



Queensland

Building and Construction Legislation (Non-conforming Building Products— Chain of Responsibility and Other Matters) Amendment Act 2017

Act No. 29 of 2017

An Act to amend the Building Act 1975, the Pest Management Act 2001, the Plumbing and Drainage Act 2002 and the Queensland Building and Construction Commission Act 1991 for particular purposes

[Assented to 31 August 2017]



Queensland

Building and Construction Legislation (Non-conforming Building Products— Chain of Responsibility and Other Matters) Amendment Act 2017

Contents

		Page
Part 1	Preliminary	
1	Short title	7
2	Commencement	7
Part 2	Amendment of Queensland Building and Construction Commission Act 1991	
3	Act amended	7
4	Amendment of s 3 (Objects of Act)	7
5	Replacement of s 20B (Committees)	8
	20B Committees	8
6	Amendment of s 20J (Role of the commissioner)	9
7	Amendment of s 20K (Relationship between commissioner and board)	10
8	Insertion of new ss 28A and 28B	10
	28A Commission must give particular information to health and safety regulator	10
	28B Exchange of information between commission and relevant agencies	11
9	Amendment of s 48 (Cancellation or suspension of licence) ...	12
10	Insertion of new s 54A	13
	54A Notification of particular safety matters	13
11	Insertion of new pt 6AA	15
	Part 6AA Building products	
	Division 1 Preliminary	
	74AA Definitions for part	15

Contents

74AB	What is a building product and a non- conforming building product	17
74ABA	Extraterritorial application of part	18
Division 2	Duties relating to building products	
Subdivision 1	General provisions about duties	
74AC	Relationship with safety laws	18
74AD	Principles applying to duties	19
74ADA	Code of practice about discharging duties	20
74ADB	Use of code of practice in proceedings	20
Subdivision 2	Duties	
74AE	Who is a person in the chain of responsibility for a building product	21
74AF	Primary duty of person in the chain of responsibility .	21
74AG	Additional duty relating to accompanying information	21
74AH	Additional duties relating to recalls	23
74AI	Duty of executive officer of company	24
Subdivision 3	Offences relating to duties	
74AJ	Failing to comply with duty	25
74AK	Duty about representations about building products .	25
74AL	Duty to notify non-conforming building product	26
74AM	Duty to notify notifiable incident	27
74AN	Commission may require remedial action	27
Division 3	Enforceable undertakings relating to building products	
74AO	Commission may accept building product undertaking	28
74AP	Notice of decision and reasons for decision	29
74AQ	When building product undertaking is enforceable . .	29
74AR	Compliance with building product undertaking	29
74AS	Contravention of building product undertaking	29
74AT	Withdrawal or variation of building product undertaking	30
74AU	Proceeding for contravention	31
Division 4	Ministerial recall orders	
74AV	Application of division	31
74AW	Minister may make recall order	32
74AX	Notice required before making recall order	33
74AY	Service of recall order	34
74AZ	Nature of recall order	34

	74AZA	Supplier or installer must help responsible person . . .	36
	Division 5	Warning statements	
	74AZB	Application of division	37
	74AZC	Minister may publish warning statement	37
	74AZD	Notice required before publishing warning statement	38
12		Amendment of s 74A (Commission may investigate grounds for taking disciplinary action)	39
13		Amendment of s 74B (Proper grounds for taking disciplinary action against a licensee and former licensees)	40
14		Amendment of s 74C (Proper grounds for taking disciplinary action against person not a licensee)	41
15		Amendment of s 86 (Reviewable decisions)	41
16		Amendment of s 86F (Decisions that are not reviewable decisions)	42
17		Amendment of s 87A (No stay by QCAT of particular decisions of commission)	43
18		Amendment of s 92 (Tribunal may conduct public examination) .	43
19		Amendment of s 95 (Expedited hearing of domestic building disputes)	44
20		Omission of s 97B (Stop orders)	45
21		Insertion of new pt 9, div 1, and pt 9, div 2, hdg	45
	Division 1	Preliminary	
	103G	Definitions for part	45
	103H	References to exercise of powers	48
	103I	Reference to document includes reference to reproductions from electronic document	49
	Division 2	Appointment of inspectors	
22		Replacement of ss 105-107	49
	Division 3	Entry of places by inspectors	
	Subdivision 1	Power to enter	
	105	General power to enter places	49
	Subdivision 2	Entry by consent	
	105A	Application of subdivision	50
	105B	Incidental entry to ask for access	51
	105C	Matters inspector must tell occupier	51
	105D	Consent acknowledgement	51
	Subdivision 3	Entry under warrant	
	105E	Application for warrant	52

Contents

105F	Issue of warrant	53
105G	Electronic application	54
105H	Additional procedure if electronic application	55
105I	Defect in relation to a warrant	56
105J	Entry procedure	57
Division 4	General powers of inspectors after entering places	
105K	Application of division	58
105L	General powers	58
105M	Power to require reasonable help	60
105N	Offence to contravene help requirement	60
Division 5	Other information-obtaining powers of inspectors	
105O	Power to require name and address	61
105P	Offence to contravene personal details requirement	62
105Q	Power to require production of document	62
105R	Offence to contravene document production requirement	63
105S	Offence to contravene document certification requirement	64
105T	Power to require information or attendance	65
105U	Offence to contravene information or attendance requirement	66
Division 6	Seizure by inspectors and forfeiture	
Subdivision 1	Power to seize	
106	Seizing evidence at a place that may be entered without consent or warrant	67
106A	Seizing evidence at a place that may be entered only with consent or warrant	67
106B	Power to seize non-conforming building products	68
106C	Power to seize dangerous places, structures and things	68
106D	Seizure of property subject to security	69
Subdivision 2	Powers to support seizure	
106E	Power to secure seized thing	69
106F	Offence to contravene seizure requirement	71
106G	Offence to interfere	71
Subdivision 3	Safeguards for seized things	
106H	Receipt and information notice for seized things	71
106I	Access to seized things	73

	106J	Return of seized things	73
		Subdivision 4 Forfeiture	
	106K	Forfeiture by commissioner decision	74
	106L	Information notice about forfeiture decision	75
		Subdivision 5 Dealing with property forfeited or transferred to State	
	106M	When place, structure or thing becomes property of the State	76
	106N	How property may be dealt with	76
		Division 7 Additional powers for building products	
	106O	Power to have building products or samples examined	77
	106P	Direction about use of non-conforming building product associated with a building or other structure	78
	106Q	Direction about action at place where non-conforming building product is present	79
	106R	Power to take remedial action	80
		Division 8 Other provisions	
	107	Evidential immunity for individuals complying with particular requirements	81
23		Amendment of s 107A (Obstructing inspectors)	81
24		Replacement of pt 9B, hdg (Injunctions)	82
25		Insertion of new pt 9B, div 2	82
		Division 2 Stop work notices	
	108AI	Commissioner may issue stop work notice	82
26		Amendment of s 108B (False or misleading statement)	84
27		Amendment of s 108C (False or misleading document)	84
28		Insertion of new s 110	85
	110	Confidentiality of information	85
29		Amendment of s 114 (Protection)	86
30		Amendment of sch 1 (Transitional and validating provisions) . . .	88
		Part 14 Transitional provisions for Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017	
	71	Information-sharing	88
	72	Grounds for suspending or cancelling licence or disciplinary action	88
	73	Recall orders and warning statements	89
	74	Current investigations	89

Contents

	75	Stop orders	89
31		Amendment of sch 2 (Dictionary)	90
Part 3		Amendment of Pest Management Act 2001	
32		Act amended	93
33		Amendment of s 14 (Suitability of person to hold licence)	93
Part 4		Other amendments	
34		Acts amended	94
Schedule 1		Minor and consequential amendments	95
		Building Act 1975	95
		Plumbing and Drainage Act 2002	95
		Queensland Building and Construction Commission Act 1991	95

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Queensland Building and Construction Commission Act 1991

3 Act amended

This part amends the *Queensland Building and Construction Commission Act 1991*.

