(c)(i);
- (d) if the application relates to development mentioned in section 84(2)(a)(ii) that may affect the position, height or form of the building work—how the building work is consistent with the provisions mentioned in section 84(2)(c)(ii);
- (e) 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 accepted building work—their location and type.

## **26 Requirements if performance solution used**

If a performance 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 performance 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 Emergency Services Act 1990*, section 104FC.

### **28            Application to build regulated pool**

A building development application for the construction of a regulated pool must also be for the construction of barriers, including any 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.

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## **Chapter 4      Building assessment provisions and assessing building development applications**

### **Part 1            Laws and other documents applying to building work**

#### **Division 1        General provisions about the laws and documents applying to building work**

#### **30      Meaning of *building assessment provisions***

The following laws and other documents are the *building assessment provisions*—

- (a) chapter 3 and this chapter;
- (b) the fire safety standard;
- (c) the fire safety standard (RCB);
- (d) any provisions of a regulation made under this Act relating to building assessment work or accepted building work;
- (e) any relevant local law, local planning instrument or resolution made under section 32 or any relevant provision under section 33;
- (f) the BCA;
- (g) subject to section 33, the QDC.

**31 Building assessment provisions are assessment benchmarks for Planning Act**

- (1) Each of the building assessment provisions is an assessment benchmark for the Planning Act for the assessment of building work that is assessable development under section 20.
- (2) However, for the assessment of the building work under the Planning Act, the building assessment provisions are subject to—
  - (a) how, under this division, the provisions apply to the work; and
  - (b) any variation of them under division 2.
- (3) The effect of a building assessment provision mentioned in section 30(a) to (d), (f) or (g) can not be changed under a local law, local planning instrument or local government resolution.
- (4) A local law, local planning instrument or local government resolution must not include provisions about building work, to the extent a building assessment provision mentioned in subsection (3) applies to the building work.
- (5) To the extent a local law, local planning instrument or local government resolution does not comply with subsection (4), the local law, local planning instrument or local government resolution is of no effect.
- (6) Subsections (3) to (5) are subject to sections 32 and 33.

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

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

- (c) alternative provisions under section 33.

### 33 **Alternative provisions to QDC residential design and siting provisions for particular buildings**

- (1) This section applies for work (*relevant work*) that—
- (a) is building assessment work or accepted building work; and
  - (b) is for a relevant building or a class 10 building or structure located on the same allotment as a single detached class 1 building.
- (2) A planning scheme or PDA instrument may include provisions (*alternative provisions*) that, for relevant work, are alternative or different to the QDC residential design and siting provisions.
- (3) However, a planning scheme or PDA instrument 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 residential design and siting 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 or PDA instrument.
- (6) In this section—

*PDA instrument* means a relevant development instrument for a priority development area, made under the *Economic Development Act 2012*.

***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.

***relevant building*** means a building that is—

- (a) a single detached class 1 building; or
- (b) a building of a class and type prescribed by regulation.

### **34A Decision for building development application that complies with building assessment provisions**

- (1) This section applies subject to section 83 and the Planning Act, chapter 3.
- (2) If the assessment manager for a building development application is satisfied the application complies with the building assessment provisions, the assessment manager must approve the application.

### **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.
- (2) Building assessment work, other than building assessment work carried out under section 46, 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 certifies in writing that—
    - (i) substantial progress was made on the design of the building, or the design was completed, before the amendment; and
    - (ii) the design would need to be changed to comply with the amended provision; and
    - (iii) the changes needed under subparagraph (ii) are not minor changes, having regard to the amendment and the nature of the building work.

*Example of a change to a design that is not a minor change—*

the removal of floors from a design to comply with an amended building assessment provision requiring the installation of water tanks in a building

- (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.
- (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) A regulation may provide the following, to the extent stated in the regulation—
- (a) subsection (2) does not apply in relation to the building work for an amendment of a building assessment provision;
  - (b) a building development approval for the building work may be given only if the approval is given under the building assessment provisions as amended.
- (6) The Minister may recommend to the Governor in Council the making of a regulation under subsection (5) only if—
- (a) the Minister has conducted an impact assessment of the making of the regulation; and
  - (b) the Minister is satisfied the regulation is necessary to reduce or remove a risk of serious injury or illness to an individual having regard to—
    - (i) the impact assessment; and
    - (ii) if the regulation is not made, any other way to manage the risk.

## **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;

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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 3

- (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 development assessment process under Planning Act**

If the variation application is about building work proposed to be carried out for which work a building development application has been made, the development assessment process under the Planning Act 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.

#### **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; 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.

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**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 the Planning Act, section 229.

**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 Referral agencies may assess application against building assessment provisions**

- (1) This section applies if, under the Planning Act—
  - (a) a person is a referral agency for a building development application; and
  - (b) the person must assess the application against a building assessment provision or part of a building assessment provision.
- (2) Only the referral agency may assess the application against the provision or part.
- (3) Assessment of the application by the referral agency must be done under the building assessment provisions.
- (4) Subject to sections 37 and 61, the assessment must be carried out under the building assessment provisions in force when the assessment is made.
- (5) If the referral agency must, under the Planning Act, assess the application against the fire safety standard, the referral agency must appoint or employ a building certifier to carry out the assessment.

*Note—*

For the referral agencies for building development applications, see the Planning Act, section 54(2).

## **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*.

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**48 Functions of private certifier (class A)**

- (1) A private certifier (class A) may—
  - (a) receive and assess a building development application; and
  - (b) decide the building development application, and give a decision notice for the application; and
  - (c) decide whether enforcement action under this Act or the Planning Act 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 section 248, a reference to a local government includes a reference to a private certifier (class A) performing functions under subsection (1)(c).
- (3) However, subsections (1)(c) and (2) apply only until the giving of a final inspection certificate for the building work or a certificate of occupancy for the building.
- (4) Despite the Planning Act—
  - (a) a private certifier (class A) is an enforcement authority for that Act in relation to building work only until a final inspection certificate for the building work, or a certificate of occupancy for the building, is given; and
  - (b) after the final inspection certificate or certificate of occupancy is given, the local government is the enforcement authority for that Act in relation to the building work.
- (5) To remove any doubt, it is declared that subsections (1)(c) and (2) do not limit the local government's functions or powers under this Act or the Planning Act, chapter 5, part 3.
- (6) Subsection (7) applies if—

- (a) under this section a private certifier (class A) gives a person an enforcement notice under this Act; or
  - (b) a private certifier (class A) that is an enforcement authority under the Planning Act gives a person an enforcement notice under the Planning Act.
- (7) If the person does not comply with the enforcement notice, the private certifier (class A) must give the local government a notice that the person has not complied with the enforcement notice.

#### **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 residential design and siting 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 occupancy.
- (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 residential design and siting 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
  - (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) for the proposed application.
- (2) The local government must do the following—
- (a) under the Planning Act, chapter 3, 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 31 and 52.

(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 in the application 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 providing public access**

- (1) This section applies if—
  - (a) under this Act, a private certifier gives a document to the local government for a building development application; and
  - (b) under the Planning Act, section 264, the local government must, or may, keep the document publicly available.
- (2) The local government may accept, and without further checking, rely and act on the document for the purpose of making the document publicly available.

**Division 4 Power of particular replacement assessment managers to decide status of development assessment process under Planning Act****55 Power to decide what stage of development assessment process under Planning Act application process may 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 the development assessment process under the Planning Act 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 2—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 referral agency's discretion—QDC**

(1) This section applies for a building certifier or referral agency carrying out building assessment work for a building development application if—

- (a) a part of the QDC applies to the application; and
- (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 referral 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, with the fire safety standard.
- (2) The decision on the application may be inconsistent with the planning scheme applying to the land on which the building work is to be carried out.

*Example—*

A desired outcome in the 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 fire safety standard does not achieve the outcome. The application may be approved despite the inconsistency.

**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 is 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 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.
- (2A) However, subsection (2) does not apply to the extent a regulation mentioned in section 37(5) states an amendment of a building assessment provision does not apply and the approval must be given under the building assessment provisions as amended.
- (3) Subsection (4) applies if the building's BCA classification as shown on the certificate of occupancy for the building has changed only because of an amendment to building classifications under the BCA made after the certificate was given.
- (4) Without limiting subsection (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 building assessment provisions applying for the BCA classification shown on the certificate of occupancy.
- (5) 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**

### **63 Restriction on granting building development approval 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 Emergency Services Act 1990*, section 104FC; or
- (b) the building work involves a performance 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.

### **63A Restriction on granting building development approval for residential care building**

- (1) This section applies to a building development application for building work that includes an alteration to a residential care building to which chapter 7A applies.
- (2) The assessment manager must not approve the application unless—
  - (a) the application also relates to building work (if any) to be carried out to the rest of the residential care building; and
  - (b) the assessment manager is satisfied that, after the building work is completed, the whole of the residential care building will comply with the fire safety standard (RCB).



(3) In this section—

*alteration*, to a residential care building, means—

- (a) an alteration affecting more than 20% of the floor area of the building; or
- (b) an addition of more than 20% to the floor area of the building.

**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 QFES 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
    - (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) However, subsection (2) does not apply to a building development application for a class 1, 2, 3 or 4 building on land subject to a noise covenant if a building assessment

provision is expressed to apply specifically for the reduction in a class 1, 2, 3 or 4 building of noise coming from outside the building.

(4) In this section—

**noise covenant** means a registered statutory covenant—

- (a) for which the registered holder of the covenant is the State; and
- (b) for the reduction in a class 1, 2, 3 or 4 building of noise coming from outside the building.

**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 structures

- (1) A building development approval for any temporary building or structure must include a condition that—

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- (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.
- (2) Subsection (3) applies to a building development application for a temporary building or structure if—
- (a) no building assessment provision is expressed to apply specifically to temporary buildings or structures generally or to temporary buildings or structures of the same type as the temporary building or structure; and
  - (b) the building or structure would not otherwise comply with the building assessment provisions.
- (3) The assessment manager must not approve the application unless the building certifier has decided 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.

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

#### **68A Statement of reasons for approving performance solution**

- (1) This section applies if—
  - (a) a performance 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 performance 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 performance 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.

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## Part 5                      Conditions of building development approvals

*Note—*

For general provisions about conditions of development approvals, see the Planning Act, chapter 3, part 3, division 3.

### Division 1                      Conditions taken to be imposed

#### 69              Operation of div 1

- (1) This division imposes restrictions and obligations for particular building development approvals.
- (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 the Planning Act.
- (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) comply with the Planning Act, section 65(1).
- (5) The Planning Act, chapter 3, part 5, division 2, subdivision 2 does not apply to an imposed condition.
- (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.

## **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 1 year 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 occupancy must be given for the building.
- (4) The condition under subsection (3) is the *demolition/removal completion condition*.

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- (5) However, a person may apply to the local government to approve 1 extension of the period mentioned in subsection (3) for a period of up to 6 months.
  - (6) The application must be—
    - (a) made before the end of the period mentioned in subsection (3); and
    - (b) in writing; and
    - (c) supported by enough information to enable the local government to decide the application.
  - (7) A person who makes an application for an extension must, within 5 business days of making the application, give a copy of the application to the assessment manager who gave the building development approval mentioned in subsection (1), unless the local government is also the assessment manager.
  - (8) The local government may consult with any other entity the local government considers appropriate in deciding the application.
  - (9) The local government must decide the application within 10 business days after the application is made.
  - (10) In making a decision about the application the local government may consider all relevant matters, including, for example—
    - (a) how much building work has been undertaken at the time of the making of the application and whether the building work that has been undertaken is structurally sound; and
    - (b) any impact the building work may have on the local community if the extension were given or not.
  - (11) The local government must, within 5 business days after deciding the application, give the applicant and the assessment manager for the building work notice of the decision.
  - (12) If the decision is to refuse to extend the building development approval, 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 the Planning Act, section 229.

- (13) If the local government grants the application, the building development approval for the building work is taken to have been extended for the period granted by the local government.
- (14) Subsection (15) applies if—
  - (a) an application for an extension is made before the end of the period mentioned in subsection (3); and
  - (b) the local government has not made a decision about the application before the end of that period.
- (15) The building development approval for the building work is taken to have been extended until the earlier of the following events—
  - (a) the local government notifies the applicant of its decision;
  - (b) the end of 6 months after the end of the period mentioned in subsection (3).

## **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.



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- (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 QFES—
    - (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 QFES.
- (3) QFES 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 *Plumbing and Drainage Act 2018*.

# **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 36,000m<sup>2</sup>; 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 QFES 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—
    - (i) a budget accommodation building to which chapter 7, part 3 applies; or
    - (ii) a residential care building to which chapter 7A, part 4 applies; and
  - (b) the purpose of the alterations is to ensure the building complies with—
    - (i) for a budget accommodation building—the fire safety standard; or
    - (ii) for a residential care building—the fire safety standard (RCB).
- (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.

## **Part 6**

# **Regulation of building assessment work and the issuing of building development approvals by private certifiers**

### **82 Application of pt 6**

This part applies if, under section 48, 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) until, under the Planning Act and the *Economic Development Act 2012*, all necessary development permits and PDA development permits are effective for development, other than building work, that may affect any or all of the following—
- (i) the form or location of the building work;
  - (ii) the use of the building or other structure;
  - (iii) the assessment of the building development application; and

*Example—*

A proposal involving building work also involves a material change of use, reconfiguring a lot and operational work under the Planning Act. The material change of use, reconfiguring a lot and operational work are categorised as assessable development under the Planning Act. The private certifier is engaged to carry out building assessment work and decide the building development application. The private certifier must not grant the

building development approval applied for until, under the Planning Act, all necessary development permits are effective for—

- the material change of use, which will affect the use of the building or other structure
  - reconfiguring the lot, which will affect the location of the building work on the reconfigured lot
  - the operational work, other than operational work that does not affect the form or location of the building work or assessment of the building development application, including, for example, landscaping work.
- (b) if the building development application is for a development permit that, under the Planning Act, section 73A, does not authorise the carrying out of a part of the building work unless a relevant preliminary approval is in effect for the part—
- (i) until the relevant preliminary approval is in effect for the part; or
  - (ii) until a development permit given by an entity other than a private certifier is in effect for the part; and

*Example—*

A building development application is made for a development permit for building work that must be assessed against the building assessment provisions and a code in the local government's planning scheme. The code is not a building assessment provision and none of the referral agencies for the application are required, under the Planning Act, to assess the application against, or having regard to, the code. A private certifier is engaged to assess and decide the building development application. The private certifier must not grant the development permit until either of the following is in effect for the part of the building work that must be assessed against the code—

- (a) a preliminary approval given by the local government under the repealed *Sustainable Planning Act 2009*; or
  - (b) a development permit given by the local government.
- (ba) if the building development application is for a development permit for building work and a part of the building work is PDA-related development that is PDA

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- assessable development—until a PDA development permit is in effect for the part; and
- (c) until the building assessment work for the application has been carried out under the building assessment provisions; and
  - (d) if, under the Planning Act, a referral agency must assess the building work against, or having regard to, a matter relating to the building work—until—
    - (i) the referral agency has given its referral agency's response to the private certifier or, if the referral agency does not give a response before the end of the referral agency's response period for the application, until after the response period has ended; and
    - (ii) if the referral 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 altering on premises an on-site sewage facility under the *Plumbing and Drainage Act 2018*—until a permit under that Act has been given for the installation or alteration.

Maximum penalty—165 penalty units.

- (2) Subsection (3) applies if the private certifier receives the application before a following application or request is decided—
  - (a) if subsection (1)(a) applies to the application—a development application for each development permit, or a PDA development application for each PDA development permit, mentioned in the subsection;
  - (b) if subsection (1)(b) applies to the application—a development application for a preliminary approval or development permit mentioned in the subsection;

- (ba) if subsection (1)(ba) applies to the application—a PDA development application for a PDA development permit mentioned in the subsection;
  - (c) if subsection (1)(e) applies to the application—an application under the *Plumbing and Drainage Act 2018* for a permit mentioned in the subsection.
- (3) For the development assessment process under the Planning Act, the building development application is taken not to have been received by the private certifier until the day the last or only application or request mentioned in subsection (2)(a) to (c) to be decided is decided.
- (4) This section does not limit part 4.
- (5) In this section—

*PDA assessable development* see the *Economic Development Act 2012*, section 33(3).

*PDA development application* see the *Economic Development Act 2012*, schedule 1.

*referral agency's response period*, for a building development application, means the period stated in the development assessment rules under the Planning Act for complying with section 56(4) of that Act for the application, including any extension of that period under the rules.

*relevant preliminary approval* see the Planning Act, section 73A(6).

## **84 Approval must not be inconsistent with particular earlier approvals or accepted development**

- (1) The private certifier must not approve the building development application if—
- (a) the application relates to either or both of the following approvals (each an *earlier approval*)—
    - (i) a development approval given by the local government;



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- (ii) a PDA development approval under the *Economic Development Act 2012*; 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 building development application if—
- (a) the application relates to—
    - (i) development categorised as accepted development under a local planning instrument; or
    - (ii) PDA-related development that is PDA accepted development under the *Economic Development Act 2012*; and
  - (b) the development may affect the position, height or form of the building work; and
  - (c) the building work is inconsistent with—
    - (i) for an application in relation to development mentioned in paragraph (a)(i)—the provisions of the local planning instrument that apply to the development; or
    - (ii) for an application in relation to development mentioned in paragraph (a)(ii)—the provisions of the relevant development instrument for the priority development area that apply to the development.

Maximum penalty—165 penalty units.

- (3) For subsection (1), if the application is a change application, the development approval to which the change application relates is not an earlier development approval.
- (4) In this section—
- relevant development instrument*** see the *Economic Development Act 2012*, schedule 1.

## **85 Additional requirement for decision notice**

The private certifier must, when issuing the decision notice, include in the notice information about any requirements the building work must comply with to be categorised as accepted development under the Planning Act.

## **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 *City of Brisbane Act 2010* or the *Local Government Act 2009* 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—*

For public access to particular documents, see the Planning Act, chapter 7, part 3.

**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 Giving approval documents to applicant**

- (1) This section applies only if the private certifier approves the application.
- (2) The private certifier must not give the applicant any approval documents for the application unless the certifier has complied with section 86(1).

Maximum penalty—50 penalty units.

- (2A) Subsection (2B) applies if the application is for building work that is—
  - (a) the demolition of a building used only or mainly for residential purposes; and
  - (b) assessable development under a local planning instrument.

- (2B) The private certifier must not give the applicant any approval documents for the application before the end of 5 business days after the day the private certifier has complied with all requirements under section 86(1).

Maximum penalty—165 penalty units.

- (3) Subsection (4) applies if the private certifier—
  - (a) receives an acknowledgement under section 87 from the local government for the application; and
  - (b) has not given the approval documents to the applicant.

- (4) The private certifier must give the approval documents to the applicant—
- (a) if the application is mentioned in subsection (2A) and the private certifier receives the acknowledgement before the end of the period mentioned in subsection (2B)—within 5 business days after the end of that period; or
  - (b) otherwise—within 5 business days after receiving the acknowledgement.

*Note—*

See also section 132.

- (5) Subsection (6) applies if the private certifier—
- (a) gives the approval documents to the applicant; and
  - (b) has not received an acknowledgement under section 87 from the local government for the application.
- (6) The private certifier must, for at least 5 years after giving the approval documents, keep written evidence that the fee mentioned in section 86(1)(c) for the application was paid to the local government.

Maximum penalty for subsection (6)—20 penalty units.

## **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.

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**90 Currency period under the Planning Act, s 85(1) for building development approval**

- (1) The period, or extended period, under the demolition/removal completion condition of the building development approval is taken to be, for the Planning Act, the currency period for the approval.
- (2) The currency period under subsection (1) may not be extended under the Planning Act.

**91 Lapsing of building development approval**

- (1) This section applies despite the Planning Act, section 85.
- (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 the Planning Act, chapter 3, part 3, division 3 and part 5, division 2, subdivision 2 and division 4.

**95 Reminder notice requirement for lapsing**

- (1) Despite the Planning Act, chapter 3, part 3, division 3 and part 5, division 4 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 the Planning Act, the currency period under the Planning Act, section 85(1) 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 currency period under Planning Act, s 85(1)**

- (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, an extension application is made under the Planning Act to extend the currency period under the Planning Act, section 85(1) 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 currency 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 currency period under Planning Act, s 85(1) more than once**

- (1) This section applies if the assessment manager is a private certifier (class A) and, under the Planning Act, the currency period under the Planning Act, section 85(1) 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 the Planning Act, chapter 3, part 3, division 3 and part 5, division 4.



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## **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; or
- (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 inspection carried out under best industry practice, that the work complies with the building development approval.

*Note—*

For rights of appeal to a development tribunal, see the Planning Act, section 229.

- (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.

## Part 2                                    Certificates of occupancy 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; or
- (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) either—
    - (i) the local government has issued a final inspection certificate under the *Plumbing and Drainage Act 2018* stating the plumbing or drainage work for the building has been finished under that Act; or
    - (ii) notice of notifiable work carried out for the building has, on the completion of that work, been given to the commissioner under the *Plumbing and Drainage Act 2018*, section 83(1); 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 occupancy 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 occupancy by a building certifier that complies with the requirements under section 103 for a certificate of occupancy (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 For rights of appeal to a development tribunal, see the Planning Act, section 229.
- 2 See also section 132.

### **103 Certificate requirements**

A certificate of occupancy must—

- (a) be signed in the approved form; and
- (b) state the building's classification, having regard to—
  - (i) the class of the building stated in the decision notice for the development; and
  - (ii) the use for which the building was designed, built or adapted; and
- (c) briefly describe the type of building or the use for which the building was designed, built or adapted, having regard to—
  - (i) any particular categories of uses under the classification; and
  - (ii) restrictions about the use of the building under the BCA or QDC; and

*Examples of descriptions for paragraph (c)—*

- retail showroom for sale of goods
- manufacturing – plastic goods production, not to be used for hazardous processes under the BCA
- motel – sole occupancy units

*Example of restriction about the use of a building under the QDC—*

a requirement under the QDC for a floating building to be permanently moored and not used for navigational purposes

- (d) if a part of the building is classified differently to another part—state the part to which each classification relates; and
- (e) if the development uses a building solution under the BCA or QDC and the solution—

- (i) restricts the use or occupation of the building—state the restriction; or
  - (ii) requires a management procedure relating to systems or procedures—state the management procedure; and
- (f) if the development uses performance solutions—state the materials, systems, methods of building, management procedures, specifications and other things required under the performance solutions.

*Examples of possible performance solution requirements relating to materials—*

- a limitation on the use of finishes with fire hazard properties as defined under the BCA
- a prohibition on storing hazardous materials above a stated height
- a limitation on storing or using stated materials

*Examples of possible performance solution requirements relating to systems or procedures—*

- a requirement that all of the building's final exit doors be unlocked before it is occupied on the start of any day
- a requirement to implement stated evacuation strategies or procedures
- a restriction on the number and the distribution of the building's occupants
- a requirement that evacuation routes be kept clear of fittings and furnishings or be kept sterile
- a prohibition on carrying out any hazardous processes or storage mentioned in BCA, part E1.5, table E1.5, note 4, paragraph (a)

## **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 occupancy 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 102, given a certificate of occupancy;
  - (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.

## **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 occupancy 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 occupancy for the further part.
- (3) The further certificate must comply with the certificate requirements.

*Note—*

See also section 132.

## **Division 3                      Miscellaneous provisions about certificates of occupancy**

### **106      Term of certificate of occupancy**

A certificate of occupancy for the building, other than an interim certificate given under section 104, continues in force until and unless it is replaced under section 113.

### **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
  - (b) a building certifier gives a certificate of occupancy 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 relevant to the agency's functions as a referral agency, other than plans or specifications given to the agency under the Planning Act, section 63(3); and
  - (c) if the agency is QFES—
    - (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.



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

If a private certifier (class A) gives a certificate of occupancy 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.

**108A Owner's obligations about access to certificate of occupancy**

- (1) This section applies to the owner of a building if—
  - (a) a certificate of occupancy has been given for the building; and
  - (b) the certificate was given on or after 1 July 1997; and
  - (c) all or part of the building is occupied.
- (2) If the building is not a class 1a building, the owner must ensure the certificate is conspicuously displayed as near as practicable to the building's main entrance.

Maximum penalty—165 penalty units.

*Notes—*

- 1 See, however, section 284 (Transitional provision for s 108A).
  - 2 A certificate of occupancy is not required to be given for a single detached class 1a building or a class 10 building or structure. See section 100.
- (3) An authorised officer may require the owner to produce the certificate for inspection at the building.
  - (4) The owner must comply with the requirement.  
Maximum penalty—165 penalty units.
  - (5) Subsections (3) and (4) do not apply if the certificate is displayed as mentioned in subsection (2).

- (6) For subsections (2) to (5), a reference to the certificate includes a reference to a copy of the certificate.

## Part 3 **Changes to BCA classification or use within classification**

### 109 **What is a *BCA classification or use change* to a building**

- (1) A *BCA classification or use change* to a building is—
- (a) a change to the use for which the building was designed, built or adapted to be used if—
- (i) the change of use alters its BCA classification; or
- (ii) the change of use does not alter its BCA classification but the new use requires building work to be carried out for the building to comply with any relevant building assessment provisions applying to the new use; or

*Example of BCA classification or use change for paragraph (a)(ii)—*

a change in the use of a class 7b warehouse to an occupancy of excessive hazard by storing combustible cartons above 4m in height or more than 1,000m<sup>3</sup> of combustible cartons

- (b) if, under section 103(e), a certificate of occupancy 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 or use change for paragraph (b)—*

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

- (2) However, a *BCA classification or use change* does not include a change of use that alters a building's BCA classification if the alteration happens only because of an amendment to building classifications under the BCA made after—

- (a) if there is a certificate of occupancy for the building—the certificate was given; or
- (b) otherwise—the building was first used or occupied.

### **110 Restriction on making BCA classification or use change**

The owner of a building must ensure a BCA classification or use 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 or use 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.
- (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 or use 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 or use 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 or use 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 E4—
  - (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 any new BCA classification or use; 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
    - (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 QFES a report on the suitability of the service.

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- (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 or use change to give new certificate of occupancy**

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

*Note—*

See also section 132.

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

## **Part 4 Restrictions on the use of buildings**

**114 No occupation or use of particular buildings without certificate of occupancy**

- (1) This section applies if—
- (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 occupancy 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.

#### **114A Owner's obligation to comply with certificate of occupancy**

- (1) This section applies if—
- (a) a certificate of occupancy has been given for a building; and
  - (b) the certificate states a restriction mentioned in section 103(e) or a requirement of a type mentioned in section 103(f).
- (2) The owner of the building must, unless the owner has a reasonable excuse, ensure the requirement or restriction is complied with.

Maximum penalty—165 penalty units.

*Note—*

This provision is an executive liability provision—see section 257.

#### **115 Compliance with relevant BCA and QDC provisions for occupation and use of building**

- (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 occupation or use—
- (a) any relevant BCA provisions for its class of building;
  - (b) any relevant QDC provisions for the building.

Maximum penalty—165 penalty units.

*Note—*

This provision is an executive liability provision—see section 257.

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- (2) Subsection (3) applies if, under a performance requirement for a building under any relevant BCA provisions for its class of building or any relevant QDC provisions for the building, a person must carry out work to maintain the building for occupation and use.
  - (3) The person must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty—165 penalty units.
  - (4) For subsections (1) and (2), 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.
  - (5) 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.
  - (6) To remove any doubt, it is declared that subsections (1) and (2) apply even if a building development approval for the building is contrary to the provisions mentioned in the subsections.

## **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 sections 114 and 115, the occupation or use 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 occupancy 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.



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**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 occupancy 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, 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;
  - (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 the Planning Act, chapter 3, part 5, division 4.

**123 Certificate of occupancy 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 occupancy for the building.
- (3) The application must be written and include enough information about the 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 occupancy 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

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- (b) a building certifier to whom part 2 applies decides not to give a certificate of occupancy 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 or use change for a client of the certifier; or
  - (e) under section 112, a building certifier decides to approve a BCA classification or use 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.

#### **124A Obligation to give owner inspection documentation for particular inspections**

- (1) This section applies if, at any time before the inspection of the final stage of assessable building work—
  - (a) the building certifier has performed an inspection of an earlier stage of the work; and
  - (b) the building certifier is satisfied that the stage of the work complies with the building development approval; and
  - (c) the building certifier gives a certificate in the approved form to certify the stage of the work.
- (2) The owner of the building may, by notice given to the building certifier, ask for a copy of any inspection documentation for the inspection performed by the building certifier.
- (3) The building certifier must, within 5 business days after receiving the notice, give the owner all the inspection

documentation under subsection (2), unless the certifier has a reasonable excuse.

Maximum penalty—20 penalty units.

## **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.

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**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.
  - 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 does any of the following—
- (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 the Planning Act;
  - (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 the Planning Act;
  - (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.
- (3) The duty to act in the public interest, when performing a building certifying function, prevails to the extent of any inconsistency with any other obligation under this Act or to another person.
- (4) The duty to act in the public interest is taken not to create a conflict of interest under section 128.

**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—
- (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.

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## **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, 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 to the public, as if the code were a document that, under the

Planning Act, section 264, the chief executive must keep available for inspection only.

## **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.

*Examples of provisions mentioned in subsection (1)—*

sections 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 QBCC for building certification**

As well as its functions under the *Queensland Building and Construction Commission Act 1991*, QBCC 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.

### **133A Building certifier to have regard to particular guidelines**

In performing a function under this Act, including, for example, a building certifying function, a building certifier must have regard to the guidelines made under section 258 that are relevant to performing the function.

## **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 48 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—1,665 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 does any of the following—

- (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 the Planning Act;
- (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 the Planning Act;
- (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.

- (3) The duty to act in the public interest, when performing a private certifying function, prevails to the extent of any inconsistency with any other obligation under this Act or to another person.

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- (4) The duty to act in the public interest is taken not to create a conflict of interest under section 137.

### 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.

- (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.
- (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.

*Note—*

See also section 132.

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## **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).

## **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—owner clients**

- (1) This section applies if—
  - (a) a private certifier is engaged by a client to perform private certifying functions for a building or building assessment work; and
  - (b) the owner of the building is the client or the applicant under the relevant building development application.
- (2) The private certifier must, within 5 business days after the engagement starts, give notice of the engagement to the local government, unless the certifier has a reasonable excuse.

Maximum penalty—40 penalty units.

### **143A Notice of engagement and contact details—other clients**

- (1) This section applies if—
  - (a) a private certifier is engaged by a client to perform private certifying functions for a building or building assessment work; and
  - (b) the owner of the building is not the client or the applicant under the relevant building development application.
- (2) The client must, within 10 business days after the engagement starts, give the private certifier the owner's name and contact details, unless the client has a reasonable excuse.

Maximum penalty—20 penalty units.

- (3) The private certifier must, within 15 business days after the engagement starts, give the owner notice of the following, unless the certifier has a reasonable excuse—
  - (a) the private certifier's name; and

- 
- (b) the details, in an approved form, of the responsibilities of the private certifier performing the work.

Maximum penalty—40 penalty units.

- (4) The private certifier must, within 15 business days after the engagement starts, give notice of the engagement to the local government, unless the certifier has a reasonable excuse.

Maximum penalty—40 penalty units.

- (5) Within 5 business days after becoming aware of a change in the owner's name or contact details, the client must give notice of the change to the private certifier, unless the client has a reasonable excuse.

Maximum penalty—20 penalty units.

### **143B Owner may require performance of additional certifying functions**

- (1) This section applies if—
- (a) a building certifier is, or was, engaged by a client to perform certifying functions for a building; and
  - (b) the owner of the building is not the client.
- (2) The owner may by notice (an *additional certification notice*) given to the client, direct the client to ask the building certifier to perform a certifying function.
- (3) An additional certification notice must—
- (a) be given to the client within 10 business days of the owner receiving a notice under section 143A(3); and
  - (b) state the following—
    - (i) the details of the certifying function to be performed by the building certifier;
    - (ii) that the client must give a copy of the additional certification notice to the building certifier within 5 business days after receiving the notice.

- (4) The client must give a copy of the additional certification notice to the building certifier within 5 business days after receiving the notice, unless the client has a reasonable excuse.
- Maximum penalty—20 penalty units.
- (5) The building certifier must perform the certifying function stated in the additional certification notice on or before the agreed day, unless the certifier has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (6) Also, the building certifier must give the owner and client, within 5 business days after performing the certifying function, copies of all documents relevant to that function, unless the certifier has a reasonable excuse.
- Maximum penalty—20 penalty units.
- (7) The agreed day, or an agreement to determine the agreed day, must be decided within 10 business days after the day (the *relevant day*) the client gives a copy of the additional certification notice to the building certifier.
- (8) If the agreed day or agreement is not decided under subsection (7), the building certifier must—
- (a) nominate a day, or a way to determine the agreed day, within 15 business days after the relevant day; and
  - (b) tell the client and owner which day is nominated as the agreed day or the way the agreed day is to be determined.
- (9) Subsections (5) and (6) do not apply to the building certifier if, before the following times, the owner tells the certifier that the additional certification notice is withdrawn—
- (a) the agreed day or agreement is decided under subsection (7);
  - (b) the agreed day is nominated under subsection (8).
- (10) The owner is liable for the reasonable costs of the performance of a certifying function by the building certifier under the additional certification notice.



(11) In this section—

**agreed day**, for performing a certifying function under subsection (5), means—

- (a) the day agreed to by, or worked out under an agreement between, all of the following—
  - (i) the client;
  - (ii) the building certifier;
  - (iii) the owner;
  - (iv) if the client is not the builder of the building work the subject of the certifying function—the builder;  
or
- (b) the day nominated by the building certifier under subsection (8).

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

**certifying function**, for a building certifier, means a building certifying function relating to compliance of a building with the BCA or QDC.

## 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 51, 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—
  - (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 assessment benchmark under the Planning Act has 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 occupancy;
    - (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 later of the following days—
    - (i) the day a final inspection certificate for the building work or a certificate of occupancy for the building is given;
    - (ii) 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 occupancy 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 occupancy 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 has 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 7 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**

QBCC 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) building certifier–level 1;
- (b) building certifier–level 2;
- (c) building certifier–level 3.

#### **152 Role of building certifier–level 1**

A building certifier–level 1 may perform building certifying functions for all classes of buildings and structures.

#### **153 Role of building certifier–level 2**

A building certifier–level 2 may only—

- (a) without the supervision of a building certifier–level 1—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 2,000m<sup>2</sup>; or
- (b) under the supervision of a building certifier–level 1—help in assessing and inspecting all classes of buildings and structures.

### **154 Role of building certifier–level 3**

A building certifier–level 3 may only perform building certifying functions on class 1 buildings or class 10 buildings or structures.

## **Division 2 Applying for and obtaining licence**

### **155 Who may apply**

- (1) An individual may apply to QBCC for a licence at the level of building certifier–level 1 or building certifier–level 2 only if the individual holds a current accreditation issued by an accreditation standards body.
- (2) An individual may apply to QBCC for a licence at the level of building certifier–level 3 only if—
  - (a) the individual holds a current accreditation issued by an accreditation standards body; and
  - (b) either—
    - (i) the individual holds, or has previously held, a licence at, or equivalent to, that level; or
    - (ii) both of the following apply—
      - (A) the individual has at least 1 year’s experience carrying out level 3 work under the supervision of a person licensed as a building certifier–level 1 or a building certifier–level 2;

(B) the period of experience mentioned in subsubparagraph (A) was completed not more than 2 years before the application for the licence is made.

(3) In this section—

*level 3 work* means work usually carried out by a building certifier–level 3 working as a building certifier–level 3.

## 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, QBCC 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, QBCC may decide to license the applicant only if it is satisfied the applicant is a suitable person to hold a licence.
- (3) QBCC may impose conditions on the licence.

### **158 Steps after making decision**

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

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

### **159 Duration of licence**

Subject to section 168, 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, QBCC 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 48 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



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certification or development approval endorsement on the licence if it is issued.

## **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 has the insurance for private certification prescribed under a regulation.
- (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 QBCC decides to refuse the application, it must give the applicant an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

# **Division 4 Renewals**

## **165 Notice of expiry of licence**

- (1) QBCC 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 QBCC has complied with section 165 in relation to the expiry.

### **167 Applying for renewal**

- (1) A building certifier may apply to QBCC 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, 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 hold 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.

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

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

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

### **Subdivision 1            QBCC's powers**

#### **171    Power to amend, cancel or suspend licence**

- (1) QBCC 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.

*Note—*

QBCC is required to cancel a building certifier's licence if the building certifier becomes a disqualified individual—see section 214K.

- (2) The power under subsection (1) may be exercised at any time after QBCC has complied with subdivision 2.
- (3) To remove any doubt, it is declared that QBCC can not, under subsection (1), amend, cancel or suspend the certifier's licence if QBCC considers the building certifier is not a suitable person to hold a licence because of unsatisfactory conduct or professional misconduct.

*Note—*

For conduct mentioned in subsection (3), see part 4 (Complaints, investigations and disciplinary proceedings relating to building certifiers).

#### **172    Power to change licence level**

- (1) If QBCC is satisfied a building certifier no longer holds accreditation from an accreditation standards body for the level of the 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 QBCC has complied with subdivision 2.

### **173 Cancellation of endorsement of licence to act as private certifier**

If QBCC 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;
  - (b) it is amended under this subdivision.
- (2) As soon as practicable after the happening of the event, QBCC 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, QBCC 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 QBCC reasonably believes needs to know about the event.
- (4) A notice under this section may include the information QBCC considers appropriate in the circumstances.

## Subdivision 2 Show cause notice procedure

### 175 Show cause notice

- (1) If QBCC 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 amend the licence—the proposed amendment;
  - (e) if the proposed action is to suspend the licence—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 QBCC about the show cause notice.
- (2) QBCC must consider the submissions.

## **177 Decision on proposed action**

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

## **178 Notice and taking effect of decision**

- (1) If QBCC decides not to take the proposed action, it must give the building certifier notice of the decision.
- (2) If QBCC decides to take the proposed action, it must give the building certifier an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

- (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) QBCC must keep a register of building certifiers.

- (2) The register may be kept in the way QBCC 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), QBCC decides the building certifier has engaged in unsatisfactory conduct—
    - (i) details of the decision; and
    - (ii) details of the further decision required under section 204(4);
  - (e) if the 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;
  - (f) any demerit points allocated to the building certifier, the demerit offences for which they were allocated and the dates the points took effect;
  - (g) if the building certifier has been a disqualified individual—details of the circumstances that led to the disqualification.
- (3A) However, QBCC may decide not to record, under subsection (3)(d), particulars about unsatisfactory conduct engaged in by a building certifier if QBCC is satisfied the conduct has not—



- (a) compromised the health and safety of a person; or
  - (b) had a direct detrimental impact on another person, including, for example, a client or owner of a building for whom building certifying functions or private certifying functions are performed.
- (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**

QBCC must—

- (a) make the register available for inspection by anyone while its office is open for business; and
- (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 QBCC.
- (2) The surrender takes effect—
- (a) on the day the notice is given to QBCC; 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 QBCC 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 QBCC in the approved form for the replacement of the certifier's licence if it has been damaged, destroyed, lost or stolen.
- (2) If QBCC is satisfied the licence has been damaged, destroyed, lost or stolen, QBCC 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 QBCC 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.

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## Division 7                      Miscellaneous provisions

### 184      **Accreditation standards bodies**

- (1) An *accreditation standards body* is an entity prescribed by regulation to be an accreditation standards body.
- (2) An entity may be prescribed under subsection (1) 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) for each level of licensing as a building certifier, set educational and experiential standards approved by the chief executive; and
  - (b) if the standards are within the scope of the national accreditation framework for building certifiers—ensure the standards comply with the framework; and
  - (c) establish a professional development scheme approved by the chief executive; and
  - (d) submit the body’s educational and experiential standards and professional development scheme to the chief executive for review at least once every 5 years from the day the standards or scheme was first approved by the chief executive; and
  - (e) if, on a review mentioned in paragraph (d), the chief executive directs the body to make stated changes to the body’s educational and experiential standards or professional development scheme—make the stated changes; and

- (f) if the body's educational and experiential standards or professional development scheme are amended other than as mentioned in paragraph (e) or for a minor or technical change—submit the amended standards or scheme to the chief executive for approval.
- (3) An accreditation standards body must publish, on its website, a copy of its current educational and experiential standards and professional development scheme.
- (4) In this section—  
*national accreditation framework* means the framework, as amended from time to time, approved by the entity known as the Australian Building Codes Board.

## **186 Criteria for deciding suitability of applicants and licensees**

- (1) This section applies if, under this part, QBCC 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) QBCC 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.
- (3) A person is not a suitable person to hold a licence if the person is a disqualified individual.

**187 QBCC may seek information from applicants about suitability**

- (1) This section applies to an application for, or to renew, a licence.
- (2) QBCC may, by notice to the applicant, require the applicant to give it, within a stated reasonable period, documents or information QBCC 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, QBCC must refund the applicant the licence fee that accompanied the application.

**189 Reviews by tribunal of 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 QBCC under this part.
- (2) The person may apply, as provided under the QCAT Act, to the tribunal for a review 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 QBCC 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.
- (2A) A complaint about conduct of a building certifier may only be made before the cut-off day, unless the certifier's conduct has or may have caused significant financial loss or other serious harm.
- (3) QBCC may require the complainant to give further particulars of the complaint.
- (4) QBCC may dismiss any complaint without taking further action under this division if—
  - (a) QBCC has asked for further particulars under subsection (3) and the further particulars are not given or are not verified by statutory declaration; or
  - (b) QBCC is satisfied the complaint—
    - (i) is frivolous or vexatious; or
    - (ii) lacks substance or credibility.
- (5) QBCC must not disclose to another person unproved complaints against a building certifier.

(6) In this section—

*cut-off day*, for making a complaint about conduct of a building certifier, means—

- (a) for conduct relating to certification of building work the subject of a building development approval, 7 years after—
  - (i) a certificate of occupancy or final inspection certificate is issued for the building work; or
  - (ii) if the building development approval lapses before a certificate of occupancy or final inspection certificate is issued for the building work—the building development approval lapses; or
- (b) for conduct relating to building work for which a building development application has been made to which paragraph (a) does not apply, 1 year after—
  - (i) a private certifier is engaged for the application; or
  - (ii) if a private certifier is not engaged for the application—the application is received by the local government; or
- (c) otherwise—1 year after the complainant becomes aware of the conduct.

## **191 Building certifier must be advised of complaint**

- (1) After receiving the complaint, QBCC 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 QBCC about the complaint.
- (2) The time stated in the notice must be at least 5 business days after the notice is given.

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

## **192 QBCC may recommend mediation to resolve complaint**

- (1) If QBCC considers a complaint about a building certifier is capable of resolution by mediation, QBCC must give the complainant and the building certifier a notice stating—
  - (a) that QBCC 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 QBCC a certificate about the mediation.
- (2) QBCC may recommend the complainant and the building certifier enter into a process of mediation to resolve the complaint as soon as practicable and before QBCC 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 QBCC 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 QBCC 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) QBCC does not recommend the complainant and the building certifier enter into mediation; or
  - (b) QBCC recommends the complainant and the building certifier enter into mediation and the complaint is not resolved when the mediation ends.
- (2) QBCC must conduct an investigation into the complaint as soon as practicable.
- (3) QBCC may deal with 1 or more complaints about a building certifier in the same investigation.
- (4) If during an investigation QBCC is satisfied there is a matter about which another complaint could have been made against the building certifier, QBCC may deal with the matter in its investigation as if a complaint had been made about the matter.

## **Division 2 Investigations**

### **195 QBCC may require documents to be produced**

- (1) For investigating a complaint or conducting an audit, QBCC may, by notice given to a building certifier, require the building certifier to produce a document to QBCC, or a person authorised by QBCC (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) QBCC 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.

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- (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 QBCC 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.

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## **201 Cooperating with investigation or audit**

- (1) A building certifier who is being investigated or audited by QBCC 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 QBCC 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 QBCC 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 QBCC 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 QBCC, 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 QBCC.

- (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, QBCC must decide whether or not the building certifier has engaged in unsatisfactory conduct or professional misconduct.
- (2) QBCC must give the building certifier and the complainant (if any) an information notice about the decision taken under subsection (1).

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

- (3) If QBCC is aware that the building certifier is employed or has been appointed by someone else to perform building or private certifying functions, it must give the employer or appointor a copy of the notice.
- (4) If QBCC decides the building certifier has engaged in unsatisfactory conduct, QBCC 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 QBCC the educational courses stated by QBCC;
  - (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 QBCC;
  - (e) require the building certifier to take all necessary steps to ensure the certification of building work—
    - (i) complies with this Act; or

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- (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 accepted 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 QBCC is satisfied the building certifier is generally competent and diligent—advise the building certifier it does not intend to take any further action.
- (5) QBCC must—
- (a) give an information notice about its decision under subsection (4) to the building certifier; and
- Note—*
- For reviews of the decision, see the QBCC Act, part 7, division 3.
- (b) if the decision is made after investigating a complaint—give the complainant a copy of the notice.
- (6) If QBCC decides the building certifier has engaged in professional misconduct, QBCC must apply to the tribunal to start a disciplinary proceeding against the building certifier.
  - (7) Subsection (4) does not prevent QBCC 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 QBCC from starting a proceeding to prosecute the building certifier for an offence against this Act.
  - (9) In this section—

*accepted development* means development categorised under a local planning instrument as accepted development for the Planning Act.

## **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 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 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    Tribunal may conduct disciplinary proceeding

- (1) The tribunal may, on application by QBCC 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.
- (3) An application under subsection (1) must be made as provided under the QCAT Act.

### 209    Constitution of tribunal for disciplinary proceeding

- (1) For a proceeding under section 208, if the president of the tribunal under the QCAT Act considers it appropriate, the president may choose the following persons to constitute the tribunal—
  - (a) 1 legally qualified member under the QCAT Act;
  - (b) 1 senior member or ordinary member who has special knowledge of the building certification industry and the administration of this Act;
  - (c) 1 other senior member or ordinary member.
- (2) In this section—

*ordinary member* means an ordinary member under the QCAT Act.

*senior member* means a senior member under the QCAT Act.

## **210 Notification of disciplinary proceeding**

- (1) If QBCC makes the application, QBCC must notify the local government of the application.
- (2) If the local government makes the application, it must notify QBCC of the application.
- (3) The applicant must file a copy of the notification in the tribunal.

## **211 Orders relating to current building certifier**

- (1) If the 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
  - (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 QBCC.
- (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
  - (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.

## **212 Orders relating to former building certifier**

- (1) This section applies if the 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 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 QBCC for the period stated in the order; or
  - (b) never be licensed or re-licensed by QBCC.
- (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.

### **213 Consequences of failure to comply with tribunal's orders and directions**

The 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 tribunal decides are not to be included in the register.

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## Part 5 Disqualified individuals

### Division 1 Preliminary

#### 214A Definitions for part

In this part—

*accumulate*—

If a demerit point is allocated to a person, the person is taken to have *accumulated* the demerit point at the time it took effect under section 214F.

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

- (a) a court finding the person guilty or accepting the person's plea of guilty, whether or not a conviction is recorded;
- (b) the person paying a fine under an infringement notice, in full;
- (c) the person paying the first instalment of a fine under an infringement notice;
- (d) the registration by the registrar of a default certificate for an infringement notice given to the person.

*default certificate* see the *State Penalties Enforcement Act 1999*, schedule 2.

*demerit offence* means an offence against a provision of this Act prescribed by regulation.

*demerit point* means a demerit point allocated by QBCC under this part for a conviction for a demerit offence.

*disqualification notice* see section 214K(2).

*disqualified individual* see section 214B.

*infringement notice* see the *State Penalties Enforcement Act 1999*, schedule 2.

*registrar* see the *State Penalties Enforcement Act 1999*, schedule 2.

### **214B Disqualified individual**

A person is a *disqualified individual* if—

- (a) the person has been given a disqualification notice; and
- (b) the person's period of disqualification under section 214L has not ended.

### **214C When period of 3 years starts**

- (1) This section applies to QBCC in deciding whether a person has accumulated 30 demerit points within a period of 3 years.
- (2) If the person has previously been given 1 or more disqualification notices, the period mentioned in subsection (1) must start at a time after the most recent disqualification notice was given to the person.

### **214D Operation of part**

This part has effect despite anything in part 3.

## **Division 2 Calculation of demerit points**

### **214E Demerit points for demerit offences**

- (1) This section applies in relation to a person who has a conviction for a demerit offence.
- (2) QBCC must allocate to the person the number of demerit points prescribed by regulation for the offence.
- (3) A regulation may prescribe up to 10 demerit points for a particular offence.
- (4) This section is subject to section 214G.



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## 214F When demerit points are allocated and take effect

- (1) QBCC must allocate demerit points to a person for a conviction for a demerit offence as soon as practicable after the points take effect.
- (2) Demerit points for a conviction for a demerit offence take effect—
  - (a) if a court finds the person guilty—on the day after the last day on which the person may appeal the finding; or
  - (b) if a court accepts the person’s plea of guilty—on the day the plea is accepted; or
  - (c) if the person pays the fine under an infringement notice in full—on the day the fine is paid; or
  - (d) if the person applies to the administering authority to pay the fine under an infringement notice by instalments—on the day the administering authority receives the first instalment; or
  - (e) if the administering authority gives a default certificate to SPER for registration—on the day the default certificate is registered.
- (3) However, if a conviction for a demerit offence is appealed, demerit points for the conviction must not be allocated until the appeal is finally dealt with or withdrawn.
- (4) Also, if a conviction for a demerit offence is appealed and after the appeal there is no conviction, demerit points stop having effect.
- (5) In this section—

***administering authority*** see the *State Penalties Enforcement Act 1999*, schedule 2.

***SPER*** see the *State Penalties Enforcement Act 1999*, schedule 2.

### **214G Limit on demerit points from single investigation or audit**

- (1) This section applies if a person is convicted of 2 or more demerit offences discovered by QBCC as a result of an investigation or audit under part 4.
- (2) The maximum demerit points that may be allocated to the person for the convictions for the demerit offences is 20.
- (3) Nothing in this section prevents more demerit points being allocated to the person for convictions for demerit offences discovered by QBCC as a result of a later investigation or audit under part 4.
- (4) However, more demerit points must not be allocated if—
  - (a) an earlier investigation or audit and a later investigation or audit relate to the same complaint or information received by QBCC from the same source; or
  - (b) for demerit offences discovered by QBCC as a result of a later investigation or audit—
    - (i) the offences were committed before an earlier investigation or audit but were not discovered as a result of the earlier investigation or audit; and
    - (ii) other demerit offences were discovered by QBCC as a result of the earlier investigation or audit; and
    - (iii) the other demerit offences resulted in the allocation of demerit points.

### **214H QBCC must notify person about demerit points**

- (1) This section applies if QBCC allocates demerit points to a person.
- (2) QBCC must, as soon as practicable after the demerit points are allocated, give the person notice of—
  - (a) the number of demerit points allocated; and
  - (b) the demerit offences for which the points were allocated; and
  - (c) the date the points took effect.

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## **Division 3                      Disqualification**

### **214I    Procedure if QBCC considers person has accumulated 30 demerit points**

- (1) This section applies if QBCC considers that a person has accumulated 30 demerit points in a period of 3 years.
- (2) QBCC must give the person a notice stating—
  - (a) details of the demerit offences for which the demerit points have accumulated and the dates the points took effect; and
  - (b) the effect of the person becoming a disqualified individual for accumulating 30 demerit points in a period of 3 years; and
  - (c) an invitation to the person to make written submissions, within a stated period, to satisfy QBCC that the person has not accumulated 30 demerit points in a period of 3 years.
- (3) The stated period must be at least 28 business days after the notice is given to the person.
- (4) QBCC must consider any submissions made by the person within the stated period.

### **214J    Ending procedure without further action**

- (1) This section applies if, after considering submissions made by the person, QBCC is satisfied the person has not accumulated 30 demerit points in a period of 3 years.
- (2) QBCC must, as soon as practicable, advise the person in writing that no further action under this part will be taken in relation to the notice given under section 214I(2).

### **214K    Notice of disqualification**

- (1) This section applies if—

- (a) after considering submissions made by the person, QBCC still considers the person has accumulated 30 demerit points in a period of 3 years; or
  - (b) the person did not make any submissions.
- (2) QBCC must, by notice (a *disqualification notice*) given to the person—
- (a) inform the person that—
    - (i) QBCC considers the person has accumulated 30 demerit points in a period of 3 years; and
    - (ii) the person is a disqualified individual for the period applying under section 214L and stated in the notice; and
  - (b) if the person holds a building certifier’s licence—cancel the person’s licence.
- (3) The disqualification notice must be an information notice.
- (4) To remove any doubt, it is declared that part 3, division 5 does not apply to a cancellation under subsection (2).

### **214L Period of disqualification**

- (1) This section applies to a person who is given a disqualification notice.
- (2) The person is a disqualified individual for the period decided by QBCC (the *period of disqualification*) that is not longer than—
  - (a) if, within the last 10 years, a previous disqualification notice was given to the person—3 years; or
  - (b) otherwise—1 year.
- (3) For subsection (2)(a), a previous notice must not be counted if—
  - (a) the previous notice was given more than 10 years before the notice mentioned in subsection (1); or

- (b) QBCC's decision under the previous notice was reversed or annulled on review by an internal review or the tribunal under the QBCC Act, part 7, division 3.

## 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.

### Part 1 Interpretation

#### 215 Definitions for ch 7

In this chapter—

*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, share-house 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) A building is not prevented from being a budget accommodation building under subsection (1) because of—
- (a) the fact that none, or only some, of the 6 or more persons mentioned in subsection (1)(b) are provided with food or meals at the building; or
  - (b) the legal basis, or the absence of any established legal basis, on which the accommodation is provided for the persons; or
  - (c) the fact that all or some of the persons are provided the accommodation free of charge; or
  - (d) the fact that all or some of the persons have a right to occupy parts of the building other than parts used to provide the accommodation.
- (3) Despite subsections (1) and (2), 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—

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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;
  - (e) 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 *Youth Justice Act 1992*;
  - (f) a facility in which residential care under the *Aged Care Act 1997* (Cwlth) is provided by an approved provider under that Act;
  - (g) 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;
  - (h) 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;
  - (i) a building used as a women’s refuge or shelter that is not used for any other type of accommodation;
  - (j) a building in which the only accommodation provided is to lifesavers;
  - (k) a building in which the only accommodation provided is recreational accommodation for camps for school groups, girl guides, scouts or similar groups.

(4) 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.

(5) 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, is classified as a class 1a building.

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

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

***educational institution*** means any of the following—

- (a) a State educational institution under the *Education (General Provisions) Act 2006*;
- (b) an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*;
- (c) TAFE Queensland under the *TAFE Queensland Act 2013*;
- (d) a university.

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



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## Part 2 Fire safety standard

### 217 Fire safety standard

- (1) The *fire safety standard* is—
  - (a) QDC, part MP 2.1; 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;
  - (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.

*Note—*

The building assessment provisions, other than the fire safety standard, apply in relation to a budget accommodation building to which this part does not apply. See the fire safety standard and chapter 4, part 1. See also section 21 for development that is accepted development for the Planning Act.

## **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—*

For rights of appeal to a development tribunal, see the Planning Act, section 229.

## **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.

## **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—

- (a) a 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).

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- (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 or change application that relates to the building; and
  - (b) the application is approved.
- (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 a performance 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).

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## 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 Emergency Services Act 1990*, section 104FD.

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

*local government Act* means the *City of Brisbane Act 2010* or a Local Government Act within the meaning of the *Local Government Act 2009*, schedule 4.

**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.

**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 a performance solution for performance requirements under the BCA—the records required under the performance solution; and
  - (b) if the local government imposes conditions on an approval given under section 221(3)—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 7A      Fire safety for residential care buildings built, approved or applied for, before 1 June 2007**

### **Part 1                      Application of chapter 7A**

#### **231AA Application of ch 7A**

- (1) This chapter applies to a residential care building only if it is operating as a residential care building on 1 September 2011 and—
  - (a) construction of the building started before 1 June 2007; or
  - (b) a building development approval for the construction of the building was given before 1 June 2007 and construction of the building was started on or after 1 June 2007; or
  - (c) all of the following apply—
    - (i) a building development application for the construction of the building was made before 1 June 2007;
    - (ii) a building development approval for the construction of the building was given on or after 1 June 2007;
    - (iii) construction of the building was started on or after 1 June 2007.
- (2) However, this chapter does not apply to a residential care building if—
  - (a) chapter 7 applies to the building; or
  - (b) the building complies with QDC, part MP 2.2.

## Part 2 Interpretation

### 231AB Definitions for ch 7A

In this chapter—

*assessment category*, for an RCB, see section 231AD.

*fire safety (RCB) compliance certificate* see section 231AI(6).

*fire safety standard (RCB)* see section 231AE.

*RCB* means residential care building.

*RCB assessment report* see section 231AI(1).

*RCB assessor* see section 231AF.

*residential care building* see section 231AC.

*type A construction* means the type of construction referred to as type A construction in the BCA.

*type B construction* means the type of construction referred to as type B construction in the BCA.

*type C construction* means the type of construction that is neither a type A construction nor a type B construction.

### 231AC What is a residential care building (or RCB)

- (1) A *residential care building* (or *RCB*) is a building—
  - (a) that is operated as a place of residence for 6 or more persons; and
  - (b) where at least 10% of the residents—
    - (i) need physical assistance in conducting their daily activities; and
    - (ii) would need physical assistance to evacuate the building during an emergency.
- (2) However, none of the following is an *RCB*—
  - (a) a hospital;

- (b) a dwelling in which 2 or more members of a family and not more than 2 other persons would ordinarily be resident;
- (c) a building in which only one resident—
  - (i) needs physical assistance to conduct their daily activities; and
  - (ii) would need physical assistance to evacuate the building during an emergency.

### **231AD What are the *assessment categories* for RCBs**

The following are the *assessment categories* for RCBs—

- (a) assessment category 1, for an RCB—
  - (i) of type B construction or type C construction; and
  - (ii) with a rise of 2 or more storeys;
- (b) assessment category 2, for an RCB—
  - (i) of type A construction; or
  - (ii) of type B construction or type C construction with a rise of 1 storey.

## **Part 3 Fire safety standard (RCB)**

### **231AE What is the *fire safety standard (RCB)***

- (1) The *fire safety standard (RCB)* is—
  - (a) QDC, part MP 2.3; or
  - (b) any other standard prescribed under a regulation for ensuring all the residents of an RCB may be safely evacuated in the event of a fire in the RCB.
- (2) A prescribed standard may, for fire safety purposes, provide for all or any of the following for the RCB—

- (a) the minimum ratio of nominated persons to residents of the RCB;
  - (b) the provision and maintenance of fire safety systems;
  - (c) training programs for persons employed in, and residents of, an RCB about—
    - (i) fire management and prevention; or
    - (ii) emergency evacuation;
  - (d) any other matter to provide appropriately for the safety of persons in an RCB.
- (3) In this section—
- nominated person*** means—
- (a) a person employed in the RCB; or
  - (b) another person who is able to physically assist a resident to evacuate the RCB during an emergency.

## Part 3A RCB assessors

### 231AF Who is an *RCB assessor*

Each of the following is an ***RCB assessor***—

- (a) a building certifier;
- (b) a public service employee approved by the chief executive to carry out an assessment of an RCB for this chapter.

### 231AG Chief executive may approve public service employees to assess RCBs

- (1) The chief executive may approve a public service employee to carry out an assessment of an RCB for this chapter.
- (2) The chief executive may only approve a public service employee if the chief executive reasonably considers the

employee has the qualifications, knowledge or experience appropriate for carrying out an assessment of an RCB.

## Part 4                      **Assessment of residential care buildings**

### **231AH Owner must have RCB assessed for assessment category and compliance with fire safety standard (RCB)**

- (1) The owner of an RCB must, before 1 March 2012, or a later date prescribed under a regulation, ensure the RCB is assessed by an RCB assessor to decide—
  - (a) the assessment category for the RCB; and
  - (b) if the RCB complies with the fire safety standard (RCB).

Maximum penalty—165 penalty units.

- (2) For the assessment, the owner must give the RCB assessor—
  - (a) a plan of the RCB drawn to scale; and
  - (b) the necessary information to enable the assessor to make the assessment.

*Example of information—*

the usual number of residents in the RCB

### **231AI RCB assessment reports**

- (1) An RCB assessor who assesses an RCB must, as soon as practicable, give the owner of the RCB and, if the owner is not its operator, the operator a report in the approved form (an ***RCB assessment report***) about the RCB assessor's decision relating to—
  - (a) the assessment category for the RCB; and
  - (b) whether the RCB complies with the fire safety standard (RCB); and

- (c) if the RCB does not comply with the fire safety standard (RCB), the way the RCB does not comply, including the provisions of the fire safety standard (RCB) with which the RCB does not comply.
- (2) If the RCB does not comply with the fire safety standard (RCB) in relation to sprinklers, the report must also include a statement of—
- (a) the parts of the RCB for which requirements under the fire safety standard (RCB) about sprinklers are not met; and
  - (b) the area of each of those parts, expressed in square metres.
- (3) For subsection (2)(a), a part of the RCB may be described by reference to the plan of the RCB given to the assessor by the owner of the RCB under section 231AH(2)(a).
- (4) Also, the RCB assessment report must include the following—
- (a) a copy of the plan of the RCB given to the assessor by the owner of the RCB under section 231AH(2)(a);
  - (b) whether the RCB is of type A construction, type B construction or type C construction;
  - (c) the number of the rise of storeys for the RCB;
  - (d) the usual number of residents in the RCB according to information given by the owner of the RCB;
  - (e) any other matter prescribed under a regulation.
- (5) The RCB assessment report must be, or include, an information notice about the RCB assessor's decision.

*Note—*

For rights of appeal to a development tribunal, see the Planning Act, section 229.

- (6) If the RCB assessor decides the RCB complies with the fire safety standard (RCB), the RCB assessor must issue a certificate in the approved form (a *fire safety (RCB) compliance certificate*) for the RCB.

### **231AJ Further assessment by RCB assessor**

- (1) This section applies if —
  - (a) an RCB assessment report (the *original report*) states that an RCB does not comply with the fire safety standard (RCB); and
  - (b) after building work necessary to make the RCB comply with the fire safety standard (RCB) is carried out, the owner of the RCB asks an RCB assessor to reassess the RCB; and
  - (c) the RCB assessor is not the one who gave the original report.
- (2) The RCB assessor may, for issuing a fire safety (RCB) compliance certificate or certificate of occupancy for the RCB, accept and, without further checking, rely on the original report.

### **231AK When owner must obtain fire safety (RCB) compliance certificate or certificate of occupancy**

The owner of an RCB must, unless the owner has a reasonable excuse, obtain a fire safety (RCB) compliance certificate for the RCB, or a certificate of occupancy relating to building work done to the RCB to make it comply with the fire safety standard (RCB), by the latest of the following days—

- (a) for an RCB with the assessment category 1—
  - (i) 1 September 2014; or
  - (ii) a day prescribed under a regulation that is later than 1 September 2014; or
  - (iii) a day approved by a local government under section 231AL that is later than 1 September 2014 but not later than 1 September 2015;
- (b) for an RCB with the assessment category 2—
  - (i) 1 September 2016; or

- (ii) a day prescribed under a regulation that is later than 1 September 2016; or
- (iii) a day approved by a local government under section 231AL that is later than 1 September 2016 but not later than 1 September 2017.

Maximum penalty—165 penalty units.

### **231AL Approval of later day for obtaining fire safety (RCB) compliance certificate or certificate of occupancy**

- (1) The owner of an RCB may make written application to the relevant local government to approve a later day for the RCB under section 231AK(a)(iii) or (b)(iii).
- (2) However, the application can only be made—
  - (a) for an RCB with the assessment category 1—before the later of the days mentioned in section 231AK(a)(i) or (ii); or
  - (b) for an RCB with the assessment category 2—before the later of the days mentioned in section 231AK(b)(i) or (ii).
- (3) The local government—
  - (a) must consult with QFES; and
  - (b) may—
    - (i) consult with any entity it considers appropriate in deciding the application; and
    - (ii) grant the application only if it is satisfied undue hardship would be caused to the occupants of the RCB if the application were refused.
- (4) The local government may grant the application with or without the reasonable conditions it considers appropriate.
- (5) 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.
- (6) The owner must comply with each condition imposed on the approval.