Note—

See also the amendments in schedule 1.

4 Amendment of s 3 (Objects of Act)

Section 3—

insert—

(e) to regulate building products to ensure—

(i) the safety of consumers and the public generally; and

- (ii) persons involved in the production, supply or installation of building products are held responsible for the safety of the products and their use.

5 Replacement of s 20B (Committees)

Section 20B—

omit, insert—

20B Committees

- (1) The Building Products Advisory Committee is established.
- (2) The Building Products Advisory Committee—
 - (a) consists of the members prescribed by regulation; and
 - (b) has a primary function of giving the Minister, commissioner and board advice about the following matters—
 - (i) the suitability of particular building products for particular uses;
 - (ii) the safety of particular building products, whether or not they are associated with an existing building;
 - (iii) the safety of a building with which a non-conforming building product has been associated;
 - (iv) how to promote the safe use of building products in the building industry;
 - (v) how to raise awareness of non-conforming building products;
 - (vi) action under this Act that may be appropriate for dealing with non-conforming building products; and

- (c) has any other functions prescribed by regulation; and
 - (d) has all the powers necessary for performing its functions, including obtaining expert advice from industry bodies and other persons.
- (3) The board, or the Minister, may appoint other committees to advise the Minister, commissioner or board on particular subjects.

6 Amendment of s 20J (Role of the commissioner)

- (1) Section 20J(1)—

insert—

- (da) monitoring, investigating and enforcing compliance with part 6AA, including giving directions for remedial action for contraventions of part 6AA, division 2, subdivision 2;

- (2) Section 20J(1)—

insert—

- (ia) publishing information about building products, including, for example—
 - (i) the uses for which particular building products are not suitable; and
 - (ii) how to use particular building products to ensure their use is safe and complies with relevant legislation.

- (3) Section 20J(1)(da) to (l)—

renumber as section 20J(1)(e) to (n).

7 Amendment of s 20K (Relationship between commissioner and board)

Section 20K(2)—

insert—

- (d) a decision to give information to a health and safety regulator under section 28A;
- (e) a decision to give a direction under section 74AN;
- (f) a decision about a building product undertaking under part 6AA, division 3;
- (g) a decision to issue a stop work notice under section 108AI.

8 Insertion of new ss 28A and 28B

Part 2, division 7—

insert—

28A Commission must give particular information to health and safety regulator

- (1) This section applies if the commission considers information obtained by the commission in the performance of a function under this Act in relation to a notifiable incident may be relevant to the functions of a health and safety regulator.
- (2) The commission must give the information to the health and safety regulator.
- (3) In this section—

health and safety regulator means—

- (a) the regulator under the *Work Health and Safety Act 2011*; or
- (b) the regulator under the *Electrical Safety Act 2002*; or

- (c) the chief executive of the department in which the *Public Health Act 2005* is administered, or a chief executive officer of a local government, but only in relation to the chief executive's or chief executive officer's functions under the *Public Health Act 2005*; or
- (d) an entity that—
 - (i) has functions similar to the functions of the commission or an entity mentioned in paragraph (a) to (c); and
 - (ii) is prescribed by regulation for this section.

28B Exchange of information between commission and relevant agencies

- (1) The commission may enter into an arrangement (an *information-sharing arrangement*) with a relevant agency for the purpose of sharing or exchanging information—
 - (a) held by the commission or the relevant agency; or
 - (b) to which the commission or the relevant agency has access.
 - (2) An information-sharing arrangement may relate only to information—
 - (a) that helps—
 - (i) the commission perform the commission's functions; or
- Note—*
For the commission's functions, see section 7.
- (ii) the relevant agency perform its functions; or

- (b) the disclosure of which is reasonably necessary for protecting the health or safety of a person or property.
- (3) Under an information-sharing arrangement, the commission and the relevant agency are, despite another Act or law, authorised to—
 - (a) ask for and receive information held by the other party to the arrangement or to which the other party has access; and
 - (b) disclose information to the other party.
- (4) In this section—

relevant agency means—

 - (a) the chief executive of a department; or
 - (b) a health and safety regulator within the meaning of section 28A; or
 - (c) a local government; or
 - (d) an agency of the Commonwealth, or another State, prescribed by regulation.

9 Amendment of s 48 (Cancellation or suspension of licence)

- (1) Section 48(f)—

omit, insert—

- (f) the licensee is convicted of—
 - (i) an offence against this Act or the *Building Act 1975*; or
 - (ii) an offence against a relevant Act in relation to building work carried out under the licence; or

- (2) Section 48—

insert—

-
- (ha) building or other work on a building site under the licensee's control may have—
- (i) caused the death of, or grievous bodily harm to, a person; or
 - (ii) involved a serious risk to the health or safety of a person; or
- (3) Section 48—
- insert—*
- (2) In this section—
- grievous bodily harm*** see the Criminal Code, section 1.
- relevant Act*** means—
- (a) the *Plumbing and Drainage Act 2002*; or
 - (b) the *Work Health and Safety Act 2011*; or
 - (c) the *Electrical Safety Act 2002*; or
 - (d) the *Public Health Act 2005*; or
 - (e) another Act prescribed by regulation.

10 Insertion of new s 54A

After section 54—

insert—

54A Notification of particular safety matters

- (1) This section applies if a licensee becomes aware of either of the following (each a ***safety matter***)—
- (a) a notifiable incident has occurred on a building site under the licensee's control or on which the licensee is carrying out building work;
 - (b) a person carrying out building or other work on a building site under the licensee's control, or on which the licensee is carrying

out building work, has contravened or is contravening—

- (i) a notice or injunction under the *Work Health and Safety Act 2011*, part 10; or
- (ii) a notice or injunction under the *Electrical Safety Act 2002*, part 11A.

- (2) The licensee must give the commission notice of the safety matter as required under this section.

Maximum penalty—80 penalty units.

- (3) The notice must be given in the fastest way possible in the circumstances—

- (a) by telephone; or
- (b) in writing.

Example—

The written notice can be given by facsimile, email or other electronic means.

- (4) A person giving notice by telephone must—

- (a) give the details of the safety matter requested by the commission; and
- (b) if required by the commission, give a written notice of the safety matter within 48 hours of that requirement being made.

- (5) A written notice must be in a form, or contain the details, approved by the commission.

- (6) If the commission receives a notice by telephone and a written notice is not required, the commission must give the person—

- (a) details of the information received; or
- (b) an acknowledgement of receiving the notice.

11 Insertion of new pt 6AA

After section 74—

insert—

Part 6AA Building products

Division 1 Preliminary

74AA Definitions for part

In this part—

associated with, in relation to a building, means incorporated into, or connected to, a building by the carrying out of relevant work.

building means a building or other structure within the meaning of the *Building Act 1975*.

building product see section 74AB(1).

building product undertaking see section 74AO(1).

code of practice means a code of practice in force under section 74ADA.

intended use, for a building product, means a use for which the building product is intended to be, or is reasonably likely to be, associated with a building.

non-compliance risk means a risk that the association of a building product with a building for an intended use does not, or will not, comply with the relevant regulatory provisions.

non-conforming building product see section 74AB(2).

person in the chain of responsibility, for a building product, see section 74AE.

reasonably practicable, in relation to a duty under division 2, means that which is, or was at a particular time, reasonably able to be done in relation to the duty, taking into account and weighing up all relevant matters including—

- (a) the likelihood of a safety risk or non-compliance risk happening; and
- (b) the harm that could result from the safety risk or non-compliance risk; and
- (c) what the person concerned knows, or ought reasonably to know, about—
 - (i) the safety risk or non-compliance risk; and
 - (ii) ways of removing or minimising the risk; and
- (d) the availability and suitability of ways to remove or minimise the safety risk or non-compliance risk; and
- (e) the cost associated with available ways of removing or minimising the safety risk or non-compliance risk, including whether the cost is grossly disproportionate to the risk.