Maximum penalty—165 penalty units.

*Notes—*

- 1 This provision is an executive liability provision—see section 257.
  - 2 For rights of appeal to a development tribunal, see the Planning Act, section 229.
- (7) Within 20 business days after giving an approval, the local government must give the chief executive notice of the approval.

### **231AM Owner and operator must ensure RCB continues to comply with fire safety standard (RCB)**

- (1) This section applies if a fire safety (RCB) compliance certificate, or a certificate of occupancy relating to building work done to an RCB to make it comply with the fire safety standard (RCB), is issued for an RCB.
- (2) Unless the person has a reasonable excuse, the owner of an RCB and, if the owner is not its operator, the operator must—
  - (a) ensure the RCB complies with the fire safety standard (RCB) at all times; and
  - (b) if any event causes the RCB not to comply—
    - (i) as soon as practicable, take action necessary to restore compliance; and
    - (ii) have the RCB assessed by an RCB assessor; and
    - (iii) obtain a fire safety (RCB) compliance certificate, or a certificate of occupancy, for the RCB.

*Example of event causing RCB not to comply—*

a change in the operation of the RCB including, for example a change to the ratio of staff to residents

Maximum penalty—165 penalty units.

## **Part 5**                      **General**

### **231AN General obligations of operator of RCB**

- (1) This section applies if the owner of an RCB is not its operator.
- (2) The operator must—
  - (a) give the owner reasonable access to the RCB to enable the owner to comply with the owner's obligations under this chapter; and
  - (b) give the owner the necessary information, including, for example, plans of the RCB, the owner requires to comply with the owner's obligations under this chapter; and
  - (c) do anything else that is reasonably required to enable the owner to comply with the owner's obligations under this chapter.

Maximum penalty—165 penalty units.

### **231AO Owner must give RCB assessment report to chief executive and local government**

- (1) Subject to subsection (2), the owner of an RCB must give an RCB assessment report for an RCB to the chief executive and the relevant local government within 10 business days after receiving the report, unless the owner has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) However, if the RCB assessor who gave the owner the RCB report is not a private certifier, the owner need not give a copy of the RCB report to—
  - (a) if the RCB assessor is a local government building certifier—the local government; or
  - (b) if the RCB assessor is approved under section 231AF(b)—the chief executive.

### **231AP Owner must give fire safety (RCB) compliance certificate to chief executive and local government**

- (1) If an owner of an RCB is given a fire safety (RCB) compliance certificate for the RCB, the owner must, within 10 business days, give a copy of the certificate to each of the following, unless the owner has a reasonable excuse—
  - (a) the chief executive;
  - (b) the relevant local government;
  - (c) if the owner is not its operator, the operator.

Maximum penalty—50 penalty units.

- (2) If an owner of an RCB is given a certificate of occupancy relating to building work done to the RCB to make it comply with the fire safety standard (RCB), the owner must, within 10 business days, give a copy of the certificate to the chief executive, unless the owner has a reasonable excuse.

Maximum penalty—50 penalty units.

### **231AQ Obligations about access to fire safety (RCB) compliance certificate**

- (1) An authorised officer may require the owner of an RCB and, if the owner is not its operator, the operator to produce for inspection, the fire safety (RCB) compliance certificate, if any, for the RCB at the RCB.
- (2) The owner or the operator of the RCB must comply with the requirement, unless the owner has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) For subsection (1), a reference to the fire safety (RCB) compliance certificate includes a reference to a copy of the certificate.

*Note—*

For an owner's obligation to produce a certificate of occupancy see section 108A.

## Chapter 8 Swimming pool safety

### Part 1 Interpretation

#### 231A Definitions for ch 8

In this chapter—

*accommodation agreement*—

1 *Accommodation agreement* means any of the following—

- (a) a residential tenancy agreement within the meaning of the *Residential Tenancies and Rooming Accommodation Act 2008*, section 12;
- (b) a rooming accommodation agreement within the meaning of the *Residential Tenancies and Rooming Accommodation Act 2008*, section 16;
- (c) a homestay or assisted accommodation agreement;
- (d) an agreement, other than an agreement mentioned in subparagraph (a), (b) or (c), under which a person gives to someone else a right to occupy premises in exchange for money or other valuable consideration.

*Example for subparagraph (d)*—

letting a motel or hotel room

2 Paragraph 1(d) applies—

- (a) whether or not the right is a right of exclusive occupation; and
- (b) whether the agreement is—
  - (i) wholly in writing, wholly oral or wholly implied; or

- (ii) partly in a form mentioned in subsubparagraph (i) and partly in 1 or both of the other forms.

3 The term does not include an agreement between members of a family under which a member of the family gives to another member money or other valuable consideration for a right to occupy that other member's residence.

***complying pool*** means a regulated pool that—

- (a) complies with the pool safety standard; or
- (b) if an exemption is in effect under section 245B for the regulated pool—complies with the pool safety standard to the extent the exemption does not apply.

***homestay or assisted accommodation agreement***—

1 *Homestay or assisted accommodation agreement* means—

- (a) an agreement under which accommodation is provided at a person's residence to a student who is enrolled to study or train at an educational institution in a State, if—
  - (i) the student pays the person for the accommodation; and
  - (ii) under the agreement, accommodation is also provided to a young child who is a dependant of the student; or
- (b) an agreement under which accommodation is provided to a person, free of charge, by a following entity at premises owned or operated by the entity—
  - (i) a charity registered under the *Collections Act 1966*;
  - (ii) a public sector entity;
  - (iii) a local government.

- 2 Paragraph 1 applies whether the agreement is—
  - (a) wholly in writing, wholly oral or wholly implied; or
  - (b) partly in a form mentioned in subparagraph (a) and partly in 1 or both of the other forms.
- 3 The term does not include an agreement between members of a family under which a member of the family gives to another member money or other valuable consideration for a right to occupy that other member's residence.

***pool immersion incident*** means an event involving the immersion or partial immersion of a young child under water in a swimming pool, if because of the immersion or partial immersion—

- (a) the child has died; or
- (b) the child has been deprived of air and the health or wellbeing of the child has been adversely affected.

***pool safety inspection function*** see section 231C.

***pool safety standard*** see section 231D.

***pool safety standard application day***, for a regulated pool, means—

- (a) for a pool situated on common property or a common property lot under an Act mentioned in schedule 2, definition *owner*, of a regulated pool, paragraphs (a) to (e) and for use by occupiers of a building subject to that Act—the earliest of the following days to happen—
  - (i) if the building, or a part of the building, is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the building or part—the day that is 90 days after the day of settlement;
  - (ii) if an accommodation agreement is entered into for the building, or a part of the building, and a pool safety certificate is not in effect for the pool when

- the agreement is entered into—the day that is 90 days after the day the agreement is entered into;
- (iii) the day a pool safety certificate is first in effect for the pool;
  - (iv) the day that is 5 years after the 2010 Act commencement day; or
- (b) for a pool situated on a part of a building mentioned in paragraph (a), other than a shared pool—the earliest of the following days to happen—
- (i) if the part of the building is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the part—the day that is 90 days after the day of settlement;
  - (ii) the day an accommodation agreement is entered into for the part of the building;
  - (iii) the day a pool safety certificate is first in effect for the pool;
  - (iv) the day that is 5 years after the 2010 Act commencement day; or
- (c) for a pool situated on a moveable dwelling or the site in a moveable dwelling park where the dwelling is situated, or on a manufactured home in a residential park or on the site in the park where the manufactured home is situated—the earliest of the following days to happen—
- (i) if the moveable dwelling or manufactured home is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the moveable dwelling or manufactured home—the day that is 90 days after the day of settlement;
  - (ii) the day an accommodation agreement is entered into for the moveable dwelling or manufactured home;

- (iii) the day a pool safety certificate is first in effect for the pool;
  - (iv) the day that is 5 years after the 2010 Act commencement day; or
- (d) for a pool situated on a moveable dwelling park (other than on moveable dwelling premises on the park) or on the common areas of a residential park—the earliest of the following days to happen—
  - (i) if the moveable dwelling park or residential park is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the moveable dwelling park or residential park—the day that is 90 days after the day of settlement;
  - (ii) if an accommodation agreement is entered into for any moveable dwelling situated on the moveable dwelling park, or any manufactured home situated in the residential park, and a pool safety certificate is not in effect for the pool when the agreement is entered into—the day that is 90 days after the day the agreement is entered into;
  - (iii) the day a pool safety certificate is first in effect for the pool;
  - (iv) the day that is 5 years after the 2010 Act commencement day; or
- (e) if paragraphs (a) to (d) do not apply—the earliest of the following days to happen—
  - (i) if the building on the regulated land where the pool is situated is sold and a pool safety certificate is not in effect for the pool at settlement under the contract of sale for the building—the day that is 90 days after the day of settlement;
  - (ii) the day an accommodation agreement is entered into for the building;



- (iii) the day a pool safety certificate is first in effect for the pool;
- (iv) the day that is 5 years after the 2010 Act commencement day.

***regulated land***—

- 1 *Regulated land* is land on which any of the following is constructed or is to be constructed—
  - (a) a class 1, 2, 3 or 4 building;
  - (b) a moveable dwelling park;
  - (c) a residential park.
- 2 The term includes land adjacent to the land and—
  - (a) in the same ownership as the land; or
  - (b) used in association with the land.

***regulated pool*** see section 231B.

***shared pool***—

- 1 If the residents of 2 or more dwellings constructed, or to be constructed, on regulated land have, or will have, a right to use a regulated pool situated on the land, the pool is a *shared pool*.
- 2 For paragraph 1—
  - (a) the resident of a dwelling is the person who is the owner or occupier of the dwelling or has a right to use the dwelling; and
  - (b) a dwelling includes—
    - (i) a moveable dwelling in a moveable dwelling park; and
    - (ii) a manufactured home on a site in a residential park.
- 3 The term includes a regulated pool situated on land on which a class 3 building is, or is to be, constructed.

### **231B What is a *regulated pool***

- (1) A *regulated pool*—
  - (a) is a swimming pool situated on regulated land; and
  - (b) includes the barriers for the pool.
- (2) The barriers for the pool include any of the following—
  - (a) the fencing for the pool;
  - (b) the walls of a building enclosing the pool;
  - (c) another form of barrier mentioned or provided for in the pool safety standard.

*Example—*

Under QDC, part MP3.4, a canal, lake, river, creek, stream, pond, ocean or dam may, in particular circumstances, form part of a barrier.

- (3) Despite subsection (1), other than in part 2A a *regulated pool* does not include a swimming pool situated on either of the following if an approved pool safety management plan is in force for the pool—
  - (a) common property in a class 3 building, including a class 3 building that is to be constructed;
  - (b) land adjacent to land on which a class 3 building is, or is to be, constructed and that is—
    - (i) in the same ownership as the building; or
    - (ii) used in association with the building.
- (4) Also, a *regulated pool* does not include a public pool.
- (5) In this section—

*public pool* means a swimming pool open to the public, whether or not on payment of money, and operated by a local government or other statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

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**231C What is a *pool safety inspection function***

A *pool safety inspection function* is doing any of the following—

- (a) inspecting a regulated pool to decide whether to give a certificate (a *pool safety certificate*) that states the pool is a complying pool;
- (b) carrying out minor repairs relating to a regulated pool arising from an inspection of the pool under paragraph (a);
- (c) the giving of a pool safety certificate for a regulated pool;
- (d) the giving of a nonconformity notice for a regulated pool.

**231D What is the *pool safety standard***

- (1) The *pool safety standard* is—
  - (a) QDC, part MP3.4; and
  - (b) any other standard prescribed under a regulation for ensuring the safety of persons using a regulated pool.
- (2) Without limiting subsection (1), a prescribed standard may provide for both or either of the following for the pool—
  - (a) the form of a resuscitation sign and the way it must be displayed;
  - (b) the requirements for devices used for recirculation of water in the pool.

## **Part 2**                      **Compliance with pool safety standard and other matters about pool safety**

### **Division 1**                **Compliance with pool safety standard**

#### **232**    **Compliance with pool safety standard—regulated pool**

- (1) The owner of a regulated pool must ensure—
  - (a) the pool complies with the pool safety standard for the pool; and
  - (b) all barriers for the pool are kept in good condition.

Maximum penalty—165 penalty units.

*Note—*

This provision is an executive liability provision—see section 257.

- (2) However, if the regulated pool is in existence on the 2010 Act commencement day, subsection (1)(a) does not apply to the owner of the pool until the pool safety standard application day for the pool.

*Note—*

For the application of subsection (1) to particular pools constructed before the 2010 Act commencement day, see section 291.

- (3) Also, if an exemption under division 3 or 4 is in effect for a regulated pool, subsection (1)(a) does not apply to the owner of the pool to the extent the exemption applies.

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## Division 2                      Requirements about constructing regulated pool

### 233      **Constructing regulated pool—requirement for warning sign**

- (1) This section applies to each relevant person for a regulated pool, other than a portable swimming pool.
- (2) The relevant person must ensure that, before construction of the pool starts, a warning sign, complying with the requirements for a warning sign prescribed under a regulation, is displayed on the land on which the pool is situated in the way prescribed under a regulation.

Maximum penalty—20 penalty units.

- (3) The relevant person must ensure the warning sign is displayed until a building certifier has provided a certificate in the approved form stating the pool is a complying pool.

Maximum penalty—20 penalty units.

- (4) In this section—

*portable swimming pool* means a swimming pool that is designed to be readily assembled by hand and moved from place to place.

*relevant person*, for a regulated pool, means—

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

### 234      **Constructing regulated pool—requirement for compliance with pool safety standard**

- (1) This section applies to a person if—
  - (a) a regulated pool has been constructed or is being constructed; 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 owner of the pool; 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 building certifier has provided a certificate in the approved form stating the pool is a complying pool.

Maximum penalty—165 penalty units.

## **Division 3 Exemptions from compliance with pool safety standard—disability**

### **Subdivision 1 Applying for exemption and deciding application**

#### **235 Application for exemption—disability**

A person may apply to the local government for an exemption under this division from complying with a part of the pool safety standard relating to barriers for a regulated pool if the person is—

- (a) the owner of the pool; or
- (b) if the pool is still to be constructed—the person who is to be the owner of the pool.

#### **236 Requirement for further information**

The local government may require the applicant to give the local government medical evidence to support the application.

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## **237 Decision on application**

- (1) The local government must consider the application and, within 5 business days after the application is made—
  - (a) grant the exemption; or
  - (b) refuse to grant the exemption.
- (2) 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 land on which the regulated pool is situated; and
  - (b) it would be physically impracticable for the person, because of the person's disability, to access the pool if it had barriers complying with the pool safety standard.
- (3) The local government may grant the exemption on the reasonable conditions it considers necessary or desirable to prevent a young child accessing the pool.
- (4) If the exemption is granted on conditions, the applicant must comply with each condition of the exemption.  
Maximum penalty for subsection (4)—165 penalty units.
- (5) The local government may only exempt a person from complying with a part of the pool safety standard to the extent reasonably necessary to allow a person mentioned in subsection (2) to access the pool.

## **238 Notice of decision**

- (1) If the local government decides to grant the exemption, it must give the applicant written notice of the exemption.
- (2) If the local government decides to refuse to grant the exemption or impose conditions on the exemption, the local government must give the applicant an information notice about the decision.

*Note—*

For rights of appeal to a development tribunal, see the Planning Act, section 229.

### **239 Notice of exemption to be given to QBCC commissioner**

- (1) The local government must give the QBCC commissioner notice of each exemption granted under this division.
- (2) The notice must—
  - (a) be given to the QBCC commissioner within 10 business days after the exemption is granted; and
  - (b) state the address, and real property description, of the land on which the regulated pool to which the exemption relates is situated.

### **240 Application of pool safety standard under exemption**

If the local government grants the exemption, the pool safety standard continues to apply for the regulated pool to the extent the exemption does not apply.

## **Subdivision 2 Ending and revocation of exemptions**

### **241 When exemption ends**

The exemption ends if—

- (a) the applicant stops being the owner of the regulated pool; or
- (b) the person because of whom the exemption was granted is no longer an occupier of the land on which the pool is situated; 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 complied with the pool safety standard.

### **242 Local government may revoke exemption**

- (1) This section applies if—



- 
- (a) a local government has, under section 237, 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;
    - (iii) the exemption was subject to conditions and there has been a contravention of a condition.
- (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, barriers complying with the pool safety standard; and
  - (b) the day by which the applicant must comply with the notice.

*Note—*

For rights of appeal to a development tribunal, see the Planning Act, section 229.

- (5) The applicant must comply with the revocation notice.  
Maximum penalty for subsection (5)—165 penalty units.
- (6) If the applicant fails to comply with the revocation notice, the failure is taken to be a failure to take action under the *Local Government Act 2009*, section 142 or the *City of Brisbane Act 2010*, section 132.

(7) In this section—

*show cause notice* means a show cause notice under section 247(1).

### **243 Notice of revocation to be given to QBCC commissioner**

- (1) If the local government gives a person a revocation notice, the local government must give the QBCC commissioner notice of the revocation notice.
- (2) The notice must—
  - (a) be given to the commissioner within 10 business days after the revocation notice is given; and
  - (b) state—
    - (i) the day the revocation notice was given; and
    - (ii) the address, and real property description, of the land on which the regulated pool to which the revocation notice relates is situated.

## **Subdivision 3 Miscellaneous**

### **244 Keeping copy of exemption**

- (1) The local government must keep a copy of each exemption it grants under this division.
- (2) The local government must—
  - (a) keep the copy while the exemption is still in force and for at least 5 years after the exemption is no longer in force; and
  - (b) make the copy available for inspection and purchase as if it were a document that, under the Planning Act, the local government must make available for inspection and purchase.

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## **Division 4 Exemptions from compliance with pool safety standard—impracticality**

### **Subdivision 1 Applying for exemption and deciding applications**

#### **245 Application for exemption—compliance impracticable**

- (1) The owner of a regulated pool may apply to the local government for an exemption under this division from complying with a part of the pool safety standard relating to barriers for the regulated pool.
- (2) The application must be accompanied by enough details to—
  - (a) identify the part of the pool safety standard for which the owner is seeking the exemption; and
  - (b) show compliance with the part of the pool safety standard is not practicable.

#### **245A Requirement for further information**

The local government may require the owner to give the local government further information to establish that compliance with the part of the pool safety standard is not practicable.

#### **245B Decision on application**

- (1) The local government must consider the application and decide to—
  - (a) grant the exemption; or
  - (b) refuse to grant the exemption.
- (2) In deciding the application, the local government may consider the following—
  - (a) whether compliance with the part of the pool safety standard may require the owner to—

- (i) move or demolish a building or part of a building;  
or
  - (ii) change the location or size of the regulated pool; or
  - (iii) remove vegetation protected from removal under an Act or a local law;
- (b) the cost of the barriers or work required to ensure the pool complies with the part of the pool safety standard, having regard to the nature of any existing barriers for the pool;
- (c) other matters the local government considers relevant.
- (3) The local government may grant the exemption on the reasonable conditions it considers necessary or desirable to prevent a young child accessing the pool.
- (4) If the exemption is granted on conditions, the owner of the regulated pool must comply with each condition of the exemption.

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

*Note—*

This provision is an executive liability provision—see section 257.

- (5) The local government may only exempt a person from complying with a part of the pool safety standard to the extent reasonably necessary in the circumstances to overcome the impracticality associated with compliance with the part.
- (6) The local government is taken to have refused to grant the exemption if the local government does not decide the application within the decision period.

### **245C Notice of decision and application of pool safety standard under exemption**

- (1) If the local government decides to grant an exemption under this division the local government must give the applicant written notice of the exemption.
- (2) If the local government decides to refuse to grant the exemption or impose conditions on the exemption, or the

application is taken to be refused under section 245B(6), the local government must give the applicant an information notice about the decision.

*Note—*

For rights of appeal to a development tribunal, see the Planning Act, section 229.

- (3) If the local government grants an exemption for a regulated pool under this division, the pool safety standard continues to apply for the pool to the extent the exemption does not apply.

## **245D Continuation of exemption**

- (1) An exemption for a regulated pool under this division continues to apply to the pool unless the exemption is revoked under subdivision 2.
- (2) If the exemption is granted on conditions, the conditions are binding on the successors in title to the owner of the regulated pool to whom the exemption was granted.

## **Subdivision 2 Revocation of exemptions**

### **245E Local government may revoke exemption**

- (1) This section applies if—
  - (a) the local government has, under this division, granted 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 in the application;
    - (ii) the exemption was subject to conditions and there has been a contravention of a condition.

- (2) The local government must give the owner of the regulated pool a show cause notice inviting the owner 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 owner, 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 owner must ensure the pool has, around the pool, barriers complying with the pool safety standard; and
  - (b) the day by which the owner must comply with the notice.

*Note—*

For rights of appeal to a development tribunal, see the Planning Act, section 229.

- (5) The owner must comply with the revocation notice.  
Maximum penalty for subsection (5)—165 penalty units.
- (6) In this section—  
*show cause notice* means a show cause notice under section 247(1).

## **Subdivision 3      Miscellaneous**

### **245F    Notice of exemption or revocation to be given to QBCC commissioner**

- (1) The local government must give the QBCC commissioner notice of each exemption granted under this division.
- (2) If the local government gives a person a revocation notice, the local government must give the commissioner notice of the revocation notice.

- (3) A notice under subsection (1) or (2) must—
  - (a) be given to the commissioner within 10 business days after the exemption is granted or revocation notice is given; and
  - (b) state all of the following—
    - (i) the address, and real property description, of the land on which the regulated pool to which the exemption or revocation notice relates is situated;
    - (ii) for a notice about a revocation notice—the day the revocation notice was given.

### **245FA Keeping copy of exemption**

- (1) The local government must keep a copy of each exemption it grants under this division.
- (2) The local government must—
  - (a) keep the copy while the exemption is still in force and for at least 5 years after the exemption is no longer in force; and
  - (b) make the copy available for inspection and purchase as if it were a document that, under the Planning Act, the local government must make available for inspection and purchase.

## **Division 5                      Reporting, and giving notice of, pool immersion incidents**

### **245G Requirement to report pool immersion incident**

- (1) A person in charge of a hospital must, under subsection (2), unless the person has a reasonable excuse, notify the chief executive (health) if an examination of a young child by a doctor in the hospital indicates that the child has been involved in a pool immersion incident.

Maximum penalty—20 penalty units.

- (2) The notice must—
  - (a) be given to the chief executive (health) within 5 business days after the examination happened; and
  - (b) include the following information to the extent the person has it—
    - (i) the name and date of birth of the young child;
    - (ii) the day the examination happened;
    - (iii) the address of the child’s parents;
    - (iv) the address where the pool immersion incident happened.
- (3) The notice may include other information about the pool immersion incident the person in charge of the hospital considers relevant.
- (4) In this section—

***person in charge***, of a hospital, means—

  - (a) for a public sector hospital under the *Hospital and Health Boards Act 2011*—the person responsible for the day-to-day operation and control of the hospital; or
  - (b) for a private health facility under the *Private Health Facilities Act 1999*—the licensee of the private health facility.

## **245H Disclosure of information about pool immersion incident**

- (1) This section applies if a health professional reasonably believes that a young child has been involved in a pool immersion incident.
- (2) The health professional may give the chief executive (health) any relevant information about the young child’s condition and the incident.



- 
- (3) The health professional is not liable, civilly, criminally, or under an administrative process, for giving the information under subsection (2).
  - (4) Also, merely because the health professional gives the information, the health professional can not be held to have—
    - (a) breached any code of professional etiquette or ethics; or
    - (b) departed from the accepted standards of professional conduct.
  - (5) Without limiting subsection (3) or (4), if the health professional would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the health professional—
    - (a) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (b) is not liable to disciplinary action for giving the information.
  - (6) In this section—

***health professional*** means any of the following—

    - (a) a person who is a health professional under the *Hospital and Health Boards Act 2011*;
    - (b) an ambulance officer under the *Ambulance Service Act 1991*;
    - (c) another person prescribed under a regulation for this section who, as part of the person's profession or occupation, performs functions relating to the health of others.

## **245I Giving notice of pool immersion incidents**

- (1) If the chief executive (health) receives a pool immersion notice, the chief executive (health) must, within 5 business days after receiving it, give notice of the pool immersion incident to which it relates to—
  - (a) the QBCC commissioner; and

- (b) the local government for the area in which the incident happened; and
  - (c) the family and child commissioner.
- (2) However, if the chief executive (health) receives more than 1 pool immersion notice about the same pool immersion incident, the chief executive (health) need only give notice under subsection (1) for the first pool immersion notice received about the incident.
- (3) The notice given under subsection (1) must state the information included in the pool immersion notice.
- (4) In this section—

*family and child commissioner* means the principal commissioner under the *Family and Child Commission Act 2014*.

*pool immersion notice* means notice of a pool immersion incident given to the chief executive (health) under—

- (a) the *Ambulance Service Act 1991*, section 23; or
- (b) section 245G.

## **Division 6                      Pool safety management plans for particular pools**

### **Subdivision 1              Preliminary**

#### **245J    Application of div 6**

This division applies to the owner of a swimming pool that is situated on—

- (a) common property in a class 3 building, including a class 3 building that is to be constructed; or
- (b) land adjacent to land on which a class 3 building is, or is to be, constructed and that is—

- (i) in the same ownership as the building; or
- (ii) used in association with the building.

### **245K Requirement to have pool safety management plan**

The owner must, by the day that is 6 months after the 2010 Act commencement day, have a plan (a *pool safety management plan*) approved under this division for the swimming pool, unless a pool safety certificate is in effect for the pool.

Maximum penalty—165 penalty units.

### **245L Requirement to comply with approved pool safety management plan**

If the owner has an approved pool safety management plan for the swimming pool, the owner must comply with the plan.

Maximum penalty—165 penalty units.

*Note—*

This provision is an executive liability provision—see section 257.

## **Subdivision 2 Approval, and duration, of pool safety management plans**

### **245M Application for approval**

- (1) The owner must apply to the QBCC commissioner for approval of its pool safety management plan for the swimming pool.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by—
    - (i) the proposed pool safety management plan; and
    - (ii) the fee prescribed under a regulation.

- (3) The proposed pool safety management plan must include details of the measures (the *pool safety measures*) the owner intends to implement under the plan to appropriately provide for the safety of young children in and around the pool, including, for example, providing for an on-site lifeguard for the pool.

### **245N Requirement for further information**

The QBCC commissioner may, by notice given to the owner, require the owner to give the commissioner further information about the pool safety management plan, including, for example, information about the pool safety measures under the plan.

### **245O Decision on application**

- (1) The QBCC commissioner must consider the application and, within 20 business days after receiving it, decide to—
  - (a) approve the pool safety management plan; or
  - (b) refuse to approve the plan.
- (2) In deciding the application, the commissioner must have regard to—
  - (a) the pool safety management plan and any information about the plan given to the commissioner under section 245N; and
  - (b) the guidelines, if any, made by the commissioner about preparing a pool safety management plan.
- (3) The commissioner must not approve the pool safety management plan unless satisfied the pool safety measures under the plan appropriately provide for the safety of young children in and around the pool.
- (4) Within 5 business days after deciding the application, the commissioner must give the owner—
  - (a) if the decision is to approve the pool safety management plan—notice of the approval; or

- 
- (b) if the decision is to refuse to approve the pool safety management plan—an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

### **245P Duration of plan**

An approved pool safety management plan has effect for 1 year after the day it is approved, unless it is sooner cancelled under this division.

## **Subdivision 3 Cancellation of approval and amendment of approved pool safety management plan**

### **245Q Cancellation or amendment**

- (1) This section applies if the QBCC commissioner is satisfied the pool safety measures under the owner's approved pool safety management plan no longer appropriately provide for the safety of young children in and around the pool.
- (2) The commissioner may, by notice given to the owner—
- (a) cancel the approval for the plan; or
  - (b) require the owner to amend the plan in the way stated in the notice.
- (3) However, before acting under subsection (2), the commissioner must—
- (a) give the owner a notice (a *show cause notice*) stating each of the following—
    - (i) the proposed action the commissioner is considering taking under subsection (2);
    - (ii) the grounds for taking the proposed action;

- (iii) the facts and circumstances forming the basis for the grounds;
    - (iv) if the proposed action is to require the owner to amend the plan—the proposed amendment;
    - (v) that the owner may, within a stated period (the *show cause period*), make submissions to the commissioner about why the proposed action should not be taken; and
  - (b) consider any submissions made to the commissioner under paragraph (a)(v).
- (4) The show cause period must end at least 20 business days after the owner is given the show cause notice.
- (5) If, after complying with subsection (3), the commissioner decides not to take the proposed action, the commissioner must give the owner notice of the decision.
- (6) If, after complying with subsection (3), the commissioner decides to take the proposed action, the commissioner must give the owner an information notice about the decision.

*Note—*

For reviews of a decision under subsection (5) or (6), see the QBCC Act, part 7, division 3.

## **245R When decision has effect**

- (1) A decision to cancel an approved pool safety management plan takes effect when the information notice about the decision is given to the owner.
- (2) If the QBCC commissioner decides to require the owner to amend an approved pool safety management plan, the plan is taken to have been amended—
- (a) in the way stated in the notice given under section 245Q(2)(b); and
  - (b) when the information notice about the decision is given.

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## **Division 7                      Miscellaneous**

### **245T    Access to regulated pool to be kept secure**

- (1) A person who opens a gate or door giving access to a regulated pool must, unless the person has a reasonable excuse, ensure the gate or door is securely closed while the gate or door is not in use.

Maximum penalty—165 penalty units.

- (2) The owner of a regulated pool that is a shared pool must, unless the owner has a reasonable excuse, 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.

- (3) The occupier of premises on which there is a regulated pool that is not a shared pool must, unless the occupier has a reasonable excuse, 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.

### **245U    Interference with barriers for regulated pools**

- (1) A person must not wilfully interfere with a barrier for a regulated pool to which the pool safety standard applies in a way that renders the pool noncompliant with the standard.

Maximum penalty—165 penalty units.

- (2) Subsection (1) does not apply to a person—
  - (a) carrying out fencing work under part 2A, division 3; or
  - (b) attaching a thing to the barrier if attaching the thing does not unreasonably and materially alter or damage the barrier; or
  - (c) altering a wall of a building along a common boundary.

- (3) In this section—

*fencing work* see the Neighbourhood Disputes Act, section 16.

### **245UA QBCC commissioner may give local government information about regulated pools**

- (1) This section applies if the QBCC commissioner reasonably suspects the fencing or other barriers for a regulated pool do not comply with the requirements of this Act for the fencing or barriers.
- (2) The commissioner may, by notice given to the local government, inform the local government of the commissioner's suspicions.
- (3) The notice must include information about the location of the regulated pool.

### **245V When particular local government exemptions about requirements for pool fencing end**

- (1) This section applies to a local government pool fencing exemption in force for a regulated pool immediately before the day (the *relevant day*) the owner of the pool must, under this Act, ensure the pool complies with the pool safety standard.
- (2) On and from the relevant day for the regulated pool, the local government pool fencing exemption is taken to have no force or effect in relation to the pool.
- (3) Subsection (2) applies despite any other Act or law.
- (4) In this section—

#### ***local government pool fencing exemption—***

1 A *local government pool fencing exemption*, for a regulated pool, means an exemption, whether partial or otherwise, from compliance with any requirements under a local law or a law of the State about fencing of the pool, if the exemption—

- (a) was lawfully given by a local government; and



- (b) is in force immediately before the relevant day for the pool.
- 2 However, the term does not include an exemption mentioned in paragraph 1, to the extent the exemption—
- (a) applies to a particular occupier of land on which a swimming pool is situated; and
  - (b) was given solely on the basis of the occupier's inability to access the pool because of the occupier's disability; and
  - (c) is in force immediately before the relevant day for the regulated pool.