recall order see section 74AW(1).

relevant regulatory provisions means—

- (a) in relation to relevant work mentioned in the definition *relevant work*, paragraph (a)—the building assessment provisions under the *Building Act 1975*; or
- (b) in relation to relevant work mentioned in the definition *relevant work*, paragraph (b) or (c)—the Standard Plumbing and Drainage Regulation under the *Plumbing and Drainage Act 2002*.

relevant work means—

-
- (a) building work under the *Building Act 1975* other than work mentioned in section 5(2) of that Act; or
 - (b) plumbing work under the *Plumbing and Drainage Act 2002* directly connected to a building; or
 - (c) drainage work under the *Plumbing and Drainage Act 2002* directly connected to a building.

representation means a claim, promise, publication, statement or other representation made in any way, including, for example, in advertising material or packaging.

safe means—

- (a) all risks of injury or illness to a person have been removed, so far as reasonably practicable; or
- (b) if it is not reasonably practicable to remove a risk of injury or illness to a person, the risk has been minimised so far as reasonably practicable.

safety risk means a risk that the association of a building product with a building for an intended use is not, or will not be, safe.

warning statement see section 74AZC(1).

74AB What is a *building product* and a *non-conforming building product*

- (1) A ***building product*** is any material or other thing associated with, or that could be associated with, a building.
- (2) A building product is a ***non-conforming building product*** for an intended use if—

- (a) the association of the product with a building for the use—
 - (i) is not, or will not be, safe; or
 - (ii) does not, or will not, comply with the relevant regulatory provisions; or
- (b) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.

74ABA Extraterritorial application of part

- (1) This part applies both within and outside Queensland.
- (2) This part applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.

Division 2 Duties relating to building products

Subdivision 1 General provisions about duties

74AC Relationship with safety laws

- (1) If a provision of this division and a provision of a safety law deal with the same thing and it is possible to comply with both provisions, a person must comply with both provisions.
- (2) However, to the extent it is not possible for the person to comply with both provisions, the person must comply with the provision of the safety law.

-
- (3) Evidence of a contravention of this division is admissible in any proceeding for an offence against a provision of a safety law.
 - (4) If an act, omission or circumstances constitute an offence under this division and a safety law, the offender is not liable to be punished twice in relation to the act, omission or circumstances.
 - (5) In this section—
safety law means—
 - (a) the *Work Health and Safety Act 2011*; or
 - (b) the *Electrical Safety Act 2002*.

74AD Principles applying to duties

- (1) This section sets out principles applying to duties persons have under subdivision 2.
- (2) A person may have more than 1 duty because of the functions the person performs or is required to perform.
- (3) More than 1 person can concurrently have the same duty.
- (4) Each person must comply with the duty to the standard required under subdivision 2 even if another person has the same duty.
- (5) If more than 1 person has a duty for the same matter, each person—
 - (a) is responsible for the person's duty in relation to the matter; and
 - (b) must discharge the person's duty to the extent to which the person—
 - (i) has the capacity to influence and control the matter; or

- (ii) would have the capacity but for an agreement or arrangement purporting to limit or remove that capacity.
- (6) A person's duty can not be transferred to another person.

74ADACode of practice about discharging duties

- (1) The Minister may make a code of practice that states a way of discharging a duty a person has under this division.
- (2) A code of practice, or an instrument amending or repealing a code of practice, has no effect unless the Minister gives notice of its making.
- (3) A notice under subsection (2) is subordinate legislation.
- (4) A code of practice, or an instrument amending or repealing a code of practice, commences on the later of the following—
 - (a) the day the notice under subsection (2) commences;
 - (b) the day the code or instrument provides that it commences.
- (5) A code of practice expires 10 years after its commencement.
- (6) The Minister must ensure a copy of each code of practice as in force from time to time, and any document applied, adopted or incorporated by the code of practice, is made available on the department's website.

74ADBUse of code of practice in proceedings

- (1) This section applies in a proceeding for an offence against this part.

- (2) A code of practice is admissible in the proceeding as evidence of whether or not a duty under this division has been complied with.
- (3) Nothing in this section prevents a person from introducing evidence of compliance with the duty in a way that is different from the code.

Subdivision 2 Duties

74AE Who is a *person in the chain of responsibility* for a building product

A person is a *person in the chain of responsibility* for a building product if—

- (a) the person—
 - (i) designs, manufactures, imports or supplies the building product; and
 - (ii) knows, or is reasonably expected to know, the product will or is likely to be associated with a building; or
- (b) the person installs the product in a building in connection with relevant work.

74AF Primary duty of person in the chain of responsibility

Each person in the chain of responsibility for a building product must, so far as reasonably practicable, ensure that the product is not a non-conforming building product for an intended use.

74AG Additional duty relating to accompanying information

- (1) A person in the chain of responsibility for a

building product who designs the product must ensure, so far as reasonably practicable, that, if the person gives the design to another person who is to give effect to the design, the design is accompanied by the required information for the product.

- (2) A person in the chain of responsibility for a building product who manufactures, imports or supplies the product must ensure, so far as reasonably practicable, that when the person gives the product to another person the product is accompanied by the required information for the product.
- (3) For subsection (2), a person *gives* a building product to another person if the person—
 - (a) sells, supplies or otherwise transfers the building product to the other person; or
 - (b) facilitates the sale, supply or transfer of the building product to the other person.
- (4) A person who installs a building product in a building must ensure, so far as reasonably practicable, that the owner of the building is given information about the product prescribed by regulation for this subsection.
- (5) A regulation, for subsection (4) or subsection (6), definition *required information*, may prescribe the following requirements for information about a building product—
 - (a) matters that must be included or provided for in the information;
 - (b) matters that must not be included or provided for in the information;
 - (c) the form in which the information must be given.
- (6) In this section—

required information, for a building product, means information about the product that—

- (a) for each intended use of the product, states or otherwise communicates the following—
 - (i) the suitability of the product for the intended use and, if the product is suitable for the intended use only in particular circumstances or subject to particular conditions, the particular circumstances or conditions;
 - (ii) instructions about how the product must be associated with a building to ensure it is not a non-conforming building product for the intended use;
 - (iii) instructions about how the product must be used to ensure it is not a non-conforming building product for the intended use; and
- (b) complies with the requirements for the information, if any, prescribed by regulation for this definition.

74AH Additional duties relating to recalls

- (1) A person who designs, manufactures, imports, supplies or installs a building product must comply with the requirements of a recall order, or corresponding recall order, that applies to the person.
- (2) A person must not supply, or install in a building, a building product the person knows, or ought reasonably to know, is the subject of a recall order or corresponding recall order.
- (3) In this section—

corresponding recall order means an order, however called, under a law of another State

providing for the recall of a building product from use.

74AI Duty of executive officer of company

- (1) If a company has a duty under a provision of this subdivision, an executive officer of the company must exercise due diligence to ensure the company complies with the duty.

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

- (2) The executive officer may be proceeded against for, and convicted of, an offence under this Act relating to the officer's duty under subsection (1) whether or not the company has been proceeded against for, or convicted of, an offence under this Act relating to the company's duty under this division.
- (3) In this section, *due diligence* includes taking reasonable steps—
- (a) to acquire, and keep up to date, knowledge of matters about the safe use of building products; and
 - (b) to gain an understanding of—
 - (i) the nature of the company's business activities relating to building products; and
 - (ii) safety risks and non-compliance risks associated with the building products; and
 - (c) to ensure the company has, and uses, appropriate resources to remove or minimise the risks mentioned in paragraph (b)(ii); and
 - (d) to ensure the company has, and implements, appropriate processes—

- (i) to remove or minimise the risks mentioned in paragraph (b)(ii); and
 - (ii) for receiving, considering and responding in a timely way to, information about the risks mentioned in paragraph (b)(ii) and any incidents arising from the risks; and
 - (iii) for complying with the company's duties under this Act; and
- (e) to verify the resources and processes mentioned in paragraphs (c) and (d) are being provided, used and implemented.

Subdivision 3 Offences relating to duties

74AJ Failing to comply with duty

A person commits an offence if—

- (a) the person has a duty under subdivision 2; and
- (b) the person fails to comply with the duty.

Maximum penalty—1000 penalty units.

74AK Duty about representations about building products

- (1) This section applies if a person in the chain of responsibility for a building product knows, or ought reasonably to know, that the association of the product with a building for an intended use does not, or will not, comply with the relevant regulatory provisions.
- (2) The person must not make a representation, or permit a representation to be made, that the association of the product with a building for the

use complies, or will comply, with the relevant regulatory provisions.

Maximum penalty—1,000 penalty units.

74AL Duty to notify non-conforming building product

- (1) Subsection (2) applies if a person in the chain of responsibility for a building product becomes aware, or reasonably suspects, that the building product is a non-conforming building product for an intended use.
- (2) As soon as practicable but within 2 days after becoming aware or reasonably suspecting, the person must give the commission notice of the matter in the approved form, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (3) If the person is aware of a notifiable incident that was or may have been caused by the use of the building product for the intended use, the notice under subsection (2) must also include notice of the notifiable incident.
- (4) Subsection (5) applies if the commission is satisfied—
 - (a) the building product is or may be a non-conforming building product for an intended use; and
 - (b) there are safety risks arising from the product being a non-conforming building product for the intended use.
- (5) The commission may, by written notice given to a person in the chain of responsibility for the building product, direct the person to take stated action within a stated period to remove or minimise the safety risks.

- (6) A person given a direction under subsection (5) must comply with the direction.

Maximum penalty for subsection (6)—50 penalty units.

74AM Duty to notify notifiable incident

- (1) This section applies if—
- (a) a building product is a non-conforming building product for an intended use; and
 - (b) a person in the chain of responsibility for the building product becomes aware, or reasonably suspects, that a notifiable incident was or may have been caused by the use of the building product for the intended use.
- (2) As soon as practicable but within 2 days after becoming aware or reasonably suspecting, the person must give the commission notice of the notifiable incident in the approved form, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

74AN Commission may require remedial action

- (1) This section applies if the commission reasonably believes a person—
- (a) is contravening a duty under subdivision 2; or
 - (b) has contravened a duty under subdivision 2 in circumstances that make it likely the contravention will continue or be repeated.
- (2) The commission may, by written notice given to the person, direct the person to do the following within the period stated in the direction—

- (a) remedy the contravention;
 - (b) take stated steps to prevent the contravention from continuing or being repeated.
- (3) The period stated in the direction must be at least 28 days unless the commission is satisfied that, if the direction is not required to be complied with within a shorter period—
- (a) a substantial loss will be incurred by, or a significant hazard will be caused to the health or safety of, a person because of the contravention; or
 - (b) the contravention will cause a significant hazard to public safety or the environment generally.
- (4) A person given a direction under subsection (2) must comply with the direction.

Maximum penalty—1000 penalty units.

Division 3 Enforceable undertakings relating to building products

74AO Commission may accept building product undertaking

- (1) The commission may accept a written undertaking (a *building product undertaking*) given by a person in connection with a matter relating to a contravention or alleged contravention of this part.
- (2) The giving of a building product undertaking does not constitute an admission of guilt by the person giving it for the contravention or alleged contravention to which the undertaking relates.

74AP Notice of decision and reasons for decision

- (1) The commission must give the person seeking to make a building product undertaking written notice of the commission's decision to accept or not accept the undertaking and the reasons for the decision.
- (2) The commission must publish, on the commission's website, notice of a decision to accept a building product undertaking and the reasons for the decision.

74AQ When building product undertaking is enforceable

A building product undertaking takes effect and becomes enforceable when written notice of the commission's decision to accept the undertaking is given to the person who made the undertaking or at any later date stated by the commission in the notice.

74AR Compliance with building product undertaking

A person must not contravene a building product undertaking made by the person that is in effect.

Maximum penalty—500 penalty units.

74AS Contravention of building product undertaking

- (1) If the commission considers that a person who made a building product undertaking has contravened the undertaking, the commission may apply to a Magistrates Court for an order under this section.
- (2) If the court is satisfied that the person has contravened the building product undertaking, the

court, in addition to the imposition of any penalty, may make 1 or both of the following orders—

- (a) an order directing the person to comply with the undertaking;
 - (b) an order discharging the undertaking.
- (3) In addition to the orders mentioned in subsection (2), the court may make any other order the court considers appropriate in the circumstances, including orders directing the person to pay to the State—
- (a) the costs of the proceeding, including legal costs; and
 - (b) the reasonable costs of the commission in—
 - (i) investigating the contravention of the building product undertaking; or
 - (ii) monitoring compliance with the building product undertaking in the future.
- (4) Nothing in this section prevents proceedings being taken for a contravention or alleged contravention of this part to which the building product undertaking relates.

74AT Withdrawal or variation of building product undertaking

- (1) A person who has made a building product undertaking may at any time, with the written agreement of the commission—
 - (a) withdraw the undertaking; or
 - (b) vary the undertaking.
- (2) However, the provisions of the undertaking can not be varied to provide for a matter relating to a different contravention or alleged contravention of this part.

- (3) The commission must publish, on the commission's website, notice of the withdrawal or variation of a building product undertaking.

74AU Proceeding for contravention

- (1) This section applies to a contravention or alleged contravention of this part.
- (2) No proceedings for the contravention may be taken or continued against a person if a building product undertaking is in effect in relation to the contravention.
- (3) No proceedings may be taken for the contravention against a person who has made a building product undertaking for the contravention and has completely discharged the undertaking.
- (4) The commission may accept a building product undertaking for the contravention before proceedings for the contravention have been finalised.
- (5) If the commission accepts a building product undertaking as stated in subsection (4), the commission must take all reasonable steps to have the proceedings discontinued as soon as practicable.
- (6) In this section—
proceedings includes proceedings for disciplinary action under part 6A.

Division 4 Ministerial recall orders

74AV Application of division

- (1) This division applies to a building product if—

- (a) the Minister is satisfied the product—
 - (i) is a non-conforming building product for all intended uses; and
 - (ii) is not reasonably expected to be used for any other use; or
 - (b) the Minister is satisfied—
 - (i) the product has been, or is proposed to be, associated with a building for an intended use; and
 - (ii) the product is a non-conforming building product for the intended use; and
 - (iii) there are safety risks arising from the product being a non-conforming building product for the intended use.
- (2) The Minister may act under this division for a particular batch or type of building product and, for that purpose, a reference in this division to a building product includes a reference to a batch or type of building product.

74AW Minister may make recall order

- (1) The Minister may make an order (a *recall order*) that—
 - (a) is directed to a responsible person for the building product; and
 - (b) requires a stated building product be recalled from use.
- (2) The Minister may make a recall order for a building product whether or not—
 - (a) the responsible person, or another responsible person, has already undertaken a recall of the building product; or

- (b) the building product has been associated with a building.

Note—

See section 74AH for duties relating to the recall order.

- (3) A recall order for a building product may be made in relation to 2 or more responsible persons for the product.
- (4) In this section—

responsible person, for a building product, means—

- (a) a person who designed, manufactured, imported or supplied the product; or
- (b) if the product has been associated with a building—the person who installed the product.