**245W When particular local law has no force or effect for regulated pool**

- (1) This section applies to a provision of a local law to the extent it regulates pool safety matters for a regulated pool.
- (2) On the day the owner of the regulated pool must, under this Act, ensure the pool complies with the pool safety standard, the provision of the local law, to the extent it regulates pool safety matters, is taken to have no force or effect in relation to the pool.
- (3) In this section—  
*pool safety matters*, for a regulated pool, means—
  - (a) the construction or maintenance of barriers for the pool;  
or
  - (b) a matter for ensuring the safety of persons using a regulated pool and prescribed under section 231D(1), definition *pool safety standard*, paragraph (b).

## Part 2A                      Neighbours' rights and responsibilities for particular dividing fences

### Division 1                      Introduction

#### 245X Overview

- (1) A sufficient dividing fence is required between 2 parcels of adjoining land if an adjoining owner requests a dividing fence.

*Note—*

For the responsibilities of neighbours for dividing fences generally, see the Neighbourhood Disputes Act, chapter 2.

- (2) This part—
  - (a) modifies the responsibilities of neighbours under the Neighbourhood Disputes Act in relation to a dividing fence, or a part of a dividing fence, forming part of a pool barrier; and
  - (b) provides for a pool owner to construct a pool barrier along the common boundary of adjoining lands.
- (3) This part encourages neighbours to attempt to resolve a dividing fence issue informally.
- (4) However, if neighbours can not resolve a dividing fence issue, the dispute may be taken to QCAT for resolution.

### Division 2                      Interpretation

#### 245XA Definitions for pt 2A

In this part—

*adjoining land* see the Neighbourhood Disputes Act, section 15(3).

***adjoining owner*** see the Neighbourhood Disputes Act, section 15(1) and (2).

***dividing fence*** see the Neighbourhood Disputes Act, section 12.

***fence*** see the Neighbourhood Disputes Act, section 11.

***fencing work*** see the Neighbourhood Disputes Act, section 16.

***neighbouring pool***, for an adjoining owner, means a regulated pool situated on the adjoining land.

***notice of proposed fencing work*** means a notice under section 245XM.

***owner***, for land, see the Neighbourhood Disputes Act, section 14.

***pool barrier*** means a barrier for a regulated pool.

*Note—*

For this part a regulated pool includes other particular swimming pools.  
See section 231B(3).

***pool owner*** means an owner of land on which there is, or is proposed to be, a regulated pool.

***proposed regulated pool*** means a swimming pool, the construction of which has not been completed, and may not have been started, but for which the relevant person has a building development approval.

***special purpose fence*** means a dividing fence constructed according to a specific design, or using specific materials or dimensions, for the purpose of being an acoustic barrier or complying with any of the following—

- (a) a development approval;
- (b) a condition of a licence granted by a statutory authority;
- (c) an order of a court or tribunal;
- (d) an obligation under an Act.

*Example—*

an enclosure for a regulated dog under the *Animal Management (Cats and Dogs) Act 2008*

*sufficient dividing fence* see the Neighbourhood Disputes Act, section 13.

## **Division 3                      Rights and responsibilities of pool owners and their neighbours for particular dividing fences**

### **245XB Right to construct pool barrier along common boundary**

- (1) This section applies if—
  - (a) there is no dividing fence between 2 parcels of adjoining land; and
  - (b) there is, or is proposed to be, a regulated pool on only 1 of the parcels that will have part of its pool barrier along the common boundary between the parcels.
- (2) The pool owner may construct part of the pool barrier along the common boundary if—
  - (a) the pool owner and adjoining owner have agreed about carrying out the fencing work; or
  - (b) QCAT has ordered that the fencing work be carried out.
- (3) Also, the pool owner may construct part of the pool barrier along the common boundary without the adjoining owner having agreed to the carrying out of the fencing work if—
  - (a) the pool barrier will, when complete, comply with the pool safety standard; and
  - (b) the part of the pool barrier along the common boundary will, when complete, be a sufficient dividing fence; and
  - (c) the pool owner gives the adjoining owner a notice of proposed fencing work at least 14 days before the proposed fencing work is carried out.

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### **245XC Walls on common boundary**

- (1) This section applies if—
  - (a) there is a wall of a building along the common boundary of 2 parcels of adjoining land; and
  - (b) there is, or is proposed to be, a regulated pool on the adjoining land without the building.
- (2) A pool owner may use any part of the wall as part of a pool barrier that would, without alteration, comply with the pool safety standard.

*Note—*

The pool owner would need to construct a separate barrier for any part of the wall that does not comply with the pool safety standard. For example, a window in the wall.

- (3) However, despite any right of a pool owner under this division, the wall may not be altered, demolished or replaced without the agreement of the owner of the adjoining land on which the building is located.

### **245XD Right to alter or replace existing dividing fence for the purpose of a pool barrier**

- (1) This section applies if—
  - (a) there is a dividing fence (the *existing dividing fence*) between 2 parcels of adjoining land; and
  - (b) there is, or is proposed to be, a regulated pool on only 1 of the parcels that will use all or part of the dividing fence to form part of the barrier for the regulated pool.
- (2) The pool owner may alter or replace all or part of the existing dividing fence if—
  - (a) the pool owner and adjoining owner have agreed about carrying out the fencing work; or
  - (b) QCAT has ordered that the fencing work be carried out.

- (3) The pool owner may alter or replace all or part of the existing dividing fence without the adjoining owner having agreed about carrying out the fencing work if—
- (a) the new fence will, when complete, form part of the barrier for the regulated pool that complies with the pool safety standard; and
  - (b) the new fence will, when complete, be a sufficient dividing fence; and
  - (c) the new fence is constructed using similar materials and colours to those of the existing dividing fence if the use of the materials would not prevent compliance with paragraph (a) and (b); and

*Note—*

Some of the materials acceptable as constituting a sufficient dividing fence would not comply with the pool safety standard.

- (d) the pool owner gives the adjoining owner a notice of proposed fencing work at least 14 days before the proposed fencing work is carried out.
- (4) Also, if the existing dividing fence is a special purpose fence, the new fence must—
- (a) continue to serve the particular purpose that the existing fence serves; and
  - (b) comply with all the requirements applying to the existing dividing fence, including, for example, requirements about the design of the fence, the materials to be used in the fence or the dimensions of the fence.
- (5) Also, if the existing dividing fence is more than 1.8m in height, the new fence must, despite subsection (3)(b), be the same height as the existing dividing fence but otherwise be a sufficient dividing fence.
- (6) In this section—
- new fence*** means a fence that has been altered or is a replacement of an existing fence.

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**245XE Right to construct part of the barrier for 2 neighbouring pools along the common boundary or alter or replace existing fence**

- (1) This section applies if—
  - (a) there is, or is proposed to be, a regulated pool on each of 2 parcels of adjoining land; and
  - (b) each regulated pool will use the same part, along the common boundary, of a barrier for a regulated pool.
- (2) Either pool owner may—
  - (a) construct, along the common boundary, the part of the barrier for the pools; or
  - (b) alter or replace an existing dividing fence to form part of the barrier for the pools; or
  - (c) attach a thing to the barrier that does not unreasonably and materially alter or damage the fence.
- (3) However, a pool owner may act under subsection (2)(a) or (b) only if—
  - (a) both pool owners have agreed about carrying out the fencing work; or
  - (b) QCAT has ordered that the fencing work be carried out.
- (4) Before carrying out fencing work mentioned in subsection (2)(a) or (b), a pool owner must give the other pool owner a notice of proposed fencing work, unless QCAT has ordered that the fencing work be carried out.
- (5) If, within 1 month after the notice is given, the pool owners have not agreed about the proposed fencing work to be carried out or their contributions to the proposed fencing work, either pool owner may, within 2 months after the notice is given, apply to QCAT for an order under section 245XQ.

**245XF Limited right of neighbour to alter or replace part of pool barrier along a common boundary**

- (1) This section applies if—

- (a) there is part of the barrier for a regulated pool along the common boundary between 2 parcels of adjoining land; and
  - (b) the part of the barrier is for a regulated pool on only 1 of the parcels.
- (2) The neighbour, or another person on behalf of the neighbour, may alter or replace the part of the barrier only if—
  - (a) the adjoining owner and the pool owner have agreed about carrying out the fencing work; or
  - (b) QCAT has ordered that the fencing work be carried out.
- (3) Also, the neighbour may attach a thing to the part of the barrier that does not unreasonably and materially alter or damage the barrier.
- (4) Before carrying out fencing work mentioned in subsection (2), the neighbour must give the other pool owner a notice of proposed fencing work, unless QCAT has ordered that the fencing work be carried out.
- (5) If, within 1 month after the notice is given, the neighbour and pool owner have not agreed about the proposed fencing work to be carried out or their contributions to the proposed fencing work, the neighbour or pool owner may, within 2 months after the notice is given, apply to QCAT for an order under section 245XQ.
- (6) To remove any doubt, it is declared that subsection (2) or (3) does not alter or otherwise affect a pool owner's obligation under section 232(1).
- (7) In this section—

***neighbour*** means an owner or lessee of adjoining land on the opposite side of the common boundary from adjoining land with a regulated pool.

### **245XG Right to enter adjoining land to carry out fencing work**

- (1) A person may enter land owned by another person (the ***other owner***) if—



- (a) the person has agreed with the other owner to carry out fencing and allow access to the land; or
  - (b) QCAT has ordered that the fencing work be carried out by the person and that access be granted to the land.
- (2) At least 14 days before entering the other owner's land, the person must give the other owner, and any lessee of the land that the person is aware of, a notice of proposed fencing work.
  - (3) An employee or agent of the person may enter the land if the person complies with subsection (2).
  - (4) The person or the person's employee or agent may enter the other person's land only at a reasonable time and only to a reasonable extent needed to carry out the fencing work.
  - (5) This section does not authorise entry to a dwelling on the land.

### **245XH Apportioning cost of constructing etc. dividing fence forming part of a pool barrier**

- (1) This section applies to carrying out relevant fencing work in relation to a dividing fence forming part of a pool barrier along the common boundary between 2 parcels of adjoining land.
- (2) If the dividing fence forms part of a barrier for a regulated pool on only 1 parcel of adjoining land—
  - (a) to the extent the work is attributable to a pool owner complying with section 232(1), the cost of carrying out the work is to be borne solely by the pool owner; and
  - (b) to the extent the work is not attributable to a pool owner complying with section 232(1), the cost of carrying out the work is to be borne equally by the pool owner and adjoining owner.
- (3) However, the entire cost of a pool owner carrying out the following fencing work is to be borne solely by the pool owner—
  - (a) altering or replacing a special purpose fence; or

- (b) altering or replacing a dividing fence to which section 245XD(5) applies.

*Note—*

Section 245XD(5) applies to an existing fence more than 1.8m in height.

- (4) If the dividing fence forms part of a barrier for a regulated pool on each of the 2 parcels of adjoining land—
  - (a) to the extent the work is attributable to both pool owners complying with section 232(1), the cost of carrying out the work is to be borne equally by both pool owners; and
  - (b) to the extent the work is not attributable to both pool owners complying with section 232(1) but is attributable to 1 of the pool owners (the **remaining owner**) complying with section 232(1), the cost of carrying out the work is to be borne solely by the remaining owner; and
  - (c) to the extent the work is not attributable to either pool owner complying with section 232(1), the cost of carrying out the work is to be borne equally by both pool owners.
- (5) Despite subsection (2) or (4), if the relevant fencing work is altering or maintaining only 1 side of the dividing fence, the cost of carrying out the work is to be borne solely by the owner of the land on that side of the dividing fence.
- (6) Despite subsections (2) to (5), if the dividing fence is damaged or destroyed by an act or omission to which section 245XJ applies, the cost of restoring the dividing fencing is to be borne solely by the owner who, under that section, is responsible for the damage or destruction.
- (7) In this section—

**relevant fencing work** means any of the following—

  - (a) constructing a dividing fence forming part of a pool barrier;

- 
- (b) altering or replacing a dividing fence along a common boundary to create a dividing fence forming part of a pool barrier;
  - (c) maintaining a dividing fence forming part of a pool barrier.

### **245XI Attaching things to a dividing fence forming part of a pool barrier**

- (1) An owner, or a person who has entered the owner's land with the owner's express consent, must not, without the consent of the adjoining owner, attach a thing to a dividing fence forming part of a pool barrier that unreasonably and materially alters or damages the fence.

*Examples of an attachment—*

carport, shade sails, lattice work, canvas, signs

- (2) However, subsection (1) does not apply if the thing was attached to the fence to make the fence comply with the pool safety standard.
- (3) If an owner does not comply with this section, the adjoining owner may—
  - (a) apply to QCAT for an order requiring the owner to remove the thing attached and restore the dividing fence to a reasonable standard, having regard to its state before the thing was attached; or
  - (b) carry out urgent fencing work under section 245XK to restore the dividing fence to a reasonable standard, having regard to its state before the thing was attached.

### **245XJ Negligent or deliberate act or omission**

- (1) This section applies if, whether before or after the commencement of this section, a dividing fence forming part of a pool barrier is damaged or destroyed by a negligent or deliberate act or omission of—
  - (a) an owner of land; or

[s 245XK]

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- (b) a person who has entered the owner's land with the owner's express consent, whether written or oral.
- (2) The owner must restore the dividing fence to a reasonable standard, having regard to its state before the damage or destruction.

*Note—*

If the owner does not comply with subsection (2), the adjoining owner may give the owner a notice under section 245XM or carry out urgent fencing work under section 245XK.

### **245XK Urgent fencing work**

- (1) This section applies if all or part of a dividing fence forming part of a pool barrier is damaged or destroyed and, in the circumstances, urgent fencing work is required.
- (2) If it is impracticable to give a notice under section 245XM, an owner may, without giving the notice, carry out the fencing work required to restore the dividing fence to a reasonable standard, having regard to its state before the damage or destruction.

*Note—*

Contribution from an owner to the cost of the urgent fencing work may be obtained after giving a notice to the owner under section 245XN.

- (3) The cause of the damage or destruction does not affect the operation of this section.
- (4) However, if the dividing fence is damaged or destroyed in a way that renders a regulated pool, that uses the fence to form part of its pool barrier, noncompliant with the pool safety standard—
  - (a) urgent fencing work is taken to be required; and
  - (b) it is taken to be impracticable to give notice under section 245XM.

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## **Division 4                    Process for obtaining contribution and resolving disputes**

### **Subdivision 1            Introduction**

#### **245XL Overview**

- (1) Adjoining owners are encouraged to attempt to resolve issues about fencing work to avoid a dispute arising.
- (2) If an owner wants an adjoining owner to contribute to fencing work under this part, the owner must give the adjoining owner a notice under subdivision 2.
- (3) QCAT resolves disputes between adjoining owners if the dispute arises about carrying out fencing work for a dividing fence forming part of a pool barrier.

*Note—*

See division 5 for the process for dealing with unauthorised fencing work.

### **Subdivision 2            Notices**

#### **245XM Notice of proposed fencing work**

- (1) If an owner must give notice of proposed fencing work under division 3, the notice must be in the approved form and state the following—
  - (a) a description of the fencing work proposed to be carried out, including the design, dimensions and materials to be used;
  - (b) if the fencing work is to construct or replace a dividing fence, the line on which it is proposed to construct or replace the fence;

*Note—*

A dividing fence must ordinarily be constructed on the common boundary.

- (c) if entry is needed to an adjoining owner's land—
  - (i) a description of the parts of the land to which entry is proposed; and
  - (ii) the proposed times of entry.
- (2) Subsections (3) and (4) apply if—
  - (a) an owner may, under this part, seek a contribution from another owner for carrying out fencing work; and
  - (b) the owner proposes to seek the contribution from the other owner.
- (3) The notice must also state the following—
  - (a) the estimated cost of the fencing work to be carried out including the cost of labour and materials;
  - (b) the proposed proportions of contribution.

*Note—*

An adjoining owner may contribute by a payment of an amount or provision of labour or materials.

- (4) The notice must be accompanied by a copy of at least 1 written quotation stating the estimated cost of the fencing work to be carried out.

### **245XN Notice to contribute for urgent fencing work**

- (1) This section applies if—
  - (a) an owner carried out urgent fencing work under section 245XK; and
  - (b) an adjoining owner is responsible for all or some of the costs of carrying out the fencing work under section 245XH.
- (2) The owner may require the adjoining owner to contribute the adjoining owner's share of any reasonable cost incurred for the urgent fencing work by giving a notice to the adjoining owner.

- (3) Reasonable costs incurred for urgent fencing work may include the cost of using a temporary fence as part of a pool barrier if use of the temporary fence was reasonable in the circumstances.
- (4) The notice must—
  - (a) be in the approved form; and
  - (b) state the following—
    - (i) a description of the fencing work carried out, including the design, dimensions and materials used;
    - (ii) the reason urgent fencing work was required;
    - (iii) if a temporary fence was used—the reason for using the temporary fence;
    - (iv) any cost incurred for the fencing work;
    - (v) the proposed contributions for the fencing work; and
  - (c) include a receipt for the cost incurred for the fencing work.
- (5) If, within 1 month after the notice is given, the adjoining owners have not agreed about their contributions to carrying out the fencing work, either adjoining owner may, within 2 months after the notice is given, apply to QCAT for an order under section 245XQ.

## **Subdivision 3      Resolving disputes**

### **245XO Jurisdiction**

- (1) QCAT has jurisdiction to hear and decide any matter arising under this part.
- (2) If there is more than 1 fence on the boundary of adjoining land, QCAT may decide which of the fences is the dividing

fence for this part and order the removal of the other fence or fences.

- (3) If there is a fence other than a dividing fence on adjoining land, QCAT may order that it be removed if QCAT considers its removal is necessary to allow fencing work for a dividing fence.

### **245XP Representation**

Without limiting the QCAT Act, section 43, in a proceeding under this part an adjoining owner may be represented by a real estate agent.

*Note—*

The QCAT Act, section 43 allows a person to be represented by someone else if the person has impaired capacity or the person has been given leave by QCAT.

### **245XQ Orders about carrying out fencing work**

- (1) QCAT may, for an application about fencing work for a dividing fence forming part of a pool barrier, decide and order 1 or more of the following—
  - (a) the line on which the fencing work is to be carried out, whether or not that line is on the common boundary of the adjoining land;
  - (b) the fencing work to be carried out, including the kind of dividing fence involved and any access to land for carrying out the fencing work;
  - (c) the way in which contributions for the fencing work are to be apportioned or reapportioned or the amount that each adjoining owner is liable to pay for the fencing work if the order is consistent with section 245XH;
  - (d) the part of the dividing fence to be constructed or repaired by either adjoining owner;
  - (e) when the fencing work is to be carried out;



- (f) any other work to be carried out that is necessary to carry out the fencing work ordered including work for a retaining wall;
  - (g) that a fence has been used, or could lawfully be used, as a dividing fence forming part of a pool barrier;
  - (h) the amount of compensation payable to an adjoining owner for damage or destruction to a dividing fence forming part of a pool barrier caused by the other adjoining owner or a person mentioned in section 245XJ(1)(b);
  - (i) that an adjoining owner remove a thing attached to a dividing fence and restore the fence;
  - (j) the amount of compensation payable to an adjoining owner for the removal of a fence under section 245XO(3);
  - (k) whether or not a dividing fence forming part of a pool barrier would comply with the pool safety standard;
  - (l) any other matter necessary for the administration of this part.
- (2) The occupation of land on either side of a dividing fence forming part of a pool barrier, as a result of an order that fencing work is to be carried out on a line other than on the common boundary of the adjoining land, does not affect the title to, or possession of, the land.

### **245XR Matters for QCAT consideration**

In deciding an application under this part QCAT may consider all the circumstances of the application, including the following—

- (a) any existing or previously existing dividing fence;
- (b) the purposes for which the 2 parcels of adjoining land are used, or intended to be used;
- (c) the kind of dividing fence normally used in the area;

[s 245XS]

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- (d) whether the dividing fence is capable of being maintained by the adjoining owners;
- (e) any policy adopted, or local law made, about dividing fences by a local government for the area where either parcel of land is situated;
- (f) any requirement for fencing work in a development approval for the land of either adjoining owner;
- (g) any written agreement made between the adjoining owners for the purposes of this part;
- (h) the pool safety standard.

### **245XS Application for order in absence of adjoining owner**

- (1) An owner may apply to QCAT for an order, in the absence of the adjoining owner, authorising the carrying out of fencing work, including the way in which contributions for the work are to be apportioned.
- (2) An order may be made under subsection (1) only if QCAT is satisfied that the owner could not locate the adjoining owner after making all reasonable inquiries.

*Examples of reasonable inquiries—*

- searching the electoral roll or telephone directory
  - making inquiries with immediate neighbours, tenants, real estate agents and the local government about where the adjoining owner is
- (3) An owner who carries out fencing work authorised by an order under this section and who later locates the adjoining owner may—
    - (a) give a copy of the order to the adjoining owner; and
    - (b) after 1 month from the day of giving a copy of the order, recover from the adjoining owner the adjoining owner's contribution as stated in the order.
  - (4) The adjoining owner given a copy of an order under subsection (1) may, within 1 month after being given the copy,

apply to QCAT for a variation of the order and QCAT may vary the order in any way it considers appropriate.

- (5) This section continues to apply to the owner or adjoining owner even if, after the order was made, the owner or the adjoining owner stopped owning the relevant parcel of land consisting of the adjoining land.

## **Division 5                      Process for dealing with unauthorised fencing work**

### **245XT Unauthorised fencing work**

An owner is taken to have carried out fencing work for a dividing fence forming part of a pool barrier without authorisation unless—

- (a) the adjoining owners have agreed under this part about the fencing work being carried out; or
- (b) QCAT has ordered that the fencing work be carried out; or
- (c) the fencing work is carried out under division 3.

### **245XU Application before unauthorised fencing work**

- (1) This section applies if an owner believes on reasonable grounds that an adjoining owner intends to carry out fencing work for a dividing fence forming part of a pool barrier without authorisation.
- (2) The owner may apply to QCAT for an order preventing the adjoining owner from carrying out the fencing work.
- (3) The owner must give the adjoining owner a copy of the application at least 1 day before the application is heard.

*Note—*

Under the *Acts Interpretation Act 1954*, section 38(3), if the day before the application is heard falls on a day that is not a business day, the last

day for giving a copy of the application is taken to be the next earlier business day.

- (4) On application under this section, QCAT may make an order preventing the adjoining owner from demolishing, or tampering with, the dividing fence.

### **245XV Application after unauthorised fencing work**

- (1) This section applies if an owner carried out fencing work for a dividing fence forming part of a pool barrier without authorisation.
- (2) The adjoining owner, for whom the dividing fence forms part of a pool barrier, may apply to QCAT for an order requiring the owner to rectify the dividing fence.
- (3) The adjoining owner must give the owner a copy of the application at least 3 days before the application is heard.
- (4) On application under this section, QCAT may make an order requiring the owner to—
  - (a) rectify the fencing work; and
  - (b) bear the costs of the rectification.

## **Division 6                      Process if common boundary not agreed**

### **245XW Process if common boundary not agreed**

- (1) This section applies if adjoining owners do not agree on the position of the common boundary for the purposes of carrying out fencing work under this part.
- (2) An owner may give a notice to the adjoining owner, or the adjoining owner's agent, of the owner's intention to have the common boundary defined by a cadastral surveyor engaged by the owner.

- (3) If an adjoining owner is given a notice under subsection (2), the adjoining owner may, within 1 month after the notice is given—
  - (a) have the common boundary defined by a cadastral surveyor engaged by the adjoining owner and give the owner written advice of the common boundary as defined by the cadastral surveyor; or
  - (b) give the owner written advice of the common boundary as defined by the adjoining owner if the adjoining owner is satisfied of the accurate position of the common boundary.
- (4) Unless an owner who has given notice under subsection (2) receives advice under subsection (3)(a), the owner may have the common boundary defined by a cadastral surveyor engaged by the owner.
- (5) If the common boundary defined by a cadastral surveyor engaged by the owner under subsection (4) is in about the same position as the position defined by the adjoining owner in an advice under subsection (3)(b), the adjoining owner is not liable for any of the reasonable cost of engaging the cadastral surveyor.
- (6) If subsection (5) does not apply—
  - (a) adjoining owners are each liable for half the reasonable cost of engaging a cadastral surveyor under this section to define the position of the common boundary; and
  - (b) if 1 adjoining owner pays the entire cost, the half payable by the other adjoining owner is recoverable as a debt by the first adjoining owner.
- (7) In this section—

***cadastral surveyor*** means a person registered as a cadastral surveyor under the *Surveyors Act 2003*.

## **Division 7                      General**

### **245XX Measurement of the height of a dividing fence or pool barrier**

If a provision of this part relates to the height of a dividing fence or pool barrier, the height of the fence or barrier is to be measured using—

- (a) for a provision that relates to a regulated pool on only 1 of 2 parcels of adjoining land—the side of the fence or barrier on the adjoining land with the regulated pool; or
- (b) for a provision that relates to a regulated pool on each of 2 parcels of adjoining land—the shorter side of the fence or barrier.

### **245XY Substantial compliance is adequate**

Substantial compliance with any agreement, notice or order mentioned in this part is adequate for this part.

### **245XZ Giving documents**

- (1) A document may be given to a person under this part in the following ways—
  - (a) leaving it with someone who is apparently an adult living at the relevant address;
  - (b) if there is no-one at the relevant address—leaving it at the relevant address in a position where it is reasonably likely to come to the person’s attention;
  - (c) if the relevant address is within a building or area to which the person who gives the document has been denied access—leaving it at the building or area in a position where it is reasonably likely to come to the person’s attention;
  - (d) posting it to the relevant address.

- (2) In a proceeding relating to this part, evidence of giving a document may be given orally or by affidavit.
- (3) For this section, a justice may take and receive an affidavit whether or not any matter to which the affidavit relates is pending in any court or QCAT.
- (4) If there are 2 or more joint owners of land and a person can not locate every owner, the document is taken to have been given to all joint owners if the person gives the document to at least 1 of the joint owners under this section.
- (5) This section does not limit the operation of the *Acts Interpretation Act 1954*, part 10.
- (6) In this section—

**document** means a notice or a copy of an order under this part.

**relevant address**, for a person to be given a document, means the person's usual or last known place of residence or business and includes the person's address as provided by a local government from its records.

## 246 Descriptions in notice

A description of land or a fence, line or boundary in a notice under this part is adequate if it allows no reasonable doubt about which land, fence, line or boundary is stated or if it is shown that the person given the notice knew the relevant land, fence, line or boundary.

## **Part 3                      Inspections of regulated pools and the giving of pool safety certificates**

### **Division 1                Inspections of regulated pools by pool safety inspectors**

#### **246AA Obligation to give pool safety certificate on inspection in particular circumstances**

- (1) This section applies if a pool safety inspector inspects a regulated pool and the inspector is reasonably satisfied the pool is a complying pool.
- (2) The pool safety inspector must, within 2 business days after the inspection, give the owner of the pool a pool safety certificate for the pool.
- (3) The pool safety inspector must not refuse to give a pool safety certificate for the pool only on the ground that—
  - (a) there is no development approval to carry out building work that is the construction of, or alteration to, the pool (the *pool work*); or
  - (b) the pool work does not comply with the development approval for the pool work.

#### **246AB Nonconformity notice**

- (1) This section applies if a pool safety inspector inspects a regulated pool (an *initial inspection*) and the inspector is not satisfied the pool is a complying pool.

*Note—*

Under section 246BE, if a pool safety inspector inspects a regulated pool that is not a complying pool, the inspector may, in particular circumstances, carry out minor repairs relating to the pool before giving a pool safety certificate for the pool.



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- (2) Subject to subsections (3) and (4), the pool safety inspector must, within 2 business days after the inspection, give the owner of the pool a notice (a *nonconformity notice*) stating—
- (a) the pool is not a complying pool; and
  - (b) how the pool is not a complying pool; and
  - (c) what must be done to make the pool a complying pool; and
  - (d) that the owner may ask the pool safety inspector to reinspect the pool within 3 months after the giving of the nonconformity notice (the *reinspection period*); and
  - (e) that it is an offence for the owner to ask, in the reinspection period, a person other than the following to inspect the pool for the giving of a pool safety certificate for the pool—
    - (i) if the owner initially asked the local government to inspect the pool—the local government;
    - (ii) if the owner initially asked the pool safety inspector to inspect the pool—the pool safety inspector; and
  - (f) that the pool safety inspector must notify the local government if the owner does not ask the pool safety inspector to reinspect the pool within the reinspection period.
- (3) The pool safety inspector is not required to give the owner of the pool a nonconformity notice if, within 2 business days after the initial inspection—
- (a) the pool safety inspector reinspects the pool and is reasonably satisfied the pool is a complying pool; or
  - (b) the owner and the pool safety inspector agree that the inspector will carry out particular minor repairs to make the pool a complying pool and, within 20 business days after the making of the agreement—
    - (i) the inspector carries out the minor repairs; and

- (ii) on reinspection of the pool, the inspector is reasonably satisfied the pool is a complying pool.
- (4) If, within 2 business days after the initial inspection—
  - (a) the owner of the pool and the pool safety inspector agree that the inspector will carry out particular minor repairs to make the pool a complying pool; and
  - (b) within 20 business days after the making of the agreement—
    - (i) the pool safety inspector has not carried out the repairs; or
    - (ii) on reinspection of the pool, the inspector is not reasonably satisfied the pool is a complying pool;

the pool safety inspector must, within a further 2 business days, give the owner a nonconformity notice for the pool.
- (5) A nonconformity notice must include an information notice about the decision.

### **246AC Steps after nonconformity notice**

- (1) This section applies if a pool safety inspector gives the owner of a regulated pool a nonconformity notice for the pool.
- (2) If, within the reinspection period, the owner asks the pool safety inspector to reinspect the pool, the pool safety inspector must reinspect the pool within 5 business days after the request or the longer period that the owner and inspector agree.
- (3) Sections 246AA and 246AB apply to the reinspection of the pool.
- (4) If the owner fails to ask the pool safety inspector to reinspect the pool within the reinspection period, the inspector must, within 5 business days after the end of the reinspection period—
  - (a) notify the local government of the failure; and

- 
- (b) give the local government a copy of the nonconformity notice.

*Note—*

See also section 246BD (Effect of pool safety inspector not complying with Act if no penalty provided).

- (5) The owner of the pool may, in the reinspection period, ask only the following person to inspect the pool for the giving of a pool safety certificate for the pool—
  - (a) if the owner initially asked the local government to inspect the pool—the local government;
  - (b) if the owner initially asked the pool safety inspector to inspect the pool—the pool safety inspector.

Maximum penalty—50 penalty units.

- (6) Subsection (5) does not apply if—
  - (a) the owner of the pool, by written request to the QBCC commissioner, asks the commissioner to allow a person other than the person mentioned in subsection (5) to reinspect the pool for the giving of a pool safety certificate for the pool; and
  - (b) the commissioner gives the owner of the pool a notice agreeing to the request.

### **246ACA Special provision for pool inspection in remote areas**

- (1) If a pool safety inspector is engaged to inspect a regulated pool situated in a remote area, the pool safety inspector—
  - (a) need not carry out an on-site inspection of the pool; and
  - (b) may, for this Act, inspect the pool by using documents or any technology allowing the pool safety inspector to satisfy himself or herself about whether the pool is, or is not, a complying pool.

- (2) In this section—

***prescribed local government*** means a local government prescribed under a regulation for this section.

**remote area** means a part of the area of a prescribed local government that the local government—

- (a) is satisfied is a remote area for this section because of its remoteness from the business premises of persons who perform pool safety inspection functions; and
- (b) has by resolution declared to be a remote area for this section.

### **246AD Record-keeping requirements for inspections**

- (1) This section applies if a pool safety inspector inspects a regulated pool under this part.
- (2) The pool safety inspector must, for at least 5 years from the day the pool is inspected, keep a record of the inspection, including any pool safety certificate and nonconformity notice given, unless the inspector has a reasonable excuse.

Maximum penalty—20 penalty units.