74AX Notice required before making recall order

- (1) Before making the recall order, the Minister must—
 - (a) give each responsible person to whom the order is to apply written notice of the Minister’s intention to make the order and the reasons for making the order; and
 - (b) give the responsible person a copy of the proposed order; and
 - (c) ask the responsible person to show cause why the Minister should not make the proposed order.
- (2) If a responsible person wishes to show cause why the recall order should not be made, the person may make written submissions to the Minister within 7 days after receiving the notice and copy of the proposed order.
- (3) The Minister must consider any written

submissions made by a responsible person within the period mentioned in subsection (2) before making the recall order.

- (4) This section does not apply to a responsible person in relation to a building product if an order, however called, directing the person to recall the building product from use is in force under the law of another State.

74AY Service of recall order

- (1) A recall order must be written and be given to each responsible person to whom the order applies.
- (2) The commission must ensure information sufficient to alert the public about the reason for the recall order is published—
- (a) in a newspaper circulating generally in the State; and
- (b) on the commission’s website.

74AZ Nature of recall order

- (1) A recall order must state—
- (a) the reasons for the recall of the building product from use; and
- (b) what each responsible person to whom the order applies must do to recall the building product from use including, for example, the following—
- (i) the way in which, and the period for which, a responsible person must inform other persons about the reason for the recall order;
- (ii) the information a responsible person must give other persons about the

-
- reason for the recall order, including the action the other persons should take to mitigate any risk of injury or illness;
- (iii) the action a responsible person must take in relation to other persons to whom the building product has been sold or supplied, for example, replacing the building product or providing a refund for the building product;
 - (iv) for a building product associated with a building—the action a responsible person must take to remove the building product from the building;
 - (v) the action a responsible person must take to stop the building product from being a non-conforming building product for an intended use, for example, by repair or modification;
 - (vi) the action a responsible person must take to help another responsible person to whom the recall order applies to comply with the order;
 - (vii) the information a responsible person must give to the commission about the progress of the recall.
- (2) Each responsible person to whom the recall order applies is liable for any cost incurred in relation to complying with the order, including costs incurred by a supplier or installer giving reasonable help in relation to the recall order under section 74AZA.
 - (3) The recall order remains in force until the end of 2 years after the order is made unless sooner revoked by the Minister.
 - (4) Subsection (3) does not prevent a further recall

order being made for the same building product to which the recall order applied while it was in force.

74AZA Supplier or installer must help responsible person

- (1) This section applies if a responsible person to whom a recall order applies, other than a supplier or installer of a building product—
 - (a) produces a copy of the recall order to a supplier or installer of a building product the subject of the order; and
 - (b) asks the supplier or installer for help in relation to the recall order.
- (2) The supplier or installer must give the responsible person reasonable help in relation to the recall order.

Examples of reasonable help by supplier—

- ceasing the supply of the recalled building product
- putting up a sign about the recall at the supplier's place of business
- providing a collection point for recalled building products
- identifying or contacting persons supplied with the recalled building product
- giving the responsible person information about the number of items of recalled building products sold, in stock or returned by customers

Examples of reasonable help by installer—

- identifying or contacting owners of the buildings in which the building product has been installed
- giving the responsible person information about the building products the installer has removed from buildings

Maximum penalty—50 penalty units.

Division 5 Warning statements

74AZB Application of division

- (1) This division applies to a building product if the Minister is satisfied—
 - (a) the product is a non-conforming building product for an intended use; or
 - (b) that associating the product with a building in a particular way will make the product a non-conforming building product for an intended use; or
 - (c) that, if the product is associated with a building for a particular use, using the product in a particular way will make the product a non-conforming building product for the use.
- (2) The Minister may act under this division for a particular batch or type of building product and, for that purpose, a reference in this division to a building product includes a reference to a batch or type of building product.

74AZC Minister may publish warning statement

- (1) The Minister may publish a statement (a *warning statement*) stating—
 - (a) if section 74AZB(1)(a) applies—that a stated building product is a non-conforming building product for a stated use; or
 - (b) if section 74AZB(1)(b) applies—that associating a stated building product with a building in a stated way will make the building product a non-conforming building product for a stated use; or

- (c) if section 74AZB(1)(c) applies—that, if a stated building product is associated with a building for a stated use, using the product in a stated way will make the product a non-conforming building product for the use.
- (2) The Minister may publish a warning statement for a building product whether or not—
 - (a) the Minister has made a recall order for the building product; or
 - (b) a person who designed, manufactured, imported, supplied or installed the building product has undertaken a recall of the building product; or
 - (c) the building product has been associated with a building.
- (3) A warning statement may be published—
 - (a) in a newspaper circulating generally in the State; and
 - (b) on the commission’s website; and
 - (c) in any other way the Minister considers appropriate.

74AZD Notice required before publishing warning statement

- (1) Before publishing the warning statement, the Minister must—
 - (a) give each person in the chain of responsibility for the building product whose identity is known or reasonably ascertainable by the Minister written notice of the following—
 - (i) the Minister’s intention to publish the warning statement;

-
- (ii) the reasons for publishing the statement; and
 - (b) give the person a copy of the proposed warning statement; and
 - (c) ask the person to show cause why the Minister should not publish the warning statement.
- (2) If the person wishes to show cause why the warning statement should not be published, the person may make written submissions to the Minister within 7 days after receiving the notice and copy of the proposed warning statement.
- (3) The Minister must consider any written submissions made by the person within the period mentioned in subsection (2) before publishing the warning statement.

12 Amendment of s 74A (Commission may investigate grounds for taking disciplinary action)

Section 74A—

insert—

- (2) An inspector may exercise powers under part 9 for an investigation under this part.
- (3) Also, for an investigation under this part, the commission may use information obtained under this Act from any entity, including, for example—
 - (a) a department or agency of the Commonwealth or a State; and
 - (b) participants in the building industry and its consumers.

13 Amendment of s 74B (Proper grounds for taking disciplinary action against a licensee and former licensees)

(1) Section 74B(1)(h)—

omit, insert—

- (h) the licensee contravenes or is taken to have contravened a relevant Act in relation to building work carried out under the licence; or
- (ha) building or other work on a building site under the licensee’s control may have—
 - (i) caused the death of, or grievous bodily harm to, a person; or
 - (ii) involved a serious risk to the health or safety of a person; or

(2) Section 74B(1)(j)—

omit, insert—

- (j) the licensee fails to comply with—
 - (i) a direction of the commission to rectify building work that is defective or incomplete, or to remedy consequential damage; or
 - (ii) a direction given by the commission under section 74AN; or

(3) Section 74B(3)—

insert—

grievous bodily harm see the Criminal Code, section 1.

relevant Act means—

- (a) the *Fair Trading Act 1989*; or

Note—

The Australian Consumer Law (Queensland) forms part of the *Fair Trading Act 1989*.

- (b) the *Plumbing and Drainage Act 2002*; or
- (c) the *Work Health and Safety Act 2011*; or
- (d) the *Electrical Safety Act 2002*; or
- (e) the *Public Health Act 2005*; or
- (f) another Act prescribed by regulation.

14 Amendment of s 74C (Proper grounds for taking disciplinary action against person not a licensee)

Section 74C(1)(e)—

omit, insert—

- (e) fails to comply with—
 - (i) a direction of the commission to rectify building work that is defective or incomplete, or to remedy consequential damage; or
 - (ii) a direction given by the commission under section 74AN; or
- (f) contravenes a duty under part 6AA, division 2, subdivision 2; or
- (g) fails to comply with a direction or requirement of an inspector under part 9 relating to a building product that is, or is suspected to be, a non-conforming building product for an intended use.

15 Amendment of s 86 (Reviewable decisions)

(1) Section 86(1)—

insert—

- (r) a decision to direct a person in the chain of responsibility for a building product to take stated action under section 74AL(5);
 - (s) a decision to give a direction under section 74AN;
 - (t) a decision not to accept a building product undertaking under part 6AA, division 3;
 - (u) a decision not to agree to a withdrawal or variation of a building product undertaking under section 74AT.
- (2) Section 86(2)—
insert—
- (c) section 106J(4)(a), 106K or 108AI.
- (3) Section 86—
insert—
- (4) In addition, each of the following decisions of an inspector is a **reviewable decision**—
- (a) a decision to seize a place, part of a place, building, structure or other thing under part 9, division 6;
 - (b) a decision to require information or attendance before the inspector under section 105T;
 - (c) a decision to give a direction under section 106P or 106Q.

16 Amendment of s 86F (Decisions that are not reviewable decisions)

Section 86F(1)—

insert—

- (d) a decision to give information to a health or safety regulator under section 28A.

17 Amendment of s 87A (No stay by QCAT of particular decisions of commission)

(1) Section 87A, heading, ‘of commission’—

omit.

(2) Section 87A(1)—

insert—

- (f) a decision to direct a person in the chain of responsibility for a building product to take stated action under section 74AL(5);
- (g) a decision to direct a person to take remedial action under section 74AN.

(3) Section 87A—

insert—

- (1A) This section also applies if a person applies to the tribunal for a review under section 87 of any of the following decisions—
 - (a) a decision of the commissioner to issue a stop work notice under section 108AI;
 - (b) a decision of an inspector to seize a place, part of a place, building, structure or other thing under part 9, division 6;
 - (c) a decision of an inspector to give a direction under section 106P or 106Q.

18 Amendment of s 92 (Tribunal may conduct public examination)

Section 92—

insert—

- (c) that investigates whether a person has contravened—
 - (i) a duty under part 6AA, division 2; or

- (ii) a direction or requirement of an inspector under part 9 relating to a building product that is, or is suspected to be, a non-conforming building product for an intended use.

19 **Amendment of s 95 (Expedited hearing of domestic building disputes)**

- (1) Section 95, heading, after ‘disputes’—

insert—

or reviews

- (2) Section 95—

insert—

- (5) The tribunal may decide a review of a decision of the commission, the commissioner or an inspector at an expedited hearing if—
- (a) the review is of—
 - (i) a decision of the commission to give a direction to a person in the chain of responsibility for a building product under section 74AL(5) or 74AN; or
 - (ii) a decision of the commissioner to issue a stop work notice under section 108AI; or
 - (iii) a decision of an inspector to seize a place, part of a place, building, structure or other thing under part 9, division 6; or
 - (iv) a decision of an inspector to give a direction under section 106P or 106Q; and
 - (b) the tribunal considers the applicant for review, or another person, may suffer undue

hardship if the matter is not dealt with at an expedited hearing; and

- (c) having regard to the complexity of the review the tribunal considers that it may properly be dealt with at an expedited hearing.

20 Omission of s 97B (Stop orders)

Section 97B—

omit.

21 Insertion of new pt 9, div 1, and pt 9, div 2, hdg

Part 9—

insert—

Division 1 Preliminary

103G Definitions for part

In this part—

compliance purpose means any of the following purposes—

- (a) ascertaining whether a relevant Act is being complied with;
- (b) determining whether building work at or on a place has been, or is being, properly carried out;
- (c) determining whether a building product associated with, or proposed to be associated with, a building or other structure, or a proposed building or other structure, for a particular use is a non-conforming building product for that use.

document certification requirement see section 105Q(6).

document production requirement see section 105Q(2).

electronic document means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

general power see section 105L(1).

help requirement see section 105M(1).

identity card, for a provision about inspectors, means an identity card issued under section 104(2).

information notice, for a decision, means a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the rights of review under this Act for the decision; and
- (d) how, and the period within which, a review under this Act for the decision may be started; and
- (e) if applicable, how a stay of the operation of the decision may be applied for under the QCAT Act.

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

- (c) if no-one apparently occupies the place—any person who is an owner of the place.

offence warning, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction or requirement is made not to comply with it.

owner, of a seized thing, includes a person who would be entitled to possession of the seized thing had it not been seized.

personal details requirement see section 105O(5).

person in control, of a place or thing, includes anyone who reasonably appears to be, claims to be, or acts as if he or she is, the person in control or possession of the place or thing.

place includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water where a building or other structure, or a group of buildings or other structures, is situated.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under paragraph (a)—

a beach, a park, a road

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Examples of a place that may be a public place under paragraph (b)—

a saleyard, a showground

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

relevant Act means—

- (a) this Act; or
(b) the *Building Act 1975*; or
(c) the *Building and Construction Industry Payments Act 2004*; or
(d) the *Subcontractors' Charges Act 1974*.

seized thing means a place, part of a place, building, structure or other thing seized under division 6.

103H References to exercise of powers

If—

- (a) a provision of this part refers to the exercise of a power by an inspector; and
(b) there is no reference to a specific power;

the reference is to the exercise of all or any inspectors' powers under this part or a warrant, to the extent the powers are relevant.

103I Reference to document includes reference to reproductions from electronic document

A reference in this part to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or
- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Division 2 Appointment of inspectors

22 Replacement of ss 105-107

Sections 105 to 107—

omit, insert—

Division 3 Entry of places by inspectors

Subdivision 1 Power to enter

105 General power to enter places

- (1) An inspector may, for a compliance purpose, enter a place if—
 - (a) an occupier at the place consents under subdivision 2 to the entry and section 105C has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section

- 105J has been complied with for the occupier; or
- (d) it is a place of business of a licensee or a person in the chain of responsibility for a building product and is—
 - (i) open for carrying on the business; or
 - (ii) otherwise open for entry; or
 - (e) it is a building site and building work is being carried out on the site.
- (2) For subsection (1)(d), a *place of business* does not include a part of the place where a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry—
- (a) the power is subject to any conditions of the consent and ceases if the consent is withdrawn; and
 - (b) the consent may include consent for re-entry and paragraph (a) applies to the power to re-enter.
- (4) If the power to enter is under a warrant—
- (a) the power is subject to the terms of the warrant; and
 - (b) the warrant may confer a power to re-enter the place and paragraph (a) applies to the power to re-enter.

Subdivision 2 Entry by consent

105A Application of subdivision

This subdivision applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place

under section 105(1)(a).

105B Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

105C Matters inspector must tell occupier

Before asking for the consent, the inspector must give a reasonable explanation to the occupier—

- (a) about the purpose of the entry, including the powers intended to be exercised; and
- (b) that the occupier is not required to consent; and
- (c) that the consent may be given subject to conditions and may be withdrawn at any time.

105D Consent acknowledgement

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and

- (b) the following has been explained to the occupier—
 - (i) the purpose of the entry, including the powers intended to be exercised;
 - (ii) that the occupier is not required to consent;
 - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (c) the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
 - (d) the time and day the consent was given; and
 - (e) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (4) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

105E Application for warrant

- (1) An inspector may apply to a magistrate for a

warrant for a place.

- (2) The inspector must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

105F Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for—
 - (a) entering the place for a compliance purpose; or
 - (b) suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against a relevant Act.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated inspector or any inspector may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the inspector's powers; and

- (c) the purpose for which the warrant is issued and, if it is issued in relation to an offence—
 - (i) particulars of the offence that the magistrate considers appropriate; and
 - (ii) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (d) the evidence that may be seized under the warrant; and
- (e) the hours of the day or night when the place may be entered; and
- (f) the magistrate's name; and
- (g) the day and time of the warrant's issue; and
- (h) the day, within 14 days after the warrant's issue, the warrant ends.

105G Electronic application

- (1) An application under section 105F may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
 - (a) may not be made before the inspector prepares the written application under section 105F(2); but
 - (b) may be made before the written application is sworn.