## **Division 2                      Functions of local government for inspections of regulated pools**

### **246ADA Requirement to inspect particular pools**

- (1) This section applies if a local government receives for a regulated pool—
  - (a) notice of a pool immersion incident under section 245I; or
  - (b) a pool safety complaint notice; or
  - (c) a notice under section 245UA.
- (2) The local government must, as soon as practicable after receiving the notice, inspect the regulated pool for compliance with—

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- (a) if under this Act the owner of the pool must ensure the pool complies with the pool safety standard for the pool—the pool safety standard; or
  - (b) otherwise—the fencing standards for the pool.
- (3) However, the local government need not, under subsection (2), inspect a regulated pool for which the local government has received a pool safety complaint notice if the local government reasonably considers the complaint is vexatious.
  - (4) The local government must not charge a fee for an inspection under subsection (2) relating to a notice mentioned in subsection (1)(a) or (b).
  - (5) If, after the inspection, the local government is satisfied the pool does not comply with the pool safety standard or fencing standards for the pool (the *relevant standards*), the local government must take necessary enforcement action to ensure the pool complies with the relevant standards.
  - (6) In this section—

*fencing standards*, for a regulated pool, means the fencing standards under section 233 of this Act as in force before the 2010 Act commencement day that applied to the pool immediately before that day.

*pool safety complaint notice*, for a regulated pool, means any complaint in writing that—

- (a) is given to a local government; and
- (b) concerns a matter about the pool's safety, including the safety of its fencing or other barriers.

### **246AE Power of local government to inspect regulated pool**

- (1) This section applies if—
  - (a) a pool safety inspector notifies the local government about a regulated pool under section 246AC(4); or

- (b) the local government must, under section 246ADA, inspect a regulated pool.
- (2) An employee or agent of the local government may enter land on which the regulated pool is situated (the *pool site*) to inspect the pool.
- (3) If the owner, or an occupier, of the land is present at the pool site, the employee or agent must do, or make a reasonable attempt to do, the following things before entering the pool site—
  - (a) identify himself or herself to the person, by—
    - (i) producing his or her identity card for the person’s inspection before exercising the power; or
    - (ii) having the identity card displayed so it is clearly visible to the person when exercising the power;
  - (b) tell the person the purpose of the entry;
  - (c) seek the consent of the person to the entry;
  - (d) tell the person the officer is permitted under this Act to enter the place without the person’s consent.
- (4) However, if it is not practicable to comply with subsection (3)(a), the employee or agent must produce the identity card for the person’s inspection at the first reasonable opportunity.
- (5) If the person is not present, the employee or agent must take reasonable steps to advise the person of the employee’s or agent’s intention to enter the place.
- (6) Subsections (3) and (4) do not require the employee or agent to take a step that the employee or agent reasonably believes may frustrate or otherwise hinder the purposes of the entry.
- (7) Subsection (2) does not apply to the entry of a dwelling.

### **246AF Cancellation of pool safety certificate after inspection**

- (1) This section applies if the local government—

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- (a) inspects a regulated pool that has a pool safety certificate; and
  - (b) reasonably believes the pool is not a complying pool.
  - (2) The local government may, after complying with section 246AG, cancel the pool safety certificate for the pool.
  - (3) If the local government cancels the pool safety certificate under subsection (2), it must, within 10 business days after the cancellation, give the QBCC commissioner notice of the cancellation.
  - (4) The commissioner must record in the regulated pools register the cancellation of the pool safety certificate for the pool.
  - (5) Subsection (2) does not limit the power of the local government under sections 248 and 249.

### **246AG Show cause notice procedure and decision**

- (1) The local government must, before cancelling the pool safety certificate under section 246AF(2), give the owner of the regulated pool a notice (a *show cause notice*).
- (2) The show cause notice must state each of the following—
  - (a) that the local government proposes cancelling the pool safety certificate for the pool;
  - (b) the grounds for cancelling the pool safety certificate;
  - (c) the facts and circumstances forming the basis for the grounds;
  - (d) that the owner of the pool may, within a stated period (the *show cause period*), make submissions about why the pool safety certificate should not be cancelled.
- (3) The show cause period must end at least 10 business days after the owner is given the show cause notice.
- (4) The owner may, within the show cause period, make submissions to the local government about the show cause notice.
- (5) The local government must—

- (a) consider the submissions; and
  - (b) decide whether to cancel the pool safety certificate for the pool.
- (6) If the local government decides not to cancel the pool safety certificate, it must give the owner notice of the decision.
  - (7) If the local government decides to cancel the pool safety certificate, it must give the owner an information notice about the decision.
  - (8) A decision to cancel the pool safety certificate takes effect at the end of 10 business days after the information notice is given unless the owner sooner appeals the decision.
  - (9) If the owner appeals the decision to cancel the pool safety certificate, the decision is stayed until—
    - (a) the appeal is withdrawn; or
    - (b) the appeal is dismissed.

### **246AH Request for inspection of regulated pool**

- (1) This section applies if the owner of a regulated pool asks the local government to inspect the pool for the giving of a pool safety certificate for the pool.
- (2) The local government must appoint or employ a pool safety inspector to conduct the inspection of the pool.

### **246AI Pool safety certificate does not limit power of local government to enter land for particular purposes**

To remove any doubt, it is declared that the existence of a pool safety certificate for a regulated pool does not limit a person performing functions or exercising powers under this Act or another Act for a local government to enter land on which the pool is situated.

*Examples of provisions giving power to enter land for a local government—*

- *City of Brisbane Act 2010*, section 122 (Entering property under an approved inspection program)



- *City of Brisbane Act 2010*, chapter 5, part 2, division 2 (Powers of other persons)
- *Local Government Act 2009*, chapter 5, part 2, division 2 (Powers of other persons)
- *Local Government Act 2009*, section 133 (Entering property under an approved inspection program)

### **246AIA Keeping records of particular notices**

- (1) If a local government receives a notice mentioned in section 246ADA(1) for a regulated pool, the local government must, for at least 5 years after its receipt, keep a record of—
  - (a) the notice; and
  - (b) the results of any inspection of the regulated pool that was carried out by the local government under section 246ADA.
- (2) The record may be kept in the way the local government decides.

### **246AIB Local government to give information to QBCC commissioner**

- (1) The QBCC commissioner may, by notice given to the local government, ask the local government to give the commissioner information contained in a record kept by the local government under section 246AIA(1)(b).
- (2) The local government must comply with the request.

## **Division 3 Pool safety certificates**

### **246AJ Identification number for pool safety certificate**

- (1) The QBCC commissioner must make available for purchase by pool safety inspectors identifying numbers for pool safety certificates that are unique to each certificate.

[s 246AK]

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- (2) The identifying number for a pool safety certificate is called its *identification number*.
- (3) The fee for an identification number for a pool safety certificate is the fee prescribed under a regulation.
- (4) A pool safety inspector must, when giving a pool safety certificate, assign to the certificate an identification number.

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

### **246AK Form of pool safety certificate**

A pool safety certificate for a regulated pool must—

- (a) be in the approved form; and
- (b) have an identification number; and
- (c) be signed by the pool safety inspector giving the certificate.

### **246AL Term of pool safety certificate**

- (1) A pool safety certificate for a regulated pool expires at the end of the relevant period unless it is sooner cancelled under section 246AF.
- (2) In this section—  
*relevant period* means—
  - (a) for a pool that is a shared pool—1 year after the pool safety certificate is given; or
  - (b) otherwise—2 years after the pool safety certificate is given.

### **246AM Pool safety inspector's obligation to give notice of pool safety certificates**

- (1) This section applies if a pool safety inspector gives a pool safety certificate for a regulated pool.

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- (2) The pool safety inspector must, within 5 business days after giving the certificate, give the QBCC commissioner details of the certificate in the way approved by the commissioner.

### **246AN Final inspection certificate or certificate of occupancy instead of pool safety certificate**

- (1) This section applies to the following (each a *building certificate*)—
- (a) a final inspection certificate given for building work that is, or includes, the construction of, or alteration to, a regulated pool;
  - (b) a certificate of occupancy given for—
    - (i) a building that includes a regulated pool; or
    - (ii) a building on land on which a regulated pool is situated.
- (2) To the extent the building certificate applies to the pool, the building certificate may be used instead of a pool safety certificate for the pool for the relevant period.
- (3) In this section—
- relevant period* means—
- (a) for a pool that is a shared pool—1 year after the building certificate is given; or
  - (b) otherwise—2 years after the building certificate is given.

## **Division 4                      Miscellaneous provision**

### **246AO Appeals to development tribunal of decisions under pt 3**

- (1) This section applies if the owner of a regulated pool is given under this part an information notice about a decision of a pool safety inspector or the local government.

- (2) The owner of the pool may, within the appeal period, appeal the decision to a development tribunal.
- (3) In this section—  
*appeal period* means—
  - (a) for a decision of a pool safety inspector—20 business days after the information notice is given; or
  - (b) for a decision of the local government—10 business days after the information notice is given.

## **Part 4                      General provisions about regulated pools**

### **Division 1                Obligations to give notice of regulated pools**

#### **246AP Building certifier's obligation to give notice of regulated pool**

- (1) This section applies to a building certifier who gives either of the following (each a *building certificate*)—
  - (a) a final inspection certificate for building work that is, or includes, the construction of, or alteration to, a regulated pool;
  - (b) a certificate of occupancy for—
    - (i) a building that includes a regulated pool; or
    - (ii) a building on land on which a regulated pool is situated.
- (2) The building certifier must, within 5 business days after giving the building certificate, give the QBCC commissioner details of the certificate in the way approved by the commissioner.

Maximum penalty—20 penalty units.

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### **246AQ Local government's obligation to give notice of existing regulated pool**

- (1) A local government must, within 3 months after the commencement of this section and in the way approved by the QBCC commissioner, give the commissioner details of each existing regulated pool in its local government area of which the local government has a record.
- (2) In this section—  
*existing regulated pool* means a regulated pool in existence on the commencement of this section.

### **246AR Owner's obligation to give notice of existing regulated pool**

- (1) This section applies to an existing regulated pool that is not recorded in the regulated pools register at the end of 3 months after the commencement of this section.
- (2) The owner of the pool must, by a day prescribed under a regulation (the *prescribed day*), give the QBCC commissioner details of the pool in the way approved by the commissioner, unless the owner has a reasonable excuse.  
Maximum penalty—20 penalty units.
- (3) The prescribed day must not be later than 12 months after the commencement of this subsection.
- (4) This section does not apply to an existing regulated pool that is demolished or removed before the prescribed day.
- (5) In this section—  
*existing regulated pool* means a regulated pool in existence on the commencement of this section.

## **Division 2                      Register of regulated pools**

### **246AS Regulated pools register**

- (1) The QBCC commissioner must keep a register of regulated pools (the *regulated pools register*).
- (2) The regulated pools register may be kept in the way the commissioner considers appropriate, including, for example, in an electronic form.
- (3) The regulated pools register must contain the following particulars for each regulated pool—
  - (a) the address, and real property description, of the land on which the pool is situated;
  - (b) the following information about any pool safety certificate for the pool—
    - (i) the day the certificate was given and the period for which it is stated to remain in force;
    - (ii) the certificate's identification number;
  - (c) any other matter prescribed under a regulation.

### **246AT Access to regulated pools register**

- (1) The QBCC commissioner must—
  - (a) on payment of the fee prescribed under a regulation, make the regulated pools register available for inspection by anyone at—
    - (i) QBCC's head office, while the office is open for business; and
    - (ii) other places the commissioner considers appropriate; and
  - (b) on application by a person and payment of the fee prescribed under a regulation, give the person a copy of all or part of the information held in the register.

- (2) The commissioner may make the regulated pools register available for inspection on QBCC's website.
- (3) A person or entity, or class of persons or entities, prescribed under a regulation may inspect the register without payment of the fee.

### **Division 3**                      **Functions of private certifiers—regulated pools**

#### **246ATA Application of div 3**

This division applies to a private certifier (class A) if, in carrying out private certifying functions in relation to a regulated pool, the private certifier is satisfied—

- (a) the pool does not comply with the pool safety standard; and
- (b) the owner of the pool has not taken, or is not taking, appropriate action to ensure the pool complies with the pool safety standard.

#### **246ATB Private certifier to take enforcement action**

- (1) The private certifier must take appropriate enforcement action against the owner of the regulated pool to ensure it complies with the pool safety standard.
- (2) For taking the enforcement action—
  - (a) a reference in section 248 to a local government includes a reference to a private certifier (class A) taking action under subsection (1); and
  - (b) a reference in the Planning Act, chapter 5, part 3 to an enforcement authority includes a reference to a private certifier (class A) taking action under subsection (1).
- (3) However, in taking the enforcement action, the private certifier need not first give a show cause notice for the matter the subject of the enforcement action.

- (4) Subsection (3) applies despite section 248(3) and the Planning Act, section 167.
- (5) To remove any doubt, it is declared that this section does not limit the local government's functions or powers under this Act or the Planning Act, chapter 5, part 3.
- (6) If—
  - (a) under this section a private certifier (class A) gives a person an enforcement notice; and
  - (b) the person does not comply with the notice;the certifier must as soon as practicable give the local government notice of the noncompliance.

## **Division 4                      Obligation to give information to particular regulated pool owners**

### **246ATC Local government's obligation to give information about particular regulated pools**

- (1) A local government must, at least once every 4 years, give the swimming pool safety advisory information to each owner of a non-certificate regulated pool in its local government area.
- (2) The local government may comply with subsection (1) in the way it considers appropriate.

*Example—*

A local government may include the swimming pool safety advisory information in a document given to all ratepayers in its area.

- (3) In this section—

*non-certificate regulated pool* means a regulated pool included on the regulated pools register, if a pool safety certificate has not been in effect for the pool for at least 4 years.

*swimming pool safety advisory information* means information prescribed under a regulation about matters



relating to ensuring barriers for swimming pools are safe and reduce the risk of children drowning.

*Examples of information—*

- information promoting the importance of having pools inspected for compliance with the pool safety standard
- information about obligations to comply with the pool safety standard

## **Division 5                      Provisions about dealings involving regulated pools**

### **Subdivision 1                  Preliminary**

#### **246ATD Definitions for div 5**

In this division—

***regulated premises*** means a building, or part of a building (other than a part that is not a class 1, 2, 3 or 4 building), on regulated land, if a regulated pool is situated on the land.

***relevant regulated pool***, for regulated premises, means—

- (a) if the premises are a building that is subject to an Act mentioned in schedule 2, definition *owner*, of a regulated pool, paragraphs (a) to (e)—a regulated pool situated on common property or a common property lot under that Act; or
- (b) if the premises are part of a building mentioned in paragraph (a)—a regulated pool situated on that part or on common property or a common property lot under the Act mentioned in paragraph (a) to which the building is subject; or
- (c) if the premises is a moveable dwelling situated on a moveable dwelling park—a regulated pool situated on the dwelling, the site in the moveable dwelling park where the dwelling is situated or on other land, other

than moveable dwelling premises, in the moveable dwelling park; or

- (d) if the premises is a manufactured home in a residential park—a regulated pool situated on the manufactured home, the site in the residential park where the manufactured home is situated or on the common areas of the residential park; or
- (e) if paragraphs (a) to (d) do not apply—a regulated pool situated on the regulated land where the premises are located.

#### **246ATE When pool safety certificate taken to be in effect for div 5**

- (1) This section applies for each provision of this division and any proceeding relating to a purported contravention of the provision.
- (2) A pool safety certificate is taken to be in effect for a relevant regulated pool at a particular time if information included on the regulated pools register at that time shows that a pool safety certificate is in effect for the pool.
- (3) However, subsection (2) does not apply in relation to the owner of a relevant regulated pool if the owner knew, or ought reasonably to have known, that a pool safety certificate was not in effect for the pool.

## **Subdivision 2 Offences and other requirements**

### **246ATF Offence about sale of regulated premises**

An owner of regulated premises who is proposing to sell the premises must, before settlement under a contract of sale for the premises—

- (a) if a pool safety certificate is in effect for a relevant regulated pool for the premises—give to the purchaser

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of the premises under the contract a copy of the pool safety certificate; and

- (b) if a pool safety certificate is not in effect for a relevant regulated pool that is not a shared pool—give a notice in the approved form to each of the following—
  - (i) the purchaser;
  - (ii) the QBCC commissioner; and
- (c) if a pool safety certificate is not in effect for a relevant regulated pool that is a shared pool—give a notice in the approved form to each of the following—
  - (i) the purchaser;
  - (ii) the owner of the shared pool;
  - (iii) the commissioner.

Maximum penalty—165 penalty units.

### **246ATG Offence about entering into accommodation agreement—regulated pool that is not a shared pool**

The owner of regulated premises must not enter into an accommodation agreement for the premises unless a pool safety certificate is in effect for each relevant regulated pool for the premises that is not a shared pool.

Maximum penalty—165 penalty units.

### **246ATH Offences about displaying and giving copies of pool safety certificates for shared pools**

- (1) Subsection (2) applies to the owner of a relevant regulated pool for regulated premises if—
  - (a) the pool is a shared pool; and
  - (b) a pool safety certificate is in effect for the pool.
- (2) The owner must, as soon as practicable after the pool safety certificate is in effect for the pool and while it is in effect,

ensure a copy of the certificate is conspicuously displayed as near as practicable to—

- (a) the main entrance of the regulated premises; or
- (b) a gate or door giving access to the pool.

Maximum penalty—165 penalty units.

- (3) Subsection (4) applies to the owner of regulated premises if a pool safety certificate is in effect for a relevant regulated pool for the premises that—

- (a) is a shared pool; and
- (b) is not situated on land or in a building at which short-term accommodation is provided.

*Examples of buildings at which short-term accommodation is provided—*

motel, hotel and backpacker's hostel

- (4) The owner must, before entering into an accommodation agreement for the premises, give to the person who will be the occupier of the premises under the agreement a copy of the pool safety certificate.

Maximum penalty—165 penalty units.

### **246ATI Offence about entering into accommodation agreement—pool safety certificate not in effect for shared pool**

- (1) This section applies to the owner of regulated premises if a pool safety certificate is not in effect for a relevant regulated pool for the premises that is a shared pool.
- (2) The owner must, before entering into an accommodation agreement for the premises, give a notice in the approved form to each of the following—
- (a) if the shared pool is not situated on land or in a building at which short-term accommodation is provided—the person who will be the occupier of the premises under the accommodation agreement;

- (b) the owner of the shared pool;
- (c) the QBCC commissioner.

Maximum penalty—165 penalty units.

### **246ATJ Requirement to obtain pool safety certificate for regulated pool that is not a shared pool**

- (1) This section applies to a person who purchases regulated premises if, at settlement under the contract of sale for the premises, a pool safety certificate is not in effect for a relevant regulated pool for the premises that is not a shared pool.
- (2) The person must ensure there is a pool safety certificate in effect for the pool within—
  - (a) generally—90 days after the day of settlement (the *usual period*); or
  - (b) if, during the usual period, the person becomes a party to a proceeding before QCAT relating to the barrier for the pool—the usual period plus a further period equal to the number of days the person was a party to the proceeding.

Maximum penalty—165 penalty units.

- (3) This section applies despite a contravention of section 246ATF(b) or (c) in relation to the sale of the regulated premises.

### **246ATK Requirement to obtain pool safety certificate for regulated pool that is a shared pool**

- (1) Subsection (2) applies to the owner of a shared pool on regulated premises if the owner is given a notice under section 246ATF(c) relating to the sale of the premises.
- (2) The owner must ensure there is a pool safety certificate in effect for the pool within—
  - (a) generally—90 days after the day of settlement under the contract of sale for the premises (the *usual period*); or

- (b) if, during the usual period, the owner becomes a party to a proceeding before QCAT relating to the barrier for the pool—the usual period plus a further period equal to the number of days the owner was a party to the proceeding.

Maximum penalty—165 penalty units.

- (3) Subsection (4) applies to the owner of a shared pool on regulated premises if the owner is given a notice under section 246ATI relating to an accommodation agreement for the premises.
- (4) The owner must ensure there is a pool safety certificate in effect for the pool within—
  - (a) generally—90 days after the day the accommodation agreement is entered into (the *usual period*); or
  - (b) if, during the usual period, the owner becomes a party to a proceeding before QCAT relating to the barrier for the pool—the usual period plus a further period equal to the number of days the owner was a party to the proceeding.

Maximum penalty—165 penalty units.

### **246ATL Licensee not to ask for, or receive, reward in particular circumstances**

- (1) Subsection (2) applies if, immediately before an accommodation agreement is entered into for regulated premises, a pool safety certificate is not in effect for a relevant regulated pool for the premises that is not a shared pool.
- (2) A licensee must not, for any activities carried out by the licensee for the entering into of the accommodation agreement, ask for, or receive, a reward for the performance of the licensee's activities.
- (3) A contravention of subsection (2) is not an offence.
- (4) However, a failure of a licensee to comply with subsection (2) is, for the *Property Occupations Act 2014*, section 172, a ground for starting disciplinary proceedings against the licensee.

(5) In this section—

*licensee* means a person in whose name a property agent licence is issued and in force under the *Property Occupations Act 2014*.

*reward* includes remuneration of any kind including, for example, any fee, commission or gain.

## Subdivision 3      Miscellaneous

### 246ATM Prescribed notification requirements

- (1) This section applies in relation to the proposed sale of regulated premises.
- (2) A regulation may prescribe notification requirements for the owner of the premises to inform a prospective purchaser of the premises, before any contract for the sale of the premises is entered into, if there is no pool safety certificate in effect for a relevant regulated pool for the premises.
- (3) The prescribed notification requirements may only require the owner to inform the purchaser—
  - (a) that there is no pool safety certificate in effect for a relevant regulated pool for the premises; and
  - (b) about matters relating to the purchaser's potential obligations under the Act if the premises are sold and there is no pool safety certificate in effect for the pool.

## **Part 5**                                **General provisions about pool safety inspectors**

### **Division 1**                        **Regulation of the performance of pool safety inspection functions**

#### **246AU Person must not perform pool safety inspection functions without licence**

A person who is not a pool safety inspector must not perform a pool safety inspection function unless the function is carrying out minor repairs mentioned in section 231C(b).

Maximum penalty—165 penalty units.

#### **246AV Person must not perform pool safety inspection functions without prescribed professional indemnity insurance**

A pool safety inspector must not perform a pool safety inspection function unless the pool safety inspector has the prescribed professional indemnity insurance.

Maximum penalty—100 penalty units.

#### **246AW Giving pool safety certificates and nonconformity notices**

- (1) A pool safety inspector may give a pool safety certificate for a regulated pool only if the pool safety inspector—
  - (a) has inspected the pool; and
  - (b) is reasonably satisfied the pool is a complying pool.

Maximum penalty—165 penalty units.

- (2) A pool safety inspector may give a nonconformity notice for a regulated pool only if the pool safety inspector—
  - (a) has inspected the pool; and



(b) is reasonably satisfied the pool is not a complying pool.

Maximum penalty—165 penalty units.

**246AX Pool safety inspector's duty to act in public interest in performing pool safety inspection function**

(1) A pool safety inspector must, in performing pool safety inspection functions, always act in the public interest.

*Note—*

See also section 246BD (Effect of pool safety inspector not complying with Act if no penalty provided).

(2) For subsection (1), the occasions when a pool safety inspector does not act in the public interest in performing pool safety inspection functions include, but are not limited to, when the inspector does any of the following—

- (a) seeks, accepts or agrees to accept a benefit (whether for the inspector'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 inspector under this Act;
- (c) acts outside the scope of the inspector's powers under this Act;
- (d) contravenes the code of conduct for pool safety inspectors;
- (e) acts in a way, in relation to the inspector's practice, that is grossly negligent or grossly incompetent.

**246AY Pool safety inspector must not perform pool safety inspection function if there is a conflict of interest**

(1) A pool safety inspector must not perform a pool safety inspection function if, in performing the function, the inspector has a conflict of interest.

*Note—*

See also section 246BD (Effect of pool safety inspector not complying with Act if no penalty provided).

- (2) For subsection (1), the occasions when a pool safety inspector has a conflict of interest include, but are not limited to, when the inspector—
  - (a) has carried out building work to which the pool safety standard applies, other than minor repairs, for the regulated pool; or
  - (b) is the owner or a lessee of, or the owner of a lot in, the building on the subject land; or
  - (c) has a direct or indirect pecuniary interest in the building on the subject land.
- (3) In this section—

*subject land* means land on which the regulated pool the subject of the pool safety inspection function is situated.

## **Division 2                      Code of conduct for pool safety inspectors**

### **246AZ Making code of conduct for pool safety inspectors**

- (1) The QBCC commissioner may make a code of conduct for pool safety inspectors for performing pool safety inspection functions (the *code of conduct for pool safety inspectors*).
- (2) The Minister must, within 14 sitting days after the code of conduct for pool safety inspectors takes effect, table a copy of the code in the Legislative Assembly.

### **246BA When code of conduct for pool safety inspectors takes effect**

- (1) The code of conduct for pool safety inspectors, or an amendment or replacement of the code, does not take effect until it has been approved under a regulation.
- (2) A reference to the code of conduct for pool safety inspectors is taken to include any amendment or replacement under subsection (1) that has taken effect.

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### **246BB 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 246BA approves an amendment or replacement of the code of conduct for pool safety inspectors; 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, 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.

### **246BC Access to code of conduct for pool safety inspectors**

- (1) The QBCC commissioner must make the code of conduct for pool safety inspectors available for inspection by anyone while QBCC's head office is open for business.
- (2) The commissioner may make the code of conduct available for inspection on QBCC's website.

## **Division 3                      Miscellaneous provisions**

### **246BD Effect of pool safety inspector not complying with Act if no penalty provided**

- (1) This section applies if a pool safety inspector does not comply with—
  - (a) a provision of this Act about pool safety inspection functions or section 246CV; and
  - (b) no penalty is stated for the failure to comply.

*Examples of provisions mentioned in subsection (1)—*  
sections 246AC, 246AX and 246AY

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

### **246BE Pool safety inspector may carry out minor repairs in particular circumstances**

- (1) A pool safety inspector may, in particular circumstances, carry out the repairs, or other works, prescribed under a regulation (*minor repairs*) for a regulated pool before giving a pool safety certificate for the pool.
- (2) The particular circumstances for subsection (1) are—
  - (a) the pool safety inspector inspects a regulated pool to decide whether the pool is a complying pool; and
  - (b) the pool would be a complying pool only if particular minor repairs were carried out; and
  - (c) the owner of the pool agrees that the pool safety inspector may carry out the minor repairs.

*Note—*

See also section 246AB.

- (3) The pool safety inspector may charge the owner the reasonable cost of carrying out the minor repairs.

### **246BF Pool safety inspector to have regard to particular guidelines**

In performing a pool safety inspection function, a pool safety inspector must have regard to the guidelines made under section 258 that are relevant to performing the function.

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## Part 6                      Licensing of pool safety inspectors

### Division 1                Role

#### 246BG Role of pool safety inspector

A pool safety inspector may perform pool safety inspection functions for regulated pools.

### Division 2                Applying for and obtaining licence

#### 246BH Who may apply

- (1) A building certifier may apply to the QBCC commissioner for a licence.
- (2) An individual who is not a building certifier may apply to the commissioner for a licence only if the individual—
  - (a) holds a qualification or statement of attainment for an approved training course; and
  - (b) if the commissioner approves a test about pool safety and pool safety inspection functions (a *pool safety inspector test*)—has passed the test.

#### 246BI Requirements for application

- (1) An application for a licence must be—
  - (a) made to the QBCC commissioner; and
  - (b) in the approved form; and
  - (c) 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) if the applicant is not a building certifier—a copy of the applicant's qualification or statement of attainment for an approved training course;
  - (v) if the applicant is not a building certifier and the commissioner has approved a pool safety inspector test—evidence that the applicant has passed the test;
  - (vi) evidence that the applicant has the prescribed professional indemnity insurance.
- (2) Information in the application must, if the approved form requires, be verified by a statutory declaration.

### **246BJ Decision on licence application**

- (1) Subject to section 246CH, the QBCC commissioner must consider the application and decide to—
- (a) license the applicant; or
  - (b) refuse to license the applicant.
- (2) However, the commissioner may decide to license the applicant only if it is satisfied the applicant is a suitable person to hold a licence.
- (3) The commissioner may impose conditions on the licence.
- (4) The commissioner is taken to have refused to license the applicant if the commissioner does not decide the application within the decision period.
- (5) If the application is refused under subsection (4), the applicant is entitled to be given by the commissioner an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

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## **246BK Steps after making decision**

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

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

## **246BL Duration of licence**

Subject to section 246BO, a licence remains in force for 1 year, unless it is earlier cancelled, suspended or surrendered under this Act.

# **Division 3                      Renewal and restoration of licences**

## **Subdivision 1              Notice of expiry**

### **246BM Notice of expiry of licence**

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

- (c) how to apply to renew the licence.

## **Subdivision 2 Renewals**

### **246BN Applying for renewal**

- (1) A pool safety inspector may apply to the QBCC commissioner to renew the inspector's licence.
- (2) However, the application can not be made after the licence expires.
- (3) The application must be in the approved form and accompanied by—
  - (a) the renewal fee prescribed under a regulation; and
  - (b) the licence fee prescribed under a regulation; and
  - (c) evidence of the applicant's identity; and
  - (d) evidence that the applicant has the prescribed professional indemnity insurance; and
  - (e) evidence that the applicant has undertaken in the previous 12-month period the continuing professional development prescribed under a regulation.

### **246BO Existing licence taken to be in force while application is being considered**

- (1) If an application is made under section 246BN 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.
- (2) Subsection (1) does not apply if the licence is earlier cancelled, suspended or surrendered under this Act.



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### **246BP Decision on renewal application**

- (1) Subject to section 246CH, the QBCC commissioner must consider the application and decide to—
  - (a) renew the licence; or
  - (b) refuse to renew the licence.
- (2) However, the commissioner may decide to renew the licence only if it is satisfied the applicant is still a suitable person to hold a licence.
- (3) The commissioner is taken to have refused to renew the licence if the commissioner does not decide the application within the decision period.
- (4) If the application is refused under subsection (3), the applicant is entitled to be given by the commissioner an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

### **246BQ Steps after making decision**

- (1) If the QBCC commissioner decides to renew the licence, it must issue the renewed licence to the applicant.
- (2) If the commissioner refuses to renew the licence or imposes conditions on the licence, it must give the applicant an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

## **Subdivision 3 Restoration**

### **246BR Applying for restoration**

- (1) If a pool safety inspector's licence expires, the person may apply for restoration of the licence.
- (2) The application must—

- (a) be made within 3 months after the expiry; and
- (b) be made to the QBCC commissioner in the approved form; and
- (c) be accompanied by—
  - (i) the restoration fee prescribed under a regulation; and
  - (ii) the licence fee prescribed under a regulation; and
  - (iii) evidence of the applicant's identity; and
  - (iv) evidence that the applicant has the prescribed professional indemnity insurance; and
  - (v) evidence that the applicant has undertaken in the previous 12 months the continuing professional development prescribed under a regulation.

#### **246BS Existing licence taken to be in force while application is being considered**

- (1) If an application is made under section 246BR to restore 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.
- (2) Subsection (1) does not apply if the licence is earlier cancelled, suspended or surrendered under this Act.

#### **246BT Decision on restoration application**

- (1) Subject to section 246CH, the QBCC commissioner must consider the application and decide to—
  - (a) restore the licence; or
  - (b) refuse to restore the licence.
- (2) However, the commissioner may decide to restore the licence only if it is satisfied the applicant is still a suitable person to hold a licence.

- (3) The commissioner is taken to have refused to restore the licence if the commissioner does not decide the application within the decision period.
- (4) If the application is refused under subsection (3), the applicant is entitled to be given by the commissioner an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

### **246BU Steps after making decision**

- (1) If the QBCC commissioner decides to restore the licence, it must issue the restored licence to the applicant.
- (2) If the commissioner refuses to restore the licence or imposes conditions on the licence, it must give the applicant an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

## **Division 4                      Cancellation and suspension of, and other changes to, licences**

### **Subdivision 1                QBCC commissioner's powers**

#### **246BV Power to amend, cancel or suspend licence**

- (1) The QBCC commissioner may, on the ground that a pool safety inspector is not a suitable person to hold a licence, do either of the following to the inspector's licence—
  - (a) amend it to impose or remove a condition;
  - (b) cancel or suspend it.
- (2) The power under subsection (1) may be exercised at any time after the commissioner has complied with subdivision 2.

- (3) To remove any doubt, it is declared that the commissioner can not, under subsection (1), amend, cancel or suspend the pool safety inspector's licence if the commissioner considers the inspector is not a suitable person to hold a licence only because a ground for disciplinary action is established.

*Note—*

The power of the commissioner under this section does not limit the power of the commissioner to take disciplinary action under part 7 (Complaints, investigations and disciplinary proceedings relating to pool safety inspectors).

### **246BW Notice of particular events to interstate licensing authorities and other entities**

- (1) This section applies if any of the following (the *event*) happens to a pool safety inspector's licence—
- (a) it is cancelled or suspended;
  - (b) it is amended under this subdivision.
- (2) As soon as practicable after the happening of the event, the QBCC commissioner must give notice of the event to the authority in any other State or New Zealand of which it is aware the pool safety inspector has a licence (however called) that is the same, or substantially the same, as a licence under this part.
- (3) Also, the commissioner may give notice of the event to all or any of the following—
- (a) any employer of the pool safety inspector;
  - (b) another entity the commissioner reasonably believes needs to know about the event.
- (4) A notice under this section may include the information the commissioner considers appropriate in the circumstances.

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## Subdivision 2 Show cause notice procedure

### 246BX Show cause notice

- (1) If the QBCC commissioner believes grounds exist to act under subdivision 1, it must, before taking the action, give the relevant pool safety inspector 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 amend the licence—the proposed amendment;
  - (e) if the proposed action is to suspend the licence—the proposed suspension period;
  - (f) that the pool safety inspector 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 pool safety inspector is given the show cause notice.
- (4) The proposed suspension period may be fixed by reference to the happening of a stated event.

### 246BY Submissions about show cause notice

- (1) The pool safety inspector may, within the show cause period, make submissions to the QBCC commissioner about the show cause notice.
- (2) The commissioner must consider the submissions.

### **246BZ Decision on proposed action**

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

### **246CA Notice and taking effect of decision**

- (1) If the QBCC commissioner decides not to take the proposed action, it must give the pool safety inspector notice of the decision.
- (2) If the commissioner decides to take the proposed action, it must give the pool safety inspector an information notice about the decision.

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

- (3) A decision to take the proposed action takes effect when the information notice is given.
- (4) In this section—

*proposed action* includes a decision under section 246BZ(2) to suspend the pool safety inspector's licence for a stated period.

## **Division 5                      General provisions about licences**

### **246CB Register of pool safety inspectors**

- (1) The QBCC commissioner must keep a register of pool safety inspectors (the *pool safety inspectors register*).
- (2) The pool safety inspectors register may be kept in the way the commissioner considers appropriate, including, for example, in an electronic form.

- (3) The pool safety inspectors register must contain the following particulars for each pool safety inspector—
  - (a) their name, licence number and business contact details;
  - (b) the following information about their licence—
    - (i) its day of issue and expiry;
    - (ii) if conditions are imposed on the licence—the conditions;
  - (c) details of their eligibility for licensing as a pool safety inspector;
  - (d) if, under section 246CY(1), the commissioner decides whether or not a ground for disciplinary action against the pool safety inspector is established—
    - (i) details of the decision; and
    - (ii) if the decision was that a ground for disciplinary action against the pool safety inspector is established—details of the further decision required under section 246CY(4);
  - (e) if the tribunal makes an order about the pool safety inspector—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 pool safety inspectors register 5 years after they were recorded in the register.
- (5) Particulars recorded under subsection (3)(e) must be removed from the pool safety inspectors register at the end of the period during which the order states the details are to be included in the register.

### **246CC Access to pool safety inspectors register**

- (1) The QBCC commissioner must make the pool safety inspectors register available for inspection by anyone while QBCC's head office is open for business.

- (2) The commissioner may make the pool safety inspectors register available for inspection on QBCC's website.

### **246CD Surrendering licence**

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

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

### **246CE Obtaining replacement licence**

- (1) A pool safety inspector may apply to the QBCC commissioner in the approved form for the replacement of the pool safety inspector's licence if it has been damaged, destroyed, lost or stolen.
- (2) If the commissioner is satisfied the licence has been damaged, destroyed, lost or stolen, the commissioner must—
  - (a) replace it with another licence; and
  - (b) on payment of the fee prescribed under a regulation, give the applicant the replacement licence.

### **246CF Obligation of pool safety inspector to give notice of change in particular circumstances**

- (1) This section applies if a pool safety inspector—
  - (a) changes address; or



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- (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 pool safety inspector's licence under this part, convicted of a relevant offence.
- (2) The pool safety inspector must give the QBCC commissioner 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 6                      Miscellaneous provisions**

### **246CG Criteria for deciding suitability of applicants and licensees**

- (1) This section applies if, under this part, the QBCC commissioner 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) The commissioner 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) whether the demerit points prescribed under a regulation for this section have been accumulated by the applicant or holder;
- (e) dealings in which the applicant or holder has been involved and the standard of honesty and integrity demonstrated in the dealings;
- (f) whether the applicant or holder has the prescribed professional indemnity insurance;
- (g) any other relevant circumstance.

#### **246CH QBCC commissioner may seek information from applicants about suitability and other matters**

- (1) This section applies to an application for, or to renew or restore, a licence.
- (2) The QBCC commissioner may, by notice to the applicant, require the applicant to give it, within a stated reasonable period, documents or information the commissioner reasonably considers is needed—
  - (a) to establish the applicant is a suitable person to hold a licence; or
  - (b) to decide the application.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

#### **246CI Refund of particular licence fees accompanying applications**

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

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## **Part 7                      Complaints and disciplinary proceedings relating to pool safety inspectors**

### **Division 1                Complaints**

#### **246CK Making a complaint against a pool safety inspector**

- (1) A person may make a complaint to the QBCC commissioner about a pool safety inspector if the person believes there is a ground for disciplinary action against the pool safety inspector.
- (2) A complaint must—
  - (a) be in writing; and
  - (b) contain particulars of the allegations on which it is founded.
- (3) The commissioner may require the complainant to give further particulars of the complaint if the commissioner reasonably considers the further particulars are necessary for investigating the complaint.
- (4) The commissioner may require a complaint or the further particulars to be verified by statutory declaration.
- (5) The commissioner may dismiss any complaint without taking further action under this division if—
  - (a) the further particulars are not given; or
  - (b) the complaint or further particulars are not verified by statutory declaration in compliance with subsection (4).
- (6) The commissioner must not disclose to another person complaints against a pool safety inspector that have not been proved to the commissioner's satisfaction.

### **246CL Pool safety inspector must be advised of complaint**

- (1) After receiving the complaint, the QBCC commissioner must, by notice—
  - (a) inform the pool safety inspector of the nature of the complaint; and
  - (b) invite the pool safety inspector to make, within the time stated in the notice, representations to the commissioner about the complaint.
- (2) The time stated in the notice must be at least 5 business days after the notice is given.
- (3) If the commissioner makes a decision about the complaint under section 246CY, the commissioner must have regard to the representations when making the decision.

### **246CM QBCC commissioner may recommend mediation to resolve complaint**

- (1) If the QBCC commissioner considers a complaint about a pool safety inspector is capable of resolution by mediation, the commissioner must give the complainant and the pool safety inspector a notice stating—
  - (a) that the commissioner 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 the commissioner a certificate about the mediation.
- (2) The commissioner may recommend the complainant and the pool safety inspector enter into a process of mediation to resolve the complaint as soon as practicable and before the commissioner investigates the complaint.

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## 246CN 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 the QBCC commissioner extends the period and advises parties in writing of the extension—20 business days after notice is given under section 246CM.
- (3) As soon as practicable after mediation has ended, the mediator must give the commissioner a certificate about the mediation in the approved form.
- (4) If the parties sign an agreement, the complaint is taken to be withdrawn.

## 246CO Investigation of complaint

- (1) This section applies if—
  - (a) the QBCC commissioner does not recommend the complainant and the pool safety inspector enter into mediation; or
  - (b) the commissioner recommends the complainant and the pool safety inspector enter into mediation and the complaint is not resolved when the mediation ends.
- (2) The commissioner must conduct an investigation into the complaint as soon as practicable.
- (3) The commissioner may deal with 1 or more complaints about a pool safety inspector in the same investigation.

- (4) If during an investigation the commissioner is satisfied there is a matter about which another complaint could have been made against the pool safety inspector, the commissioner may deal with the matter in its investigation as if a complaint had been made about the matter.

### **246CY Decision after investigation or audit completed**

- (1) After investigating a complaint or conducting an audit, the QBCC commissioner must decide whether or not a ground for disciplinary action against the pool safety inspector is established.
- (2) The commissioner must give the pool safety inspector and the complainant (if any) an information notice about the decision taken under subsection (1).

*Note—*

For reviews of the decision, see the QBCC Act, part 7, division 3.

- (3) If the commissioner is aware that the pool safety inspector is employed by someone else to perform pool safety inspection functions, it must give the employer a copy of the notice.
- (4) If the commissioner decides a ground for disciplinary action against the pool safety inspector is established, the commissioner must decide to do 1 or more of the following—
  - (a) reprimand the pool safety inspector;
  - (b) impose the conditions it considers appropriate on the pool safety inspector's licence;
  - (c) direct the pool safety inspector to complete to the satisfaction of the commissioner the educational courses stated by the commissioner;
  - (d) direct the pool safety inspector to report on his or her practice as a pool safety inspector at the times, in the way and to the persons stated by the commissioner;
  - (e) require the pool safety inspector to refund some or all of a fee paid for an inspection of a regulated pool;

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- (f) require the pool safety inspector to pay to the commissioner, within a reasonable stated period, a stated amount of not more than the equivalent of 60 penalty units;
  - (g) suspend the pool safety inspector's licence for a period of not more than 1 year;
  - (h) if the commissioner is satisfied the pool safety inspector is generally competent and diligent—advise the pool safety inspector it does not intend to take any further action.
- (5) However, if the commissioner is satisfied it would be reasonable in the circumstances to decide to do either of the following, the commissioner must apply to the tribunal to start a disciplinary proceeding against the pool safety inspector—
- (a) suspend the pool safety inspector's licence for more than 1 year;
  - (b) cancel the pool safety inspector's licence.
- (6) The commissioner must—
- (a) give an information notice about its decision under subsection (4) to the pool safety inspector; and
- Note—*
- For reviews of the decision, see the QBCC Act, part 7, division 3.
- (b) if the decision is made after investigating a complaint—give the complainant a copy of the notice.
- (7) Subsection (4) does not prevent the commissioner—
- (a) 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 pool safety inspector; or
  - (b) starting a proceeding to prosecute the pool safety inspector for an offence against this Act.

## **Division 3                      Disciplinary proceedings**

### **246DA Tribunal may conduct disciplinary proceeding**

- (1) The tribunal may, on application by the QBCC commissioner, conduct a disciplinary proceeding to decide whether a ground for taking disciplinary action against a pool safety inspector is established.
- (2) An application under subsection (1) must be made as provided under the QCAT Act.

### **246DB Constitution of tribunal for disciplinary proceeding**

- (1) For a proceeding under section 246DA, if the president of the tribunal under the QCAT Act considers it appropriate, the president may choose the following persons to constitute the tribunal—
  - (a) 1 legally qualified member under the QCAT Act;
  - (b) 1 senior member or ordinary member who has special knowledge of pool safety inspection functions and the administration of this Act;
  - (c) 1 other senior member or ordinary member.
- (2) In this section—

*ordinary member* means an ordinary member under the QCAT Act.

*senior member* means a senior member under the QCAT Act.

### **246DC Orders relating to current pool safety inspector**

- (1) This section applies if the tribunal decides a ground for disciplinary action against a pool safety inspector who is licensed at the time of the decision is established.
- (2) The tribunal may make an order—
  - (a) reprimanding the pool safety inspector; or



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- (b) imposing conditions it considers appropriate on the pool safety inspector's licence; or
  - (c) directing the pool safety inspector to complete the educational courses stated in the order; or
  - (d) directing the pool safety inspector to report on his or her practice as a pool safety inspector at the times, in the way and to the persons stated in the order; or
  - (e) requiring the pool safety inspector to refund some or all of a fee paid for an inspection of a regulated pool; or
  - (f) directing the pool safety inspector to pay to the QBCC commissioner a stated amount of not more than the equivalent of 160 penalty units; or
  - (g) suspending the pool safety inspector's licence for the period the tribunal considers appropriate; or
  - (h) cancelling the pool safety inspector's licence; or
  - (i) disqualifying, indefinitely or for a stated period, the pool safety inspector from obtaining a licence as a pool safety inspector from the commissioner.
- (3) The tribunal may make any other order it considers appropriate.

### **246DD Orders relating to former pool safety inspector**

- (1) This section applies if the tribunal decides a ground for disciplinary action against a former pool safety inspector is established.
- (2) The tribunal may make an order that the former pool safety inspector must—
  - (a) pay to the QBCC commissioner a stated amount of not more than the equivalent of 160 penalty units; or
  - (b) not be licensed or re-licensed by the commissioner for the period stated in the order; or
  - (c) never be licensed or re-licensed by the commissioner.

- (3) The tribunal may make any other order it considers appropriate.

#### **246DE Consequences of failure to comply with tribunal's orders and directions**

The tribunal may, in a disciplinary proceeding against a pool safety inspector, order that the pool safety inspector's licence be suspended or cancelled if the pool safety inspector fails to comply with an order or direction of the tribunal within the period allowed by the tribunal.

#### **246DF Recording details of orders**

An order may state—

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

## **Part 8                                                  Approval of training courses for pool safety inspectors**

#### **246DG QBCC commissioner may approve course for pool safety inspectors**

- (1) The QBCC commissioner may approve a course to enable an individual who is not a building certifier to apply for a licence under part 6.
- (2) The commissioner may publish a description of the course on QBCC's website.

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## **Part 9                      Role of QBCC—pool safety**

### **Division 1                QBCC's functions**

#### **246E   Pool safety functions performed by QBC board**

The functions of the QBC board for pool safety include—

- (a) reporting to the Minister on—
  - (i) any issue relating to pool safety referred to it by the Minister; or
  - (ii) any issue relating to pool safety the board considers the Minister should know about; and
- (b) performing other functions relating to pool safety given to the board under this Act.

#### **246F   Pool safety functions performed by QBCC commissioner**

The functions of the QBCC commissioner for pool safety include the following—

- (a) under part 6, licensing individuals as pool safety inspectors;
- (b) under part 7, carrying out audits of pool safety inspectors, including their performance of pool safety inspection functions;
- (c) under part 7, investigating written complaints made to the commissioner about pool safety inspectors or former pool safety inspectors and deciding whether grounds for disciplinary action against the inspector are established;
- (d) taking disciplinary action against pool safety inspectors or former pool safety inspectors if grounds for disciplinary action against the inspectors are established;

- (e) giving the QBC board, at least annually, a list of pool safety inspectors and a summary of disciplinary action taken against pool safety inspectors;
- (f) under part 6, division 5, keeping a register of pool safety inspectors;
- (g) approving training courses under section 246DG for individuals proposing to become pool safety inspectors;
- (h) making available for purchase by pool safety inspectors identification numbers for pool safety certificates;
- (i) administering the fund;
- (j) performing any other functions relating to pool safety given to the commissioner under this Act.

*Note*

For powers of the QBCC commissioner, see the QBCC Act, section 20J(3).

## **Division 2                      Pool Safety Fund**

### **246G Fund established**

The Pool Safety Fund (the fund) is established.

### **246H Purpose of fund**

The purpose of the fund is to provide funding to achieve the purposes of this chapter.

### **246I Payment of amounts into fund**

The following amounts must be paid into the fund—

- (a) fees paid to the QBCC commissioner under this chapter;
- (b) amounts payable under section 246CY, 246DC or 246DD;

- (c) penalties paid to the commissioner under section 256(6) or (7);
- (d) other amounts paid to the commissioner under this chapter.

### **246J Payments from fund**

The QBCC commissioner may make payments from the fund only for—

- (a) paying expenses incurred by the commissioner under this chapter; or
- (b) making other payments required or permitted by this chapter to be paid out of the fund.

## **Chapter 8A Provisions to support sustainable housing**

### **Part 2 Provisions to support sustainable housing**

#### **Division 1 Preliminary**

#### **246L Purpose of pt 2**

The purpose of this part is to regulate the effect of particular instruments on stated activities or measures likely to support sustainable housing.

#### **246M Definitions for pt 2**

In this part—

***bathroom*** includes an ensuite.

***energy efficient***, in relation to a window in a prescribed building, means the window reduces heat conduction and solar radiation passing through the window.

*Examples—*

tinted glass windows, double-glazed windows and triple-glazed windows

***prescribed building*** means—

- (a) a class 1a or 2 building; or
- (b) an enclosed class 10a building attached to a class 1a or 2 building.

***relevant instrument*** means any of the following—

- (a) a sublease or sub-sublease of a lease held under the *Land Act 1994*;
- (b) a building management statement under the *Land Act 1994* or *Land Title Act 1994*;
- (c) a community management statement for a community titles scheme under the *Body Corporate and Community Management Act 1997*, including by-laws in the statement and the provisions of any architectural and landscape code adopted under the statement;
- (d) a by-law in force for a building units plan or group titles plan under the *Building Units and Group Titles Act 1980*;
- (e) a management statement under the *South Bank Corporation Act 1989*, including by-laws in the statement;
- (f) a development approval under the *South Bank Corporation Act 1989*;
- (g) a development control by-law in force for an approved scheme under the *Integrated Resort Development Act 1987*;

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- (h) a management statement under the *Mixed Use Development Act 1993*;
  - (i) development control by-laws, activities by-laws and property by-laws in effect, and made by a community body corporate or precinct body corporate, under the *Mixed Use Development Act 1993*;
  - (j) a development control by-law or residential zone activities by-law in force, and made by the principal body corporate, under the *Sanctuary Cove Resort Act 1985*;
  - (k) a contract or other agreement, entered into in relation to a prescribed building, a provision of which includes a prohibition, requirement or restriction mentioned in division 2 that operates to the benefit of, or is enforceable by, a person other than the owner or occupier of the building.

***solar hot water system*** includes any part of a water heating system designed to heat water using light or heat from the sun.

***treat***, in relation to a window in a prescribed building, means apply a colour tint or other substance to the window to reduce solar radiation passing through the window.

## **246N Application of pt 2**

- (1) This part applies to a relevant instrument—
  - (a) even if it were made or entered into before 1 January 2010; and
  - (b) despite any provision of an Act mentioned in section 246M, definition *relevant instrument*.
- (2) To remove any doubt, it is declared that this part applies to a relevant instrument even if it is registered or recorded under the *Land Act 1994* or *Land Title Act 1994*.
- (3) However, despite subsection (1)(a), this part does not apply in relation to a prescribed matter that, on 1 January 2010, is included in—

- (a) a relevant instrument that is a contract or other agreement mentioned in section 246M, definition *relevant instrument*, paragraph (k) and entered into before 1 January 2010; or
  - (b) another relevant instrument made or entered into before 1 January 2010 that is in force or effect for a lot within the meaning of the *Land Title Act 1994*.
- (4) In this section—

*prescribed matter* means a prohibition, requirement or restriction mentioned in section 246O(1)(a) to (c), 246P(1) or 246R(1).

## **Division 2                      Limiting effect of prohibitions etc. for particular sustainable housing measures**

### **246O Prohibitions or requirements that have limited or no force or effect**

- (1) This section applies to a relevant instrument that, but for this section, would have the effect of—
- (a) prohibiting the use of a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building, if using the colour would achieve a solar absorptance value for the upper surface of the roof of not more than 0.55; or
  - (b) prohibiting—
    - (i) the use in a prescribed building of a window that is energy efficient; or
    - (ii) the treatment of a window in a prescribed building to ensure the window is energy efficient; or
  - (c) requiring—
    - (i) a minimum floor area for a class 1a building, but not a minimum frontage unless the requiring of a



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- minimum frontage has the effect of construction of a less energy efficient building; or
- (ii) a minimum number of bathrooms or bedrooms for a class 1a building; or
  - (iii) a class 1a building or an enclosed class 10a building attached to a class 1a building to be orientated on a parcel of land in a particular way, if orientating the building in the particular way would have the effect of construction of a less energy efficient building; or
- (d) prohibiting the installation of a solar hot water system or photovoltaic cells on the roof or other external surface of a prescribed building.
- (2) For a prohibition or requirement mentioned in subsection (1)(a) to (c), the relevant instrument has no force or effect to the extent of the prohibition or requirement.
- (3) For a prohibition mentioned in subsection (1)(d), the relevant instrument has force or effect only to the extent—
- (a) the prohibition applies to the roof or other external surface that is common property of the prescribed building; and
  - (b) the prohibition—
    - (i) is necessary to preserve the building's structural integrity; or
    - (ii) if there is insufficient space on the roof or other external surface for a solar hot water system or photovoltaic cells to be installed by the owner of each lot in the building—prohibits an owner of a lot in the building from installing a solar hot water system or photovoltaic cells on the roof or other external surface; or
    - (iii) if the prohibition relates to a solar hot water system—is necessary to prevent noise from piping associated with the system causing unreasonable

interference with a person's use or enjoyment of the building.

## **246P Restrictions that have no force or effect—roof colours and windows**

- (1) This section applies to a relevant instrument that, but for this section, would have the effect of—
  - (a) restricting the use of a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building, if using the colour would achieve a solar absorptance value for the upper surface of the roof of not more than 0.55; or
  - (b) restricting—
    - (i) the use in a prescribed building of a window that is energy efficient; or
    - (ii) the treatment of a window in a prescribed building to ensure the window is energy efficient.
- (2) For a restriction mentioned in subsection (1), the relevant instrument has no force or effect to the extent the restriction prevents a person—
  - (a) using a colour for the roof of the building to achieve a solar absorptance value for the upper surface of the roof of not more than 0.55, if use of the colour—
    - (i) minimises potential adverse effects on the external appearance of the building; and
    - (ii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building; or
  - (b) using in a prescribed building a window that is energy efficient or treating a window in a prescribed building to ensure the window is energy efficient, if the type of window to be used or the treatment—
    - (i) minimises potential adverse effects on the external appearance of the building; and

- (ii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.

**246Q Restrictions that have limited or no force or effect—other restrictions**

- (1) This section applies to a relevant instrument that, but for this section, would have the effect of restricting the location on the roof or other external surface of a prescribed building where a solar hot water system or photovoltaic cells may be installed.
- (2) The relevant instrument has force or effect only to the extent—
  - (a) the restriction mentioned in subsection (1) applies to the roof or other external surface that is common property of the prescribed building; and
  - (b) the restriction mentioned in subsection (1)—
    - (i) is necessary to preserve the building's structural integrity; or
    - (ii) if there is insufficient space on the roof or other external surface for a solar hot water system or photovoltaic cells to be installed by the owner of each lot in the building—prohibits an owner of a lot in the building from installing a solar hot water system or photovoltaic cells on the roof or other external surface; or
    - (iii) if the restriction relates to a solar hot water system—is necessary to prevent noise from piping associated with the system causing unreasonable interference with a person's use or enjoyment of the building.

**246R When consent for particular activities can not be withheld—roof colours and windows**

- (1) This section applies if, under a relevant instrument, the consent of an entity is required to—

- (a) use a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building; or
  - (b) use in a prescribed building a window that is energy efficient or treat a window in a prescribed building to ensure the window is energy efficient.
- (2) The entity can not withhold consent for an activity mentioned in subsection (1)(a) if use of the colour—
- (a) achieves a solar absorptance value for the upper surface of the roof of not more than 0.55; and
  - (b) minimises potential adverse effects on the external appearance of the building; and
  - (c) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.
- (3) The entity can not withhold consent for an activity mentioned in subsection (1)(b) if the type of window to be used or the treatment—
- (a) minimises potential adverse effects on the external appearance of the building; and
  - (b) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.
- (4) A requirement under this section to not withhold consent—
- (a) is taken to be a requirement under the relevant instrument; and
  - (b) applies to the relevant instrument despite any other provision of the instrument.

### **246S When consent for particular activities can not be withheld—other matters**

- (1) This section applies if, under a relevant instrument, the consent of an entity is required to install a solar hot water

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system or photovoltaic cells on the roof or other external surface of a prescribed building.

- (2) The entity can not withhold the consent for an activity mentioned in subsection (1) unless the consent is withheld—
- (a) in relation to the roof or other external surface that is common property of the prescribed building; and
  - (b) only—
    - (i) to the extent necessary to preserve the building’s structural integrity; or
    - (ii) if there is insufficient space on the roof or other external surface for a solar hot water system or photovoltaic cells to be installed by the owner of each lot in the building—to prohibit an owner of a lot in the building from installing a solar hot water system or photovoltaic cells on the roof or other external surface; or
    - (iii) if the consent relates to a solar hot water system—to the extent necessary to prevent noise from piping associated with the system causing unreasonable interference with a person’s use or enjoyment of the building.
- (3) A requirement under this section to not withhold consent—
- (a) is taken to be a requirement under the relevant instrument; and
  - (b) applies to the relevant instrument despite any other provision of the instrument.

## **Division 3                      Miscellaneous provisions**

### **246T    Particular limitation on operation of pt 2**

- (1) This section applies if, under this part and in relation to the installation of a solar hot water system or photovoltaic cells

on the roof or other external surface of a prescribed building—

- (a) a provision of a relevant instrument has no force or effect; or
  - (b) an entity can not withhold consent for the installation.
- (2) The operation of this part does not give rise to any entitlement to install a solar hot water system or photovoltaic cells on the roof or other external surface of the building in a way that unreasonably prevents or interferes with a person's use and enjoyment of any part of the building.

#### **246U No compensation payable**

To remove any doubt, it is declared that no compensation is payable by the State or another person for any loss or expense arising out of the operation of this part or its effect on a relevant instrument.

## **Chapter 8B Transport noise corridors**

### **Part 1 Preliminary**

#### **246V Purpose of ch 8B**

The purpose of this chapter is to provide for the designation of land as a transport noise corridor for building assessment provisions expressed to apply specifically for the reduction of noise in class 1, 2, 3 or 4 buildings.

#### **246W Definitions for ch 8B**

In this chapter—

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***railway land*** means rail corridor land, commercial corridor land or future railway land under the Transport Infrastructure Act, schedule 6.

***road*** means—

- (a) for a road under the control of a local government—any part of the surface of the road on which motor vehicles ordinarily travel; or
- (b) a local government franchised road within the meaning of the Transport Infrastructure Act.

***State-controlled road*** means—

- (a) a road or land, or part of a road or land, declared under the Transport Infrastructure Act, section 24 to be a State-controlled road; or
- (b) a franchised road within the meaning of the Transport Infrastructure Act.

***transport chief executive*** means the chief executive of the department in which the Transport Infrastructure Act is administered.

***Transport Infrastructure Act*** means the *Transport Infrastructure Act 1994*.

***transport noise corridor*** means land designated under this chapter as a transport noise corridor.

## Part 2                      Designation by local governments

### 246X Designation of transport noise corridor—local governments

- (1) A local government may, by gazette notice, designate land as a transport noise corridor.
- (2) A local government may designate land under subsection (1) only if—

- (a) the land is within—
  - (i) 100m of a road under its control; or
  - (ii) a distance of more than 100m but not more than 200m of a road under its control, if the noise level caused by traffic on the road at the distance has been measured, in a way approved by the chief executive, to be at least 58db(A); and
- (b) the road has an AADT of at least 3,000 vehicles.
- (3) At least 20 business days before acting under subsection (1), the local government must give the chief executive written notice about the proposed designation.
- (4) The notice must—
  - (a) identify the land that is proposed to be designated; and
  - (b) include information reasonably required by the chief executive about the likely levels of noise within the proposed transport noise corridor caused by traffic on the road for which the designation is proposed; and
  - (c) state the proposed gazettal day for the designation.
- (5) The information mentioned in subsection (4)(b) must be given in the form required by the chief executive.
- (6) If the local government designates land under this section, the land must be—
  - (a) identified specifically in the gazette notice; or
  - (b) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for inspection at an office of the local government mentioned in the gazette notice.
- (7) In this section—

*AADT*, for a road, means its annual average daily traffic rate worked out by using the following formula—

$$\text{AADT} = \frac{V}{365}$$



where—

*AADT* is the annual average daily traffic rate.

*V* is the total volume of vehicular traffic for the road in a year, worked out under a relevant guideline for measuring traffic volume published by Austroads.

### **246Y Notification about designation of transport noise corridor**

- (1) As soon as practicable after designating land as a transport noise corridor, the local government must—
  - (a) give notice of the designation to the chief executive; and
  - (b) include a record of the transport noise corridor in its planning scheme.
- (2) The record must—
  - (a) identify the land that is within the transport noise corridor; and
  - (b) include details about the levels of noise within the corridor caused by traffic on the road for which it is designated; and
  - (c) state that interested persons may obtain details about the transport noise corridor and the levels of noise from the local government.
- (3) Information required to be included in the record must be included in a way that readily allows an applicant for a building development approval to identify whether land the subject of the approval is within a transport noise corridor.



- (b) the local government in whose area the transport noise corridor is situated.
- (2) The notice must include information about the levels of noise within the corridor caused by rolling stock or traffic on the railway land or State-controlled road for which it is designated.
- (3) As soon as practicable after receiving the notice, the local government must include a record of the transport noise corridor in its planning scheme.
- (4) The record must—
  - (a) identify the land that is within the transport noise corridor; and
  - (b) include details about the levels of noise within the corridor caused by rolling stock or traffic on the railway land or State-controlled road for which it is designated; and
  - (c) state that interested persons may obtain details about the transport noise corridor and the levels of noise from the local government.
- (5) Information required to be included in the record must be included in a way that readily allows an applicant for a building development approval to identify whether land the subject of the approval is within a transport noise corridor.

## 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 48 and the Planning Act, chapter 5, part 3.

## 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—
    - (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 (3) 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 the Planning Act, section 168.

## **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 development tribunal as if the appeal were an appeal under the Planning Act.
- (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 to take action under the *Local Government Act 2009*, section 142 or the *City of Brisbane Act 2010*, section 132.

## **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*.

## Chapter 10 General provisions

### 254 Approved forms

The chief executive or the QBCC commissioner may approve forms for use under this Act.

### 255 Information to be given by the State

- (1) Subsection (2) applies to building work that, under a regulation under the Planning Act, is accepted development if carried out by or on behalf of the State or a public sector entity.
- (2) If the building work 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 section 108A, 114A or 231AM—an authorised officer; or
  - (b) for an offence against chapter 6—the QBCC commissioner; or
  - (c) for an offence against chapter 7A, other than section 231AM—
    - (i) the chief executive; or
    - (ii) an authorised person under the *City of Brisbane Act 2010* or the *Local Government Act 2009* carrying out functions relating to this Act; or
  - (d) for an offence against section 245G(1)—the QBCC commissioner, a local government or the chief executive (health); or
  - (e) for an offence against section 245K, 245L or 246AR(2)—the QBCC commissioner or a local government; or
  - (f) for an offence against section 246AD(2) or 246AJ(4)—the QBCC commissioner or a local government; or
  - (g) for an offence against section 246AP(2)—the QBCC commissioner or a local government; or
  - (h) for an offence against chapter 8, part 4, division 5, subdivision 2, other than section 246ATH(2)—the QBCC commissioner, a local government or a person authorised by a local government; or
  - (i) for an offence against chapter 8, part 5—the QBCC commissioner, a local government or a person authorised by a local government; or



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- (j) for an offence against chapter 8, part 6, 7 or 8—the QBCC commissioner; or
  - (k) for an offence against a provision of the expired *Building Regulation 2006*, part 4A—the QBCC commissioner, a local government or a person authorised by a local government; or

*Note—*

The expired *Building Regulation 2006*, part 4A continues in force, see the *Building Regulation 2021*, section 95.