105H Additional procedure if electronic application

- (1) For an application made under section 105G, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under section 105G; and
 - (b) the way the application was made under section 105G was appropriate.
- (2) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
 - (b) otherwise—
 - (i) the magistrate must tell the inspector the information mentioned in section 105F(2); and
 - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 105F(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the *duplicate warrant*), is a duplicate of, and as effectual as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the written application complying with section 105E(2) and (3); and

- (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) The magistrate must keep the original warrant and, on receiving the documents under subsection (4)—
 - (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (6) Despite subsection (3), if—
 - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (7) This section does not limit section 105E.
- (8) In this section—

relevant magistrates court, in relation to a magistrate, means the court that the magistrate constitutes under the *Magistrates Act 1991*.

105I Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—
 - (a) the warrant; or
 - (b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 105H(3).

105J Entry procedure

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under this subdivision.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person who is an occupier of the place and is present by producing the inspector's identity card or another document evidencing the inspector's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.
- (4) In this section—

warrant includes a duplicate warrant mentioned in section 105H(3).

Division 4 General powers of inspectors after entering places

105K Application of division

- (1) The powers under this division may be exercised if an inspector enters a place under section 105(1)(a), (c), (d) or (e).
- (2) However, if the inspector enters under section 105(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

105L General powers

- (1) The inspector may do any of the following (each a *general power*)—
 - (a) inspect, examine or make a recording of any part of the place or anything at the place;
 - (b) take for examination a thing, or a sample of or from a thing, at the place, without payment;
 - (c) place an identifying mark in or on anything at the place;
 - (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (e) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

-
- (f) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this part;
 - (g) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may take a necessary step to allow the exercise of a general power.
 - (3) If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable.
 - (4) If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.
 - (5) If the inspector takes a person to, into or onto the place under subsection (1)(f)—
 - (a) the person—
 - (i) may do the things at the place and in the way the inspector reasonably requires for exercising the inspector's powers under this part; and
 - (ii) must not do anything the inspector does not have power to do, except under a warrant; and
 - (b) anything done lawfully by the person is taken for all purposes to have been done by the inspector.
- (6) In this section—

inspect, a thing, includes open the thing and examine its contents.

recording includes a drawing, photograph, film,

audiotape, videotape, digital imaging and recording of an image or sounds in another way.

105M Power to require reasonable help

- (1) The inspector may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

105N Offence to contravene help requirement

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with the requirement on the basis that complying might tend to incriminate the person or expose the person to a penalty.
- (3) Subsection (2) does not limit what may be a reasonable excuse.
- (4) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
 - (a) the person must comply with the requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
 - (b) if the person is an individual—under section 107, there is a limited immunity against the

future use of the information or document given in compliance with the requirement.

- (5) If the person is an individual and the individual fails to comply with the requirement when the inspector has failed to comply with subsection (4), the individual can not be convicted of the offence against subsection (1).

Division 5 Other information-obtaining powers of inspectors

1050 Power to require name and address

- (1) This section applies if an inspector reasonably suspects a person has committed an offence against a relevant Act.
- (2) The inspector may require the person to state the person's name, date and place of birth and residential address.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
 - (a) be in possession of evidence of the correctness of the stated name or address; or
 - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the inspector must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

105P Offence to contravene personal details requirement

- (1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

105Q Power to require production of document

- (1) An inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector, a document relevant to—
 - (a) a compliance purpose; or
 - (b) an investigation into whether an individual is an influential person for a company that holds, or is applying for, a licence under this Act.
- (2) A requirement under subsection (1) is a ***document production requirement***.
- (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
- (4) The inspector may keep the document to copy it.
- (5) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

- (6) A requirement under subsection (5) is a *document certification requirement*.
- (7) The inspector must return the document to the person as soon as practicable after copying it.
- (8) However, if a document certification requirement is made of a person, the inspector may keep the document until the person complies with the requirement.

105R Offence to contravene document production requirement

- (1) A person of whom a document production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might—
 - (a) tend to incriminate the person or expose the person to a penalty; or
 - (b) disclose commercial in confidence information or expose the person to a risk of financial loss.
- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that the person must comply with the document production requirement even though complying with the requirement might—
 - (a) tend to incriminate the person or expose the person to a penalty; or
 - (b) disclose commercial in confidence information or expose the person to a risk of financial loss.

- (4) If the person fails to comply with the document production requirement and the inspector has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).
- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

105S Offence to contravene document certification requirement

- (1) A person of whom a document certification requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might—
 - (a) tend to incriminate the person or expose the person to a penalty; or
 - (b) disclose commercial in confidence information or expose the person to a risk of financial loss.
- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that the person must comply with the document certification requirement even though complying with the requirement might—
 - (a) tend to incriminate the person or expose the person to a penalty; or

- (b) disclose commercial in confidence information or expose the person to a risk of financial loss.
- (4) If the person fails to comply with the document certification requirement and the inspector has failed to comply with subsection (3), the person can not be convicted of the offence against subsection (1).

105T Power to require information or attendance

- (1) This section applies if an inspector reasonably believes—
 - (a) an offence against a relevant Act has been committed; and
 - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to—
 - (a) give the inspector information related to the offence by a stated reasonable time; or
 - (b) attend before the inspector at a stated reasonable time and place to answer questions, or produce documents, related to the offence.
- (3) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.
- (4) In this section—
information includes a document.

105U Offence to contravene information or attendance requirement

- (1) A person of whom a requirement is made under section 105T(2)(a) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) For subsection (1), it is not a reasonable excuse for a person to fail to comply with the requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 107.

- (3) A person of whom a requirement is made under section 105T(2)(b) must not fail, without reasonable excuse, to—

- (a) attend as required by the notice; and
- (b) answer a question the person is required to answer by the inspector; and
- (c) produce a document the person is required to produce by the notice.

Maximum penalty—50 penalty units.

- (4) For subsection (3), it is not a reasonable excuse for a person to fail to answer a question or produce a document on the basis that answering the question or producing the document might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 107.

Division 6 Seizure by inspectors and forfeiture

Subdivision 1 Power to seize

106 Seizing evidence at a place that may be entered without consent or warrant

An inspector who enters a place the inspector may enter under this part without the consent of an occupier of the place and without a warrant may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against a relevant Act.

106A Seizing evidence at a place that may be entered only with consent or warrant

- (1) This section applies if—
 - (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the inspector enters the place after obtaining the consent or under a warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place only if—
 - (a) the inspector reasonably believes the thing is evidence of an offence against a relevant Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place under a warrant,

the inspector may seize the evidence for which the warrant was issued.

- (4) The inspector may also seize anything else at the place if the inspector reasonably believes—
 - (a) the thing is evidence of an offence against a relevant Act; and
 - (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.
- (5) The inspector may also seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against a relevant Act.

106B Power to seize non-conforming building products

- (1) An inspector who has entered a place under this part may seize a building product at the place if the inspector reasonably believes—
 - (a) the product is, or is proposed to be, associated with a building for an intended use and the product is a non-conforming building product for the use; or
 - (b) the product is the subject of a recall order under part 6AA, division 4, or a corresponding recall order.
- (2) In this section—

corresponding recall order means an order, however called, under a law of another State providing for the recall of a building product from use.

106C Power to seize dangerous places, structures and things

- (1) This section applies if—

-
- (a) an inspector enters a place under this part; and
 - (b) the place is a building site or has a non-conforming structure on it; and
 - (c) the inspector reasonably believes that the place, a part of the place, or a building or other structure or other thing on the place, is hazardous to a degree likely to cause death or a serious injury or illness to a person.
- (2) The inspector may seize the place, part of the place, or the building, structure or thing.
 - (3) In this section—

non-conforming structure means a building or other structure with which a building product that is, or is suspected to be, a non-conforming building product is or has been associated.

106D Seizure of property subject to security

- (1) An inspector may seize a place, part of a place, building, structure or other thing, and exercise powers relating to the place, part of the place, building, structure or thing, despite a lien or other security over it claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting under the direction or authority of the inspector.