- (l) 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), the QBCC commissioner 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 QBCC.
  - (6) All penalties recovered under chapter 8 as a result of proceedings for which the QBCC commissioner is the complainant must be paid to the commissioner.
  - (7) All penalties recovered as a result of an infringement notice served under the *State Penalties Enforcement Act 1999* for an offence against this Act and for which QBCC is the administering authority for the infringement notice must be paid to the QBCC commissioner.
  - (8) In this section—

*administering authority*, for an infringement notice, see the *State Penalties Enforcement Act 1999*, schedule 2.

## **257 Liability of executive officer—particular offences committed by corporation**

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence against an executive liability provision; and
  - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

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

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
- (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
  - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
  - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
- (a) the liability of the corporation for the offence against the executive liability provision; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.

(5) In this section—

*executive liability provision* means any of the following provisions—

- section 114A(2)
- section 115(1)
- section 231AL(6)
- section 232(1)
- section 245B(4)
- section 245L.

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

## **257A Disclosure of particular information**

- (1) A relevant person is authorised to disclose pool immersion information or pool safety information if the QBCC commissioner—
  - (a) believes on reasonable grounds the disclosure is in the public interest; and
  - (b) has, in writing, authorised the disclosure.
- (2) In addition, a relevant person is authorised to disclose pool immersion information if—
  - (a) the disclosure is to the Commonwealth, another State, or an entity of the Commonwealth or another State and the disclosure is required or allowed under an agreement—
    - (i) between Queensland and the Commonwealth, State or entity; and
    - (ii) prescribed under a regulation; or
  - (b) the disclosure is to an entity of the State and the disclosure is required or allowed under an agreement—

- (i) between the commissioner and the entity; and
  - (ii) prescribed under a regulation; or
  - (c) the disclosure is to a person who requires the information to perform a function under the *Coroners Act 2003*, other than the preparation of an annual report.
- (3) QBCC's annual report for a financial year under the *Financial Accountability Act 2009* must include details of—
- (a) the nature of any information disclosed under subsection (1) during the financial year; and
  - (b) the purpose for which the information was disclosed.
- (4) However, the details mentioned in subsection (3)(a) must not identify, directly or indirectly, any person to whom the information relates.
- (5) The commissioner may not delegate the commissioner's power under subsection (1).
- (6) In this section—

**entity**, of the Commonwealth or a State, includes a department and an entity established under an Act for a public purpose.

**pool immersion information** means information given to the commissioner under section 245I.

**pool safety information** means information about matters relating to swimming pool safety obtained by the commissioner in the administration of chapter 8.

**relevant person** means—

- (a) the commissioner; or
- (b) an officer or employee of QBCC.

## 258 Guidelines

- (1) The chief executive may make guidelines for matters within the scope of this Act to help compliance with this Act.
- (2) Without limiting subsection (1), the chief executive may make the following guidelines—

- 
- (a) a guideline about ways of complying with the pool safety standard and performing pool safety inspection functions;
  - (b) a guideline about the content of a pool safety management plan;
  - (c) a guideline to help local governments declare an area to be a remote area for section 246ACA.

## **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 the Planning Act, section 264, 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 QBCC Act.
- (2) A certificate purporting to be signed by the QBCC commissioner 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
    - (ii) the register; or
    - (iii) another document kept or made under chapter 6, part 2, 3 or 4; or
    - (iv) the pool safety inspectors register; or
    - (v) the regulated pools register; or
    - (vi) a pool safety certificate; or
    - (vii) another document kept or made under chapter 8;

- (b) on a stated day, or during a stated period, a licence or a licence as a pool safety inspector—
  - (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.
- (3) A certificate purporting to be signed by the chief executive 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) the BCA; or
    - (ii) the QDC; or
    - (iii) a document kept or made under this Act, other than a document kept or made under chapter 6, part 2, 3 or 4;
  - (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.

## **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 performance of pool safety inspection functions; and
- (f) the licensing of pool safety inspectors; and
- (g) the fees payable under the Act; and
- (h) flammable and combustible liquids; and
- (i) the records required for this Act; and
- (j) 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, transitional and validation 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 the repealed *Integrated Planning Act 1997*, 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 the repealed *Integrated Planning Act 1997*, section 4.2.8.



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**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), had been granted to a person under the unamended Act, section 15; and
  - (b) the decision had not been revoked under the unamended Act, section 16.

- (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—
  - (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 236 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.

## 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.

*Note—*

A pool for which a local law is of no effect under this section is subject to chapter 8.

- (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 205 as if the decision of the accrediting body were a decision of BSA.

## **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.

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**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

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

*Note—*

The only amendment or replacement of QDC part 25 from 1 September 2006 to 1 July 2007 was a replacement that took effect on 1 January 2007. That version was replaced by a new part MP 4.2 that took effect on 1 January 2008.

- (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.

## Part 6 Transitional provision for Building and Other Legislation Amendment Act 2008

### 284 Transitional provision for s 108A

If a certificate of classification was given for a building on or after 1 July 1997 but before the commencement of section 108A, section 108A does not apply to the owner of the building until the first anniversary of the commencement.



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*Editor's note—*

section 108A (Owner's obligations about access to certificate of classification)

## **Part 7** **Transitional provision for Sustainable Planning Act 2009**

### **285 Continuing application of chs 2, 3 and 4**

- (1) This section applies to a development application made but not decided under the repealed *Integrated Planning Act 1997* before the commencement.
- (2) Chapters 2, 3 and 4 as in force before the commencement continue to apply to the development application as if the *Sustainable Planning Act 2009* had not commenced.
- (3) In this section—

*commencement* means the day this section commences.

## **Part 8** **Transitional provisions for Building and Other Legislation Amendment Act 2009**

### **286 Continuing application of s 154**

- (1) This section applies to a relevant person who does not have at least 1 year's experience as a building surveying technician employed by a local government or under the supervision of a private certifier.
- (2) Section 154 as in force immediately before 1 January 2010 continues to apply to the relevant person—
  - (a) while the person is licensed as a building surveying technician; and

- (b) until the person has the experience mentioned in subsection (1).
- (3) In this section—
  - relevant person* means a person—
    - (a) licensed as a building surveying technician immediately before 1 January 2010; or
    - (b) issued with a licence or a renewed licence on a decision for an application mentioned in section 287(1).

*Note—*

This section commenced on 1 January 2010.

## **287 Continuing application of s 155**

- (1) This section applies to a following application made but not decided before 1 January 2010—
  - (a) an application under section 155 for a licence at the level of building surveying technician;
  - (b) an application under section 167 for renewal of a licence at the level of building surveying technician.
- (2) For considering and deciding the application, section 155 as in force immediately before 1 January 2010 continues to apply.

## **Part 9 Transitional provisions for Building and Other Legislation Amendment Act 2010**

### **288 Term of pool safety certificate in force before the commencement**

- (1) Despite section 246AL, a pool safety certificate for a regulated pool that is in force before the commencement day expires at the end of the relevant period unless it is sooner cancelled under section 246AF.

(2) In this section—

*commencement day* means the day this section commences.

*relevant period* means—

- (a) for a pool that is a shared pool—1 year after the commencement day; or
- (b) otherwise—2 years after the commencement day.

## **289 Building certifiers taken to be licensed as pool safety inspectors for 1 year**

A building certifier is taken to be licensed as a pool safety inspector for a period of 1 year from the commencement of this section unless—

- (a) the licence as a pool safety inspector is sooner cancelled, suspended or surrendered under chapter 8, part 6 or 7; or
- (b) the building certifier's licence is sooner cancelled, suspended or surrendered, or the building certifier's licence sooner expires, under chapter 6.

# **Part 10 Transitional provisions for Building and Other Legislation Amendment Act (No. 2) 2010**

## **290 Definitions for pt 10**

In this part—

*amending Act* means the *Building and Other Legislation Amendment Act (No. 2) 2010*.

*fencing standards*, for a swimming pool, see previous section 233.

*previous*, for a provision of this Act, means the provision as in force immediately before the 2010 Act commencement day.

*unamended Act* means this Act as in force before the 2010 Act commencement day.

## **291 When s 232 applies to particular regulated pools**

- (1) Subsection (2) applies to a regulated pool that—
  - (a) is a shared pool; and
  - (b) was constructed before the 2010 Act commencement day; and
  - (c) is situated on land or in a building at which only short-term accommodation is provided.

*Examples for paragraph (c)—*

motel, hotel and backpacker's hostel

- (2) If the pool safety standard application day for the pool happens more than 90 days before the day that is 6 months after the 2010 Act commencement day (the *postponed day*), section 232(1) applies to the owner of the regulated pool on and from the postponed day, unless a pool safety certificate is in effect for the pool before that day.
- (3) Subsection (4) applies to a regulated pool that—
  - (a) is a shared pool, other than a shared pool mentioned in subsection (1); and
  - (b) was constructed before the 2010 Act commencement day.
- (4) If the pool safety standard application day for the pool happens more than 90 days before the day that is 2 years after the 2010 Act commencement day (also the *postponed day*), section 232(1) applies to the owner of the regulated pool on and from the postponed day, unless a pool safety certificate is in effect for the pool before that day.
- (5) This section applies despite section 232.

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**292 Term of pool safety certificate for particular regulated pools**

- (1) This section applies—
  - (a) to a shared pool to which section 291 applies; and
  - (b) despite section 246AL.
- (2) If a pool safety certificate is given for the pool before the day that is 3 months after the 2010 Act commencement day, the certificate expires at the end of 2 years after the day it is given, unless it is sooner cancelled under section 246AF.
- (3) This section applies to a pool safety certificate whether it was given before or after the 2010 Act commencement day.

**293 Continuing application of particular provisions—requirements about fencing pool**

- (1) This section applies to a regulated pool that is an outdoor swimming pool constructed on residential land before the 2010 Act commencement day.
- (2) Previous sections 235 and 237 continue to apply to the pool until—
  - (a) for a pool to which section 291 applies—the later of the following—
    - (i) the day that is 6 months after the 2010 Act commencement day;
    - (ii) the pool safety standard application day for the pool; or
  - (b) for another pool—the pool safety standard application day for the pool.
- (3) For subsection (2), previous sections 232 to 234 continue to apply as if the unamended Act had not been amended by the amending Act.

**294 Continuing application of particular provisions—resuscitation sign**

- (1) This section applies to a regulated pool that is an outdoor swimming pool constructed on residential land before the 2010 Act commencement day if—
  - (a) under section 293, previous section 235 applies to the pool; and
  - (b) previous section 236 applied to the pool owner of the pool immediately before the 2010 Act commencement day.
- (2) Previous section 236 continues to apply to the pool owner of the pool while previous section 235 applies to it.
- (3) For subsection (2)—
  - (a) previous section 236(2) continues to apply to the pool owner as if a reference in the previous subsection to a regulation were a reference to a regulation in force immediately before the 2010 Act commencement day; and
  - (b) previous sections 232 and 234 continue to apply as if the unamended Act had not been amended by the amending Act.

**295 Application of s 233**

- (1) This section applies to a regulated pool being constructed on the 2010 Act commencement day.
- (2) Section 233(2) applies to the relevant person for the regulated pool as if the reference in the subsection to before construction of the pool starts were a reference to on the 2010 Act commencement day.
- (3) In this section—  
*relevant person*, for a regulated pool, see section 233(4).

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**296 Continuing application of previous s 237**

- (1) This section applies to a regulated pool that is an outdoor swimming pool constructed on residential land before the 2010 Act commencement day if, under section 293, previous section 235 applies to the pool.
- (2) Previous section 237 continues to apply to the pool owner of the pool while previous section 235 applies to it.
- (3) For subsection (2), previous sections 232 and 234 continue to apply as if the unamended Act had not been amended by the amending Act.

**297 Application for exemption under previous s 240**

- (1) This section applies to an application under previous section 240 for an exemption from compliance with the fencing standards made to a local government but not decided before the 2010 Act commencement day.
- (2) The local government may, under previous section 240—
  - (a) continue to decide the application; and
  - (b) grant or refuse to grant the exemption.
- (3) Previous section 241(1) continues to apply for a decision mentioned in subsection (2) as if the unamended Act had not been amended by the amending Act.

**298 Continuing effect of particular exemptions**

- (1) This section applies to an exemption, for a regulated pool, from compliance with the fencing standards granted by a local government under previous section 240, if the exemption is in effect on the 2010 Act commencement day.
- (2) The exemption is taken to be an exemption granted under chapter 8, part 2, division 3.
- (3) If the exemption was subject to a condition immediately before the 2010 Act commencement day, the exemption continues to be subject to the condition.

## **299 Keeping copy of exemption**

- (1) This section applies to an exemption granted by a local government under previous section 240.
- (2) Section 244 applies to the local government in relation to the exemption as if the exemption were granted under chapter 8, part 2, division 3.

## **300 When s 246ATK applies to particular regulated pools**

- (1) Subsection (2) applies to a regulated pool that—
  - (a) is a shared pool; and
  - (b) was constructed before the 2010 Act commencement day; and
  - (c) is situated on land or in a building at which only short-term accommodation is provided.

*Examples for paragraph (c)—*

motel, hotel and backpacker's hostel

- (2) If the owner of the regulated pool is given a relevant notice more than 90 days before the day that is 6 months after the 2010 Act commencement day (the *postponed day*), section 246ATK applies to the owner of the pool—
  - (a) as if the reference in section 246ATK(2) to within 90 days after the day of settlement under the contract of sale for the premises were a reference to by the postponed day; and
  - (b) as if the reference in section 246ATK(4) to within 90 days after the day the accommodation agreement is entered into were a reference to by the postponed day.
- (3) Subsection (4) applies to a regulated pool that—
  - (a) is a shared pool, other than a shared pool mentioned in subsection (1); and
  - (b) was constructed before the 2010 Act commencement day.



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- (4) If the owner of the regulated pool is given a relevant notice more than 90 days before the day that is 2 years after the 2010 Act commencement day (also the *postponed day*), section 246ATK applies to the owner of the regulated pool—
- (a) as if the reference in section 246ATK(2) to within 90 days after the day of settlement under the contract of sale for the premises were a reference to by the postponed day; and
  - (b) as if the reference in section 246ATK(4) to within 90 days after the day the accommodation agreement is entered into were a reference to by the postponed day.
- (5) This section applies despite section 246ATK.
- (6) In this section—
- relevant notice* means a notice under section 246ATF(c) or 246ATI.

## Part 11

# Transitional and validation provisions for Queensland Reconstruction Authority Act 2011

### 301 Definition for pt 11

In this part—

*exemption period* means the period—

- (a) starting on 8 January 2011; and
- (b) ending on 8 July 2011.

*relevant building surveying technician* means a person who—

- (a) was a building surveying technician immediately before 1 January 2010; or

- (b) was issued with a licence or a renewed licence on a decision for an application mentioned in section 287(1).

*relevant certifying function* means a building certifying function for a building or structure having a rise of no more than 2 storeys and a total floor area no more than 500m<sup>2</sup>.

### 302 Modified application of ch 8 provisions

- (1) Subsection (2) applies to a relevant regulated pool if, but for the subsection, the pool safety standard application day for the pool would happen, or would have happened, during the exemption period because an accommodation agreement is or was entered into.
- (2) Section 231A, definition *pool safety standard application day*, paragraphs (b), (c) and (e) apply, and are taken to have applied, to the pool as if the references in the paragraphs to ‘the day an accommodation agreement is entered into’ were a reference to ‘the day, not being a day during the exemption period, an accommodation agreement is entered into’.
- (3) Section 246ATG does not apply, and is taken not to have applied, to the owner of regulated premises for an accommodation agreement entered into by the owner during the exemption period.
- (4) Section 246ATL does not apply, and is taken not to have applied, to a licensee under that section in relation to activities carried out by the licensee for an accommodation agreement entered into during the exemption period.
- (5) In this section—

*pool safety standard application day* see section 231A.

*regulated pool* see section 231B.

*relevant regulated pool* means a regulated pool—

- (a) in existence on the 2010 Act commencement day; and
- (b) to which section 231A, definition *pool safety standard application day*, paragraph (b), (c) or (e) applies.

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**303 Offence about entering into accommodation agreement**

- (1) This section applies to the owner of regulated premises during the exemption period if—
  - (a) section 302(3) applies to the owner; and
  - (b) the owner does not have a pool safety certificate for a relevant regulated pool for the premises that is not a shared pool.
- (2) The owner must, before entering into an accommodation agreement for the premises, give the person who will be the occupier of the premises under the agreement a notice in the approved form.

Maximum penalty—165 penalty units.

**304 Additional role of relevant building surveying technician**

A relevant building surveying technician may, while employed by a local government, perform a relevant certifying function.

**305 Validation of relevant building surveying technician function**

- (1) This section applies to a relevant certifying function performed by a relevant building surveying technician between 1 January 2010 and the day this section commences.
- (2) The relevant certifying function is taken to be, and have always been, validly performed by the relevant building surveying technician.

## **Part 12**                      **Transitional provision inserted under Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011**

### **306**      **Provision about offences under s 246AR**

(1) A proceeding can not be started or continued for an offence constituted by an act or omission under pre-amended section 246AR if the circumstances giving rise to the commission of the offence would not, if the circumstances happened after the commencement of this section, give rise to the commission of an offence under post-amended section 246AR.

(2) In this section—

*post-amended section 246AR* means section 246AR as amended under the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011*, section 4.

*pre-amended section 246AR* means section 246AR as in force immediately before the *Sustainable Planning (Housing Affordability and Infrastructure Charges Reform) Amendment Act 2011*, section 4 commenced.

## **Part 13**                      **Validation provision inserted under the Local Government Electoral Act 2011**

### **307**      **Validation of particular appointments to PSC**

(1) If, before the commencement of this section, the Minister purportedly appointed a person as a deputy member, the person is declared to always have been validly appointed as a deputy member.

- (2) Anything done or omitted to be done by a person mentioned in subsection (1) as a deputy member that would have been valid and lawful under this Act had the person been validly appointed is declared to always have been valid and lawful.
- (3) If, before the commencement of this section, the Minister purportedly appointed a deputy member to be the deputy chairperson of PSC, despite section 246EM(1) the deputy member is declared to always have been validly appointed as the deputy chairperson of PSC.
- (4) Anything done or omitted to be done by a deputy member mentioned in subsection (3) as deputy chairperson of PSC that would have been valid and lawful under this Act had the deputy member been validly appointed is declared to always have been valid and lawful.
- (5) To remove any doubt, it is declared that a quorum for a PSC meeting can be, and could always have been, made up of any combination of attendees if the number of attendees at the meeting is, or was, more than half of the number of persons appointed as members of PSC at the time of the meeting.
- (6) In this section—  
*attendee*, for a PSC meeting, means—
  - (a) a member; or
  - (b) a deputy member, including a deputy member to whom subsection (1) applies, acting for a member who is absent from the PSC meeting.

*deputy member* means a deputy appointed under section 246EL(1) to act for a member.

*member* means a person appointed under section 246EK(1) as a member of PSC.

## Part 14

# Transitional provision for Treasury (Cost of Living) and Other Legislation Amendment Act 2012

### 308 Continuation of ss 246I, 246J and 246K in relation to particular sustainability declarations

- (1) Previous section 246I continues to apply in relation to a document that was, or purported to be, a current sustainability declaration for a class 1a or 2 building bought before the commencement day.
- (2) Previous section 246J continues to apply in relation to the following things done, before the commencement day, by a seller of a class 1a or 2 building—
  - (a) publishing a relevant advertisement for the sale of the building;
  - (b) giving or making available a current sustainability declaration for the building.
- (3) Previous section 246K continues to apply in relation to a breach of an obligation under previous chapter 8A, part 1 before the commencement day.
- (4) In this section—

*commencement day* means the day this section commences.

*previous*, followed by a provision number, means the provision of that number in force before the commencement day.

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## **Part 14A**                      **Transitional provisions for Vocational Education and Training (Commonwealth Powers) Act 2012**

### **309**      **Definitions for pt 14A**

In this part—

*commencement* means the commencement of this part.

*former Act* means this Act as in force from time to time before the commencement.

### **310**      **When approved training course under former Act taken to be approved training course under this Act**

- (1) This section applies if an individual has, before the commencement, completed an approved training course under the former Act.
- (2) The approved training course under the former Act is taken to be an approved training course under this Act, for a period of 6 months from the commencement, for the purpose of an application for a licence under chapter 8, part 6.

### **310A**      **Fees may be refunded**

- (1) This section applies if, before the commencement—
  - (a) an eligible course provider paid a fee under section 246DH of the former Act for the approval of a training course; and
  - (b) the approval is in force at the commencement.
- (2) PSC may refund the proportion of the fee PSC considers appropriate having regard to the period of the approval left to run after the commencement.

## Part 15

# Transitional provisions for Sustainable Planning and Other Legislation Amendment Act 2012

### 311 Definitions for pt 15

In this part—

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

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

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

*commencement* means the commencement of this section.

*previous*, for a provision of this Act, means the provision as in force immediately before the commencement.

### 312 Existing accreditations

- (1) This section applies to a current accreditation issued by an accreditation standards body that, immediately before the commencement, was a current accreditation for an application under previous section 155 for a licence as a building surveyor, an assistant building surveyor or a building surveying technician.
- (2) On the commencement, the accreditation is taken to be a current accreditation for—
  - (a) if the accreditation is for a licence as a building surveyor—an application under section 155 for a licence as a building certifier–level 1; or



- (b) if the accreditation is for a licence as an assistant building surveyor—an application under section 155 for a licence as a building certifier—level 2; or
- (c) if the accreditation is for a licence as a building surveying technician—an application under section 155 for a licence as a building certifier—level 3.

### **313 Existing building surveyors, assistant building surveyors and building surveying technicians**

- (1) A person who, immediately before the commencement, was licensed as a building surveyor is taken to be licensed as a building certifier—level 1.
- (2) A person who, immediately before the commencement, was licensed as an assistant building surveyor is taken to be licensed as a building certifier—level 2.
- (3) A person who, immediately before the commencement, was licensed as a building surveying technician is taken to be licensed as a building certifier—level 3.

### **314 References in existing accreditation standards and professional development schemes**

- (1) This section applies to an existing accreditation standard or an existing professional development scheme.
- (2) From commencement, a reference in the standard or scheme to—
  - (a) a building surveyor—level 1 is taken to be a reference to a building certifier—level 1; or
  - (b) a certifier level 1 (building surveyor) is taken to be a reference to a building certifier—level 1; or
  - (c) an assistant building surveyor—level 2 is taken to be a reference to a building certifier—level 2; or
  - (d) a certifier level 2 (assistant building surveyor) is taken to be a reference to a building certifier—level 2; or

- (e) a building surveying technician is taken to be a reference to a building certifier–level 3; or
  - (f) a certifier level 3 (building surveying technician) is taken to be a reference to a building certifier–level 3.
- (3) An accreditation standards body may amend an existing accreditation standard or an existing professional development scheme to change a reference to—
- (a) a building surveyor–level 1 to a reference to a building certifier–level 1; or
  - (b) a certifier level 1 (building surveyor) to a reference to a building certifier–level 1; or
  - (c) an assistant building surveyor–level 2 to a reference to a building certifier–level 2; or
  - (d) a certifier level 2 (assistant building surveyor) to a reference to a building certifier–level 2; or
  - (e) a building surveying technician to a reference to a building certifier–level 3; or
  - (f) a certifier level 3 (building surveying technician) to a reference to a building certifier–level 3.
- (4) An existing accreditation standard amended under subsection (3) is taken to be approved by the chief executive for section 185(2)(a).
- (5) An existing professional development scheme amended under subsection (3) is taken to be approved by the chief executive for section 185(2)(c).
- (6) In this section—

***existing accreditation standard*** means an educational and experiential standard set by an accreditation standards body under section 185(2)(a) and in effect immediately before the commencement.

***existing professional development scheme*** means a professional development scheme established by an accreditation standards body under section 185(2)(c) and in effect immediately before the commencement.

### 315 Existing applications for a licence

- (1) This section applies to an application for a licence made, but not decided, before the commencement.
- (2) If the application is for a licence at the level of a building surveyor, it is taken to be an application for a licence at the level of building certifier–level 1.
- (3) If the application is for a licence at the level of an assistant building surveyor, it is taken to be an application for a licence at the level of building certifier–level 2.
- (4) If the application is for a licence at the level of a building surveying technician, it is taken to be an application for a licence at the level of building certifier–level 3.
- (5) Subsection (6) applies to BSA for considering and deciding an application mentioned in subsection (4).
- (6) If the applicant has at least 1 year’s experience as a building surveying technician employed by a local government or under the supervision of a private certifier, the applicant is taken to have at least 1 year’s experience carrying out level 3 work under the supervision of a person licenced as a building certifier–level 1 or a building certifier–level 2.

## Part 16 Validation provisions for Housing and Other Legislation Amendment Act 2013

### 316 Definitions for pt 16

In this part—

*commencement* means the commencement of this part.

*previous*, for a provision of this Act, means the provision as in force immediately before the commencement.

*relevant period* means the period starting on 1 November 2012 and ending immediately before the commencement.

**317 Retrospective validation of particular certificates of classification given during relevant period**

- (1) This section applies if, during the relevant period, a building certifier for a building development approval—
  - (a) gave a certificate of classification for the building under section 102; and
  - (b) when the certificate was given—
    - (i) the building was not substantially completed under previous section 101(1)(d); but
    - (ii) would have been substantially completed if section 101(1)(d), as in force immediately after the commencement, had been in force on the day the certificate was given.
- (2) The certificate of classification is taken to be, and always to have been, as valid as if section 101(1)(d), as in force immediately after the commencement, had been in force on the day the certificate was given.

**318 Retrospective validation of particular applications for renewal of licences at level of building certifier—level 3**

- (1) This section applies to an application for the renewal of a licence at the level of building certifier—level 3 made under section 167 if the application—
  - (a) was made before the commencement; and
  - (b) when the application was made, the individual making the application—
    - (i) did not comply with the requirements of previous section 155(1)(b)(ii) or (iii); but
    - (ii) would have complied with the requirements of section 155 as in force immediately after the commencement.
- (2) The application is taken to be, and always to have been, as valid as if section 155, as in force immediately after the

commencement, had been in force on the day the application was made.

**319 Retrospective validation of particular licences at level of building certifier—level 3 renewed during relevant period**

- (1) This section applies to a licence—
  - (a) which was renewed by the BSA under section 169(1)(a) at the level of building certifier—level 3 during the relevant period; and
  - (b) when the decision to renew the licence was made, the applicant—
    - (i) did not comply with the requirements of previous section 155(1)(b)(ii) or (iii); but
    - (ii) would have complied with the requirements of section 155 as in force immediately after the commencement.
- (2) The renewed licence is taken to be, and always to have been, as valid as if section 155, as in force immediately after the commencement, had been in force on the day the licence was issued.
- (3) If the renewed licence was subject to a restriction, condition or endorsement, the licence is also taken to be subject to the same restriction, condition or endorsement in the same terms so far as practicable.

**320 Retrospective validation of building certifying functions performed during relevant period**

- (1) This section applies to a building certifying function performed by an individual who holds a renewed licence mentioned in section 319.
- (2) The individual is taken to be, and always to have been, licensed when performing the function.

**321 Retrospective validation of particular applications for renewal of licences for pool safety inspectors**

- (1) This section applies to an application for the renewal of a pool safety inspector's licence made under section 246BN if the application—
  - (a) was made before the commencement; and
  - (b) when the application was made, the pool safety inspector who made the application did not comply with the requirements of previous section 246BN(2)(b).
- (2) The application is taken to be, and always to have been, as valid as if section 246BN, as in force immediately after the commencement, had been in force on the day the application was made.

**322 Retrospective validation of particular licences for pool safety inspectors renewed during particular period**

- (1) This section applies to a pool safety inspector's licence—
  - (a) which was renewed by the PSC under section 246BP during the period starting on 29 December 2012 and ending immediately before the commencement; and
  - (b) if when the decision to renew was made the applicant did not comply with the requirements of previous section 246BN(2)(b).
- (2) The renewed licence is taken to be, and always to have been, as valid as if section 246BN, as in force immediately after the commencement, had been in force on the day the licence was issued.
- (3) If the renewed licence was subject to a restriction or condition, the licence is also taken to be subject to the same restriction or condition in the same terms so far as practicable.

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**323 Retrospective validation of pool safety inspection functions**

- (1) This section applies for a pool safety inspection function performed by a pool safety inspector who holds a renewed licence mentioned in section 322.
- (2) The pool safety inspector is taken to be, and always to have been, licensed when performing the function.

**Part 17 Transitional provisions for Queensland Building Services Authority Amendment Act 2013**

**324 Definitions**

In this part—

*amending Act* means the *Queensland Building Services Authority Amendment Act 2013*.

*transfer day* means the day the amending Act, section 5 commences.

*former BSA* means the former Queensland Building Services Authority under the QBSA Act.

*general manager* means the general manager under the QBSA Act.

*QBSA Act* means the *Queensland Building and Construction Commission Act 1991* as in force immediately before its amendment under the amending Act, section 5.

**325 Unresolved applications to or by the former BSA**

- (1) On the transfer day, the QBCC stands in place of the former BSA for any unresolved application made—
  - (a) under this Act to the former BSA; or
  - (b) by the former BSA to the tribunal.

- (2) For subsection (1)(a), the QBCC may be satisfied about a matter merely because the former BSA was satisfied about the matter under the relevant provision of this Act.
- (3) In this section—  
*unresolved application* means an application made, but not finally decided or withdrawn, before the transfer day.

### **326 Prosecution of offences against chapter 6 or section 246AP(2)**

- (1) For section 256(1), the commissioner for QBCC is taken to have knowledge of the commission of a relevant offence—
  - (a) if the offence came to the general manager’s knowledge; and
  - (b) when the offence came to the general manager’s knowledge.
- (2) For section 256(2), a complaint made by the general manager is taken to be a complaint made by the commissioner for QBCC when the complaint was made.
- (3) A prosecution for an offence against chapter 6 or section 246AP(2) started by the general manager but not concluded or dismissed before the transfer day, may be continued by the commissioner for QBCC.
- (4) In this section—  
*relevant offence* means an offence against this Act, chapter 6 or section 246AP(2) for which—
  - (a) the alleged date of commission of the offence was before the transfer day; and
  - (b) the prosecution for the offence had not yet started on the transfer day.

### **327 Other administrative matters relating to the former BSA**

- (1) From the transfer day, each of the following things in effect immediately before the transfer day continue in effect as if the



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thing was approved, given or made by the QBCC when the thing first took effect—

- (a) a direction or notice given by the former BSA under this Act;
  - (b) a requirement made by the former BSA under this Act that has not been fully complied with on the transfer day;
  - (c) a licence issued by the former BSA under this Act;
  - (d) a decision or order of the former BSA made under this Act.
- (2) On the transfer day, the register kept by the former BSA under section 179 before the transfer day becomes part of the register kept by the QBCC under section 179.
- (3) For a provision of this Act enabling the taking of action by an entity if the QBCC had previously taken a particular action, a reference to the QBCC having previously taken the action is taken to include a reference to the former BSA having previously taken it.

## Part 18                      **Transitional provisions for Professional Engineers and Other Legislation Amendment Act 2014**

### Division 1                      **Preliminary**

#### **328      Definitions**

In this part—

*amended Act* means this Act as amended by the amending Act.

*amending Act* means the *Professional Engineers and Other Legislation Amendment Act 2014*.

*commencement* means commencement of this section.

*former council* means the PSC established under the unamended Act.

*unamended Act* means this Act as in force immediately before the commencement.

## **Division 2                      Dissolution of former council and transfer of matters to QBCC**

### **329      Dissolution**

(1) On the commencement—

- (a) the former council ceases to exist; and
- (b) the registrar and members of the former council go out of office.

(2) In this section—

*registrar* means the person holding the office of registrar under the unamended Act immediately before the commencement.

### **330      Transfer of former fund**

(1) On the commencement—

- (a) any liabilities relating to the former fund are taken to be liabilities of the Pool Safety Fund; and
- (b) any amounts payable to the former fund immediately before the commencement are taken to be payable to the Pool Safety Fund.

(2) The chief executive must—

- (a) as soon as practicable after the commencement, do all things necessary to transfer to the Pool Safety Fund all funds held immediately before the commencement in the former fund; and

(b) from time to time, transfer to the Pool Safety Fund any funds received that relate to the former fund.

(3) In this section—

*former fund* means the Pool Safety Fund established under section 246FB as in force from time to time before the commencement.

### **331 Agreements, assets, liabilities and rights**

(1) On the commencement—

(a) the former council's assets, liabilities and rights vest in QBCC; and

(b) QBCC is substituted for the former council in all agreements to which the former council was a party immediately before the commencement.

(2) Without limiting subsection (1), any amounts payable to the former council immediately before the commencement are, on the commencement, taken to be payable to QBCC.

(3) In this section—

*agreement* includes a lease, undertaking and contractual arrangement.

### **332 Pending applications**

(1) This section applies to an application made but not finally decided or withdrawn before the commencement—

(a) under the unamended Act to the former council; or

(b) by the former council to the tribunal.

(2) On and from the commencement, the application is taken to have been made—

(a) if subsection (1)(a) applies—to the QBCC commissioner under the amended Act; or

(b) if subsection (1)(b) applies—by the commissioner;

when it was made to or by the former council.

- (3) For deciding the application, if the context permits—
  - (a) action taken by the former council before the commencement in relation to the application is action taken by the commissioner under the amended Act; and
  - (b) the commissioner may be satisfied about a matter merely because the former council was satisfied about the matter under the unamended Act.

### **333 Pending legal proceedings**

- (1) A legal proceeding that has been started, or could have been started, by or against the former council before the commencement may be started or continued by or against the QBCC commissioner.
- (2) For section 256(1), the QBCC commissioner is taken to have knowledge of the commission of a past offence—
  - (a) if the offence came to the former council's knowledge; and
  - (b) when the offence came to the former council's knowledge.
- (3) Subsection (4) applies if a prosecution for an offence against the unamended Act is started by a person under section 256(2) of that Act before the commencement.
- (4) On and from the commencement, the commissioner is taken to be the complainant for continuing the prosecution.
- (5) In this section—

*legal proceeding* means a proceeding before a court or tribunal.

*past offence* means an offence against this Act for which—

- (a) the alleged date of commission of the offence was before the commencement; and
- (b) the prosecution for the offence had not yet started on the commencement.

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**334 Ministerial directions to former council**

- (1) This section applies to a Ministerial direction given before the commencement to the former council by the Minister under section 246FG of the unamended Act.
- (2) The Ministerial direction is, if the context permits, taken to have been given to QBCC under the QBCC Act, section 9.

**335 Records of former council**

- (1) On the commencement, a record of the former council becomes a record of QBCC.
- (2) In this section—  
*record* includes a register kept by the former council under the unamended Act.

**336 Continuing authorisation of investigators**

- (1) This section applies to a person authorised by the former council under section 246CP(1) of the unamended Act as a person to whom a document must be produced.
- (2) On and from the commencement, the person is taken to have been authorised under section 246CP(1) of the amended Act as an investigator by the QBCC commissioner.
- (3) Action taken for an investigation under the unamended Act continues to have effect for the purpose of the amended Act.
- (4) If a notice given by the former council before the commencement under section 246CP of the unamended Act required a document to be produced at a time that is on or after the commencement, the notice is taken to require the document to be produced at that time to the QBCC commissioner.
- (5) Subsection (6) applies if, immediately before the commencement—
  - (a) an identity card had been issued to the person under section 246CQ of the unamended Act; and

- (b) the card had not expired according to its terms.
- (6) The card is taken to be an identity card issued to the person by the commissioner until the earlier of the following—
  - (a) a new identity card is issued to the person by the commissioner under the amended Act;
  - (b) the card expires according to its terms.

**337 Pending complaints and disciplinary matters under ch 8, pt 7**

- (1) This section applies if, immediately before the commencement—
  - (a) action is being taken by the former council under chapter 8, part 7, division 1 of the unamended Act in relation to a complaint; or
  - (b) the tribunal is conducting a disciplinary proceeding under chapter 8, part 7, division 3 on an application by the former council.
- (2) On and from the commencement, the complaint or application is taken to have been made to or by the QBCC commissioner under the amended Act.
- (3) For completing the action in relation to the complaint or completing the disciplinary proceeding—
  - (a) steps taken by the former council before the commencement in relation to the complaint or proceeding are steps taken by the commissioner under the amended Act; and
  - (b) the commissioner may be satisfied about a matter merely because the former council was satisfied about the matter under the unamended Act.

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### **338 Other administrative matters relating to former council**

(1) Subsection (2) applies to each of the following things in effect under the unamended Act immediately before the commencement—

(a) a direction or notice given by the former council;

*Example—*

a direction to a pool safety inspector to attend training under section 246CY(4)(c)

(b) a request, requirement or order made by the former council that has not been fully complied with on the commencement;

*Example—*

a request of an applicant to give the former council further information or evidence to decide an application

(c) a certificate or licence issued by the former council;

(d) a decision of the former council.

(2) The thing continues in effect as if it had been given, issued or made by QBCC when the thing first took effect.

(3) A code of conduct for pool safety inspectors made under section 246AZ of the unamended Act and in effect immediately before the commencement continues in effect, on and from the commencement, as if the code of conduct had been made by the QBCC commissioner.

## **Division 3                      Transfer of matters from chief executive to QBCC**

### **339 Pending applications to chief executive**

(1) This section applies to an application made, but not finally decided or withdrawn before the commencement, for approval of a pool safety management plan under the unamended Act, section 245M.

- (2) On and from the commencement, the application is taken to have been made to the QBCC commissioner under the amended Act.
- (3) For deciding the application, if the context permits—
  - (a) action taken by the chief executive before the commencement in relation to the application is action taken by the commissioner under the amended Act; and
  - (b) the commissioner may be satisfied about a matter merely because the chief executive was satisfied about the matter under the unamended Act.

#### **340 Other administrative matters relating to chief executive**

Action taken by the chief executive under the unamended Act, chapter 8, part 2, division 6 before the commencement in relation to a pool safety management plan continues to have effect as if it had been taken by the QBCC commissioner when the action was first taken.

### **Division 4 Provisions about review of particular decisions**

#### **341 Pending reviews of relevant decisions**

- (1) This section applies if, before the commencement—
  - (a) an application for review of a relevant decision had been made but not decided or otherwise finally dealt with; or
  - (b) the period in which a person was entitled to apply under the unamended Act for review of a relevant decision had started but not ended.
- (2) The review of the relevant decision may be completed, or started and completed, as if—
  - (a) the unamended Act continued to apply; and



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- (b) the QBCC Act, part 7, division 3 did not apply for review of the decision.
- (3) In this section—  
*relevant decision* means a decision under section 157, 169, 177, 204, 246BJ, 246BP, 246BT, 246BZ or 246CY.

## Division 5                      Other matters

### 342      References to former council

In an Act or document, a reference to the former council may, if the context permits, be taken to be a reference to the QBCC commissioner.

### 343      Effect on legal relationships

- (1) Nothing done under the amendments to this Act under the amending Act (the *Act amendments*)—
- (a) makes a relevant entity in breach of an instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
  - (b) except as provided for under the Act amendments, is taken to fulfil a condition that—
    - (i) terminates, or allows a person to terminate, an instrument or obligation; or
    - (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
    - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
    - (iv) requires any money to be paid before its stated maturity.

- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under the Act amendments, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If, apart from this Act, giving notice to a person would be necessary to do something under the Act amendments, the notice is taken to have been given.
- (4) In this section—  
*relevant entity* means—
  - (a) the State or an employee or agent of the State; or
  - (b) QBCC, or a member or relevant officer of QBCC.

## **Part 18A                      Transitional provision for Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2017**

### **344      Building development application approved before commencement**

- (1) This section applies to a building development application approved by a private certifier before the commencement.
- (2) Former section 88 continues to apply in relation to the building development application as if the amending Act had not been enacted.
- (3) In this section—

*amending Act* means the *Local Government Electoral (Transparency and Accountability in Local Government) and Other Legislation Amendment Act 2017*.

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*former section 88* means section 88 as in force immediately before the commencement.

## Part 19                      **Transitional provision for Planning (Consequential) and Other Legislation Amendment Act 2016**

### **345 Existing building development applications**

- (1) This section applies to an existing building development application.
- (2) This Act, as in force immediately before the commencement, continues to apply in relation to the application as if the *Planning (Consequential) and Other Legislation Amendment Act 2016* had not been enacted.
- (3) In this section—

*existing building development application* means a building development application, as defined in former section 6, to which the Planning Act, section 288 applies.

*former section 6* means section 6 as in force immediately before the commencement.

## Part 20                      **Transitional provision for Economic Development and Other Legislation Amendment Act 2019**

### **346 Existing building development applications**

- (1) The following provisions continue to apply in relation to an existing building development application as if the amending Act had not been enacted—

- (a) former section 25;
  - (b) if chapter 4, part 6 applies in relation to the application—former sections 83 and 84.
- (2) In this section—

***amending Act*** means the *Economic Development and Other Legislation Amendment Act 2019*.

***existing building development application*** means a building development application made, but not decided, before the commencement.

***former***, in relation to a provision, means as in force immediately before the provision was amended or repealed under the amending Act.

## Part 21

# Transitional provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

### 347 Definitions for part

In this part—

***new***, for a provision, means the provision as in force from the commencement.

***previous***, for a provision, means the provision as in force from time to time before the commencement.

### 348 Section 124A does not apply to building certifier engaged before commencement

Section 124A does not apply to a building certifier in relation to inspection documentation for building work if the building certifier was engaged to inspect the building work before the commencement.

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**349 Application of s 143B for owner of building**

Section 143B applies in relation to the owner of a building only if the building certifier mentioned in section 143B(1)(a) for the building is engaged by the client on or after the commencement.

**350 Application of s 185 to existing educational and experiential standards**

For section 185(2)(d), an educational and experiential standard and professional development scheme in force on the commencement is taken to have been first approved by the chief executive on the commencement.

**351 Application of disqualified person provisions**

For new chapter 6, part 5, demerit points do not take effect for convictions for demerit offences committed before the commencement.

**352 Existing certificates of classification**

- (1) This section applies to a certificate of classification in force immediately before the commencement.
- (2) The certificate of classification is taken to be a certificate of occupancy.

**353 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature about any matter—
  - (a) for which it is necessary to make provision to allow or to facilitate the doing of anything to achieve the transition from the pre-amended Act to the amended Act; and
  - (b) for which this Act does not provide or sufficiently provide.

- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the commencement.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 2 years after the commencement.

## Part 22                              **Transitional provisions for Building and Other Legislation Amendment Act 2022**

### **354      Definitions for part**

In this part—

*affected period* means the period starting on 1 January 2010 and ending on the commencement.

*former*, for a provision of this Act, means the provision as in force from time to time before the commencement.

*new*, for a provision of this Act, means the provision as in force from the commencement.

*order* means an order made by a court or tribunal.

*prescribed building* see section 246M.

*relevant instrument* see section 246M.

*solar hot water system* see section 246M.

### **355      Existing appeals under former s 245S**

- (1) This section applies if a person was given an information notice about a decision under former section 245O or 245Q and immediately before the commencement—
  - (a) the person could have, but had not, appealed the decision to a development tribunal under former

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- section 245S and the period mentioned in former section 245S(2) had not ended; or
- (b) the person had started an appeal against the decision under former section 245S but the appeal had not been decided by a development tribunal.
- (2) If subsection (1)(a) applies, the person may, within the period mentioned in former section 245S(2), appeal the decision, and a development tribunal may hear and decide the appeal under former section 245S as if the *Building and Other Legislation Amendment Act 2022* had not been enacted.
- (3) If subsection (1)(b) applies, the development tribunal may continue to hear, and decide, the appeal under former section 245S as if the *Building and Other Legislation Amendment Act 2022* had not been enacted.

**356 Effect of particular relevant instruments made in affected period—former ss 246O and 246Q**

- (1) This section applies if, during the affected period, because of a prohibition or restriction under a relevant instrument given effect, or purportedly given effect, under former section 246O or 246Q, a person was prevented or restricted from installing a solar hot water system or photovoltaic cells—
- (a) on the roof or other external surface of a prescribed building; or
- (b) at the person's preferred location on the roof or other external surface of a prescribed building.
- (2) New section 246O or 246Q applies to the relevant instrument as if the relevant instrument had been made after the affected period ended.
- (3) Any agreement, proceeding, order or other action enforcing the prohibition or restriction has effect only to the extent the prohibition or restriction has effect under new section 246O or 246Q.

**357 Effect of particular relevant instruments made in affected period—former s 246S**

- (1) This section applies if, during the affected period, because an entity withheld consent, or purportedly withheld consent, under a relevant instrument under former section 246S, a person was prevented or restricted from installing a solar hot water system or photovoltaic cells—
  - (a) on the roof or other external surface of a prescribed building; or
  - (b) at the person's preferred location on the roof or other external surface of a prescribed building.
- (2) New section 246S applies to the relevant instrument as if the relevant instrument had been made after the affected period ended.
- (3) Any agreement, proceeding, order or other action enforcing the prohibition or restriction has effect only to the extent the prohibition or restriction has effect under new section 246S.
- (4) The entity that withheld the consent must, if asked, reconsider giving consent for the installation of a solar hot water system or photovoltaic cells under new section 246S.



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## Schedule 2      Dictionary

## section 4

**2010 Act commencement day** means the day the *Building and Other Legislation Amendment Act (No. 2) 2010*, part 4, commences.

**accepted building work** see section 21(3).

**accepted development** see the Planning Act, section 44(4).

**accommodation agreement** see section 231A.

**accreditation standards body** see section 184(1).

**accumulate**, for chapter 6, part 5, see section 214A.

**adjoining land** see section 245XA.

**adjoining owner**, for chapter 8, part 2A, see section 245XA.

**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.

**amending Act**, for chapter 11, part 10, see section 290.

**another relevant Act** means any of the following—

- (a) the Planning Act;
- (b) *Queensland Building and Construction Commission 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
- (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
  - limitations on the capacity of sewerage, stormwater and water supply services
  - location of any erosion control districts
  - location of contaminated land
  - location of landslip areas
  - location of mine subsidence areas
- (f) if the application relates to building work that uses a performance solution and the assessment manager approved the application on the basis of the performance solution—the statement required under section 68A.

***approved form*** means a form approved under section 254.

***approved pool safety management plan*** means a pool safety management plan approved and in effect under chapter 8, part 2, division 6.

***approved training course*** means a training course approved by the QBCC commissioner under section 246DG.

***assessable development*** see the Planning Act, section 44(3).

***assessment category***, for an RCB, for chapter 7A, see section 231AD.

***assessment manager*** see section 11.

***assistant building surveyor***, for chapter 11, part 15, see section 311.

***auditor*** see section 195(1).

***authorised officer*** means—

- (a) a fire service officer under the *Fire and Emergency Services Act 1990*; or
- (b) an authorised person under the *City of Brisbane Act 2010* or the *Local Government Act 2009* carrying out functions relating to this Act.

***bathroom***, for chapter 8A, part 2, see section 246M.

***BCA*** see section 12.

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

**BCA classification or use change** see section 109.

**budget accommodation building** see section 216.

**build** includes—

- (a) starting or continuing to build; and
- (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 or is roofed.
- 2 The term includes a floating building and any part of a building.

**building assessment provisions** see section 30.

**building assessment work** see section 7.

**building certifier** see section 8.

**building certifier–level 1** means a building certifier who, under section 151, is licensed as a building certifier–level 1.

**building certifier–level 2** means a building certifier who, under section 151, is licensed as a building certifier–level 2.

**building certifier–level 3** means a building certifier who, under section 151, is licensed as a building certifier–level 3.

**building certifying function** see section 10.

**Building Code of Australia** see section 12.

**building development application** see section 6(1).

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***building development approval*** means a development approval to the extent it approves a building development application.

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

***building surveying technician***, for chapter 11, part 15, see section 311.

***building surveyor***, for chapter 11, part 15, see section 311.

***building work*** see section 5.

***certificate of occupancy***, for a building or structure, means—

- (a) a certificate about its BCA classification in force under section 106; or
- (b) an interim certificate of occupancy in force 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.

***change application*** means a change application under the Planning Act.

***chief executive (health)*** means the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered.

***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).

***code of conduct for pool safety inspectors*** see section 246AZ(1).

***common areas***, for a residential park, see the *Manufactured Homes (Residential Parks) Act 2003*, schedule 2.

***complaint*** means—

- (a) for chapter 6—a complaint made under chapter 6, part 4 about a building certifier or former building certifier; or
- (b) for chapter 8—a complaint made under chapter 8, part 7 about a pool safety inspector or former pool safety inspector.

**compliance certificate** see section 10(b).

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

**complying pool**, for chapter 8, see section 231A.

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

**construct**, for a regulated pool, includes install or place the pool on land, including within a building.

*Examples—*

- 1 A person constructs a regulated pool if the person installs the pool above ground level on land or in a building.
- 2 A person constructs a regulated pool if the pool is portable and the person places it, ready to be filled with water, on land or in a building.

**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
  - (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
    - (ii) that is not revived as prescribed by section 11 of that Act.

**conviction**, of a person for a demerit offence, for chapter 6, part 5, see section 214A.

**court** means the Planning and Environment Court.

**criminal history**, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than for a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

**decision notice**, for a development application or change application, means the decision notice given under the Planning Act about the decision on the application.

**decision period**, for an application made under chapter 8, means—

- (a) 40 business days after the application is made; or
- (b) if the QBCC commissioner asks for further information or documents to decide the application, the sum of the following days after the application is made—
  - (i) 40 business days;
  - (ii) the number of business days from the day the commissioner asks for the further information or documents to the day the commissioner receives the further information or documents.

***default certificate***, for chapter 6, part 5, see section 214A.

***demerit offence*** see section 214A.

***demerit point*** see section 214A.

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

***development application*** means a development application under the Planning Act.

***development approval*** means a development approval under the Planning Act.

***development approval endorsement*** see section 160(b).

***development permit*** means a development permit under the Planning Act.

***development tribunal*** means a tribunal established under the Planning Act, section 235.

***disqualification notice***, for chapter 6, part 5, see section 214K(2).

***disqualified individual*** see section 214B.

***dividing fence***, for chapter 8, part 2A, see section 245XA.

***dividing fence*** has the meaning given by the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

***energy efficient***, for chapter 8A, part 2, see section 246M.

***enforcement action*** means the giving, under chapter 9, of a show cause notice and an enforcement notice and taking action under the Planning Act, chapter 5, part 3.

***enforcement notice*** see section 248(1).

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

***exemption period***, for chapter 11, part 11, see section 301.

***fence***, for chapter 8, part 2A, see section 245XA.

***fencing standards***, for chapter 11, part 10, see section 290.

***fencing work*** see section 245XA.

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



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*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
  - special automatic fire suppression systems (including foam, deluge and gas flooding systems)
  - sprinklers (including wall-wetting sprinklers)
  - stairwell pressurisation systems
- (c) firefighting 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.
- 3 Also, if a performance solution to a performance requirement under the BCA relating to the fire safety system has been used for a building or structure, a *fire safety installation*, for the building or structure, includes any thing required to comply with the performance solution.

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

***fire safety (RCB) compliance certificate***, for chapter 7A, see section 231AI(6).

***fire safety standard*** see section 217(1).

***fire safety standard (RCB)*** see section 231AE.

***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 tribunal makes an order under section 212.

***former pool safety inspector*** means an individual who—

- (a) was a pool safety inspector when a pool safety inspection function, the subject of a complaint, was performed; but
- (b) is not licensed as a pool safety inspector when—
  - (i) the complaint, or the decision taken about the complaint under section 246CY(1), is made; or
  - (ii) the tribunal makes an order under section 246DD.

***fund*** see section 246G.

***ground for disciplinary action***, against a pool safety inspector or former pool safety inspector, includes the following—

- (a) conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing pool safety inspection functions;
- (b) conduct that compromises the health or safety of a person;
- (c) conduct that is contrary to a function under this Act, including, for example—
  - (i) disregarding relevant and appropriate matters; and

- (ii) acting outside the scope of the pool safety inspector's powers; and
- (iii) acting beyond the scope of the pool safety inspector's competence; and
- (iv) contravening the code of conduct for pool safety inspectors;
- (d) seeking, accepting or agreeing to accept a benefit, whether for the benefit of the pool safety inspector or another person, as a reward or inducement to act in contravention of this Act;
- (e) failing to comply with an order of the QBCC commissioner or the tribunal;
- (ea) failing to comply with a written notice given to the pool safety inspector under the *Queensland Building and Construction Commission Act 1991*, section 50C(2);
- (eb) obstructing an investigator under the *Queensland Building and Construction Commission Act 1991*, section 107A;
- (f) accumulating the number of demerit points prescribed under a regulation for this provision in the period prescribed under a regulation;
- (g) fraudulent or dishonest behaviour in performing pool safety inspection functions;
- (h) other improper or unethical conduct;
- (i) conduct that is of a lesser standard than the standard that might reasonably be expected of the pool safety inspector by the public or the pool safety inspector's professional peers.

***homestay or assisted accommodation agreement***, for chapter 8, see section 231A.

***identification number***, for a pool safety certificate, see section 246AJ(2).

***imposed condition*** see section 69(4).

***indoor swimming pool*** means—

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- (a) a swimming pool completely enclosed by the walls of a building; or
  - (b) 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**, for a decision, means—

- (a) if the decision may be appealed under the Planning Act—a notice stating—
  - (i) the decision, and the reasons for it; and
  - (ii) all rights of appeal against the decision under the Planning Act; and
  - (iii) how the rights are to be exercised; or
- (b) if the decision is a decision of the QBCC commissioner under section 157, 169, 177, 204, 245O, 245Q, 246BJ, 246BP, 246BT, 246BZ or 246CY, or a decision of the QBCC relating to accumulation of demerit points under section 214K, a notice stating the following—
  - (i) the decision;
  - (ii) the reasons for it;
  - (iii) that the person to whom the notice is given may, within 28 days after the person is given the notice—
    - (A) apply to QBCC for internal review of the decision under the QBCC Act, part 7, division 3; or
    - (B) apply to the tribunal for external review of the decision under the QBCC Act, part 7, division 3;
  - (iv) how to apply for review of the decision.

**infringement notice**, for chapter 6, part 5, see section 214A.

**inspection**, of a regulated pool, means an inspection of the pool carried out under best industry practice.

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

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

***investigator*** means a person appointed under the *Queensland Building and Construction Commission Act 1991*, section 104 as an investigator to investigate compliance with chapter 8.

***LGAQ*** means the LGAQ Ltd. under the *Local Government Act 2009*, section 287(2).

***licence*** means—

- (a) generally—a licence as a building certifier, issued under chapter 6, part 3; or
- (b) for chapter 8—a licence as a pool safety inspector, issued under chapter 8, part 6.

***licensed builder*** means a licensed builder under the *Queensland Building and Construction Commission 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; or
- (c) for a provision about an RCB to which chapter 7A applies—means a building certifier appointed or employed by the relevant local government.

**local planning instrument** means a local planning instrument under the Planning Act.

**manufactured home** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

**member**, of a person's family, means the person and each of the following—

- (a) the person's spouse;
- (b) the parents of the person or the person's spouse;
- (c) the grandparents of the person or the person's spouse;
- (d) a brother, sister, nephew, niece or first cousin of the person or the person's spouse;
- (e) a child, stepchild or grandchild of the person;
- (f) the spouse of anyone mentioned in paragraph (b), (c), (d) or (e).

**minor repairs** see section 246BE(1).

**moveable dwelling** see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

**moveable dwelling park** see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

**moveable dwelling premises** see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

**negotiated decision notice** see the Planning Act, section 76(3).

**Neighbourhood Disputes Act** means the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

**neighbouring pool** see section 245XA.

**notice** means a written notice.

**notice of proposed fencing work** see section 245XA.

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

**owner**, for land, for chapter 8, part 2A, see section 245XA.

**owner**, of a building or structure, means—

- (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



- 
- (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 *City of Brisbane Act 2010* or the *Local Government Act 2009* as the person who will accept service for the owners—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.

**owner**, of a regulated pool, means—

- (a) for a regulated pool on land or in a building or structure that is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—
  - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
  - (ii) if the pool is situated on common property under the Act—the primary thoroughfare body corporate for the common property; or
- (b) for a regulated pool on land or in a building or structure that is subject to the *Mixed Use Development Act 1993*—
  - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or

- (ii) if the pool is situated on a community property lot under the Act—the community body corporate for the lot; or
- (c) subject to paragraphs (a) and (b), for a regulated pool on land or in a building or structure that is subject to the *Building Units and Group Titles Act 1980*—
  - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
  - (ii) if the pool is situated on common property under the Act—the body corporate for the common property; or
- (d) for a regulated pool on land or in a building or structure that is, under the *Body Corporate and Community Management Act 1997*, on scheme land for a single community titles scheme—
  - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
  - (ii) if the pool is situated on common property under the Act for the community titles scheme—the body corporate for the scheme; or
- (e) for a regulated pool on land or in a building or structure that is, under the *Body Corporate and Community Management Act 1997*, on scheme land for 2 or more community titles schemes—
  - (i) if the pool is situated on a single lot—the registered proprietor of the lot; or
  - (ii) if the pool is situated on common property under the Act for a community titles scheme—the body corporate for the community titles scheme that is a principal scheme; or
- (f) for a regulated pool on land, or in a building or structure 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

- 
- (g) for a regulated pool situated on a moveable dwelling or the site in a moveable dwelling park where the dwelling is situated—
    - (i) generally—the owner of the moveable dwelling; or
    - (ii) if the occupier of the moveable dwelling is the owner of the pool but not the owner of the dwelling—the occupier; or
  - (h) for a regulated pool on a moveable dwelling park, other than on moveable dwelling premises in the park—the owner of the park; or
  - (i) for a regulated pool on a manufactured home in a residential park, or on the site in the park where the home is situated—
    - (i) generally—the owner of the manufactured home; or
    - (ii) if the occupier of the manufactured home is the owner of the pool but not the owner of the home—the occupier; or
  - (j) for a regulated pool on the common areas of a residential park—the owner of the residential park; or
  - (k) if paragraphs (a) to (j) do not apply—
    - (i) generally—the owner of the land, building or structure on which the pool is situated; or
    - (ii) if the occupier of the land, building or structure, or that part of any land, building or structure, on which the pool is situated is the owner of the pool but not the owner of the land, building or structure—the occupier.

***PDA development permit*** means a PDA development permit under the *Economic Development Act 2012*.

***PDA-related development*** means—

- (a) development in a priority development area; or
- (b) PDA-associated development for a priority development area under the *Economic Development Act 2012*.

***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.

***performance 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.

***Planning Act*** means the *Planning Act 2016*.

***planning scheme*** means a planning scheme under the Planning Act.

***pool barrier*** see section 245XA.

***pool immersion incident***, for chapter 8, see section 231A.

***pool owner*** see section 245XA.

***pool safety certificate*** see section 231C(a).

***pool safety inspection function***, for chapter 8, see section 231C.

***pool safety inspector*** means an individual who, under chapter 8, part 6, is licensed as a pool safety inspector.

***pool safety inspectors register*** see section 246CB(1).

***pool safety inspector test*** means a test of knowledge of pool safety and the performance of pool safety inspection functions, approved by the QBCC commissioner.

***pool safety management plan*** see section 245K.

**pool safety measures** see section 245M(3).

**pool safety standard**, for chapter 8, see section 231D.

**pool safety standard application day**, see section 231A.

**pool site** means a place where a regulated pool is situated.

**portable wading pool** means a pool that—

- (a) is capable of being filled with water to a depth of no more than 300mm; and
- (b) has a volume of no more than 2,000L; and
- (c) has no filtration system.

**preliminary approval** means a preliminary approval under the Planning Act.

**prescribed building**, for chapter 8A, part 2, see section 246M.

**prescribed professional indemnity insurance** means the professional indemnity insurance prescribed under a regulation.

**priority development area** means a priority development area under the *Economic Development Act 2012*.

**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
  - (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 QBCC or the 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) if the application is a change application—
  - (i) is an application that the responsible entity for the application must accept under the Planning Act, section 79(2)(a); or
  - (ii) may be accepted by the responsible entity for the application under the Planning Act, section 79(2)(c) or (d); and

*Editor's note—*

Subparagraph (ii) refers to a provision proposed to be inserted by an amendment in consideration in detail of the Planning Bill 2015.

- (b) if the application is a development application—is a properly made application under the Planning Act; and
- (c) complies with any requirements under chapter 3 applying to the application.

***proposed regulated pool***, for chapter 8, part 2A, see section 245XA.

***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.

***QBC board*** means the Queensland Building and Construction Board established under the QBCC Act, section 10.

***QBCC*** means the Queensland Building and Construction Commission established under the QBCC Act, section 5.

***QBCC Act*** means the *Queensland Building and Construction Commission Act 1991*.

***QBCC commissioner*** means the commissioner of QBCC.

***QDC*** see section 13.

***QDC residential design and siting provisions*** means the parts, or aspects of parts, of the QDC prescribed by regulation.

**QFES** means the Queensland Fire and Emergency Service under the *Fire and Emergency Services Act 1990*.

**qualification** means a VET qualification under the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

**Queensland Development Code** see section 13.

**railway land**, for chapter 8B, see section 246W.

**RCB**, for chapter 7A, see section 231AB.

**RCB assessment report**, for chapter 7A, see section 231AI(1).

**RCB assessor**, for chapter 7A, see section 231AF.

**referral agency** means a referral agency under the Planning Act.

**referral agency's response** see the Planning Act, section 56(4).

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

**registrar**, for chapter 6, part 5, see section 214A.

**regulated land**, for chapter 8, see section 231A.

**regulated pools register** see section 246AS.

**regulated premises** see section 246ATD.

**reinspection period** see section 246AB(2)(d).

**relevant building surveying technician**, for chapter 11, part 11, see section 301.

**relevant certifying function**, for chapter 11, part 11, see section 301.

**relevant instrument**, for chapter 8A, part 2, see section 246M.

**relevant period**, for chapter 11, part 16, see section 316.

**relevant regulated pool**, for chapter 8, part 4, division 5, see section 246ATD.



**residential care building** see section 231AC.

**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.

**residential park** see the *Manufactured Homes (Residential Parks) Act 2003*, section 12.

**responsible entity**, for a change application, means the responsible entity under the Planning Act for the application.

**revocation notice**—

- (a) for chapter 8, part 2, division 3—see section 242(3); and
- (b) for chapter 8, part 2, division 4—see section 245E(3).

**road**, for chapter 8B, see section 246W.

**shared pool**, for chapter 8, see section 231A.

**show cause notice**, for—

- (a) chapter 6, part 3—see section 175(1); or
- (b) chapter 6, part 4—see section 206(1); or
- (c) chapter 8, part 6, division 4, subdivision 2—see section 246BX(1); or
- (e) 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); or
- (c) chapter 8, part 6, division 4, subdivision 2—see section 246BX(2)(f).

**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 2018*.

***solar hot water system***, for chapter 8A, part 2, see section 246M.

***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);
- (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 purpose fence***, for chapter 8, part 2A, see section 245XA.

***special structure*** means a structure that can not be classified under the BCA, part A6.

**stage**, of assessable building work, means a stage of the work, prescribed by regulation, at which the work may be inspected.

**State** includes territory.

**State-controlled road**, for chapter 8B, see section 246W.

**statement of attainment** means a VET statement of attainment under the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

**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.

**sufficient dividing fence**, for chapter 8, part 2A, see section 245XA.

**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
- (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; or
- (h) a spa bath situated in a bathroom, other than a spa bath continually filled with water to a depth of more than 300mm; or
- (i) a birthing pool used solely for waterbirths.

**transport chief executive**, for chapter 8B, see section 246W.

**Transport Infrastructure Act**, for chapter 8B, see section 246W.

**transport noise corridor** see section 246W.

**treat**, for chapter 8A, part 2, see section 246M.

**tribunal** means QCAT.

**type A construction**, for chapter 7A, see section 231AB.

**type B construction**, for chapter 7A, see section 231AB.

**type C construction**, for chapter 7A, see section 231AB.

**unamended Act**, for chapter 11, part 10, see section 290.

**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;

- (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.