Subdivision 2 Powers to support seizure

106E Power to secure seized thing

- (1) Having seized a place, part of a place, building, structure or other thing under this division, an

inspector may—

- (a) for a place, part of a place or building—take reasonable action to restrict access to it; or
 - (b) for another seized thing—
 - (i) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (ii) move it from the place of seizure.
- (2) For subsection (1)(a) and (b)(i), the inspector may, for example—
- (a) for a place, part of a place or building—
 - (i) seal the entrance to the place, part of the place or building, and mark the place, part of the place or building to show access to it is restricted; or
 - (ii) make any equipment on the place or part of the place, or in the building, inoperable; or
 - (b) for another seized thing—
 - (i) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to it is restricted; or
 - (ii) for equipment—make it inoperable; or
 - (c) require a person the inspector reasonably believes is in control of the seized thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a) or (b)(i).

Example for making equipment inoperable—

make the equipment inoperable by dismantling it or removing a component without which it can not be used

106F Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 106E(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

106G Offence to interfere

- (1) If access to a seized thing is restricted under section 106E, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If access to a place, part of a place or building is restricted under section 106E, a person must not enter the place, part of the place or building in contravention of the restriction or tamper with anything used to restrict access to the place, part of the place or building without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

Subdivision 3 Safeguards for seized things

106H Receipt and information notice for seized things

- (1) This section applies if an inspector seizes a place, part of a place, building, structure or other thing under this division unless—

- (a) the inspector reasonably believes there is no-one apparently in possession of the seized thing or it has been abandoned; or
 - (b) because of the condition, nature and value of the seized thing it would be unreasonable to require the inspector to comply with this section.
- (2) The inspector must, as soon as practicable after the seizure, give an owner or person in control of the seized thing before it was seized—
 - (a) a receipt for the seized thing that generally describes it and its condition; and
 - (b) an information notice about the decision to seize the seized thing.
- (3) However, if an owner or person from whom the seized thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way where the seized thing is seized.
- (4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.
- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this Act.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place where the seized thing was seized to keep it under observation.

106I Access to seized things

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying, including, for example, because of the risks of injury or illness to a person that may arise from the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

106J Return of seized things

- (1) This section applies if a seized thing is not forfeited under subdivision 4.
- (2) As soon as the commissioner stops being satisfied there are reasonable grounds for retaining the seized thing, the commissioner must return it to its owner.
- (3) If the seized thing is not returned to its owner within 3 months after it was seized, the owner may apply to the commissioner for its return.
- (4) Within 30 days after receiving the application, the commissioner must—
 - (a) if the commissioner is satisfied there are reasonable grounds for retaining the seized thing and decides to retain it—give the owner an information notice for the decision; or
 - (b) otherwise—return the seized thing to the owner.

- (5) For this section, there are reasonable grounds for retaining a seized thing if—
 - (a) the thing is being, or is likely to be, examined; or
 - (b) the thing is needed, or may be needed, for the purposes of—
 - (i) a proceeding for an offence against a relevant Act that is likely to be started or that has been started but not completed; or
 - (ii) an appeal from a decision in a proceeding for an offence against a relevant Act; or
 - (c) it is not lawful for the owner to possess the thing; or
 - (d) it would be unreasonable to return the thing to its owner because of the risks of injury or illness to a person that may arise from returning it.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.

Subdivision 4 Forfeiture

106K Forfeiture by commissioner decision

- (1) The commissioner may decide a seized thing is forfeited to the State if an inspector—
 - (a) after making reasonable inquiries, can not find an owner; or

-
- (b) after making reasonable efforts, can not return it to an owner; or
 - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, the inspector is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.
- Example for paragraph (b)—*
- the owner of the thing has migrated to another country
- (3) Regard must be had to the seized thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

106L Information notice about forfeiture decision

- (1) If the commissioner decides under section 106K(1) to forfeit a seized thing, the commissioner must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 106K(1)(a) or (b), the information notice may be given by leaving it at the place where the seized thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former

owner may apply for a stay of the decision if he or she applies to the tribunal for a review of the decision.

- (4) However, subsections (1) to (3) do not apply if—
- (a) the decision was made under section 106K(1)(a) or (b); and
 - (b) the place where the seized thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by the former owner.

Subdivision 5 Dealing with property forfeited or transferred to State

106M When place, structure or thing becomes property of the State

A place, part of a place, building or other structure or other thing becomes the property of the State if—

- (a) it is forfeited to the State under section 106K(1); or
- (b) its owner and the State agree, in writing, to the transfer of the ownership of it to the State.

106N How property may be dealt with

- (1) This section applies if, under section 106M, a place, part of a place, building or other structure or other thing becomes the property of the State.
- (2) The commissioner may deal with the place, part

of the place, building, structure or thing as the commissioner considers appropriate, including, for example, by destroying it or giving it away.

- (3) The commissioner must not deal with the place, part of the place, building, structure or thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the commissioner sells the place, part of the place, building, structure or thing, the commissioner may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the place, part of the place, building, structure or thing.

Division 7 Additional powers for building products

106O Power to have building products or samples examined

- (1) This section applies if an inspector takes for examination a building product, or a sample of or from a building product, under section 105L(1)(b).
- (2) The commission may have the building product or sample examined.
- (3) A person must not, with intent to adversely affect the examination of a building product or a sample of or from a building product—
 - (a) tamper with a building product before an inspector takes it, or a sample of or from it, for examination; or
 - (b) tamper with a building product or a sample of or from a building product after it is taken by an inspector for examination.

Maximum penalty—100 penalty units.

- (4) An examination under this section must be conducted by a person of a class, and in the way, prescribed by regulation.
- (5) The commission must obtain a certificate or report stating the outcome of an examination under this section from the person conducting the examination.
- (6) The commission may recover, as a debt, the reasonable costs of conducting an examination of a building product, or a sample of or from a building product, under this section from a person in the chain of responsibility for the product who has failed to comply with a duty under part 6AA, division 2 in relation to the product.

106P Direction about use of non-conforming building product associated with a building or other structure

- (1) This section applies if an inspector reasonably believes—
 - (a) a building product associated with a building or other structure is, or may be, a non-conforming building product; and
 - (b) the building product, or using the building product in a particular way or for a particular use, is hazardous to a degree likely to cause death or a serious injury or illness to a person.
- (2) The inspector may, by written notice given to the person in control of the building or structure, direct the person—
 - (a) to not use the building product or to not use the building product in a stated way or for a stated use; or

(b) to make the building product incapable of operation.

(3) A person to whom a notice is given under subsection (2) must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

106Q Direction about action at place where non-conforming building product is present

(1) This section applies if an inspector reasonably believes—

(a) circumstances causing, or likely to cause, an immediate risk of serious injury or illness have arisen at a place; and

(b) the circumstances are, or involve, the presence of a building product at the place, whether or not the building product has been associated with a building or other structure.

(2) The inspector may direct the person in control of the place, or another person at the place, to take action the inspector considers necessary to remove or minimise the risk.

Example of direction—

An inspector reasonably believes the association of a particular building product with a medium-rise building at a place may cause pieces of glass to fragment and fall, creating a risk of injury to persons walking near the building. The inspector may direct the person in control of the place to install temporary overhead protection for persons walking near the building.

(3) The direction under subsection (2) may be given orally, but must be confirmed by written notice given to the person as soon as practicable.

(4) The person must comply with—

(a) the direction under subsection (2); and

(b) the notice under subsection (3).

Maximum penalty—100 penalty units.

(5) The notice must state—

(a) the inspector believes that—

(i) circumstances causing, or likely to cause, an immediate risk of serious injury or illness have arisen at the place; and

(ii) the circumstances are, or involve, the presence of a building product at the place; and

(b) briefly, the circumstances that have caused or are likely to cause the risk; and

(c) if the inspector believes the circumstances involve a contravention, or likely contravention, of a provision of an Act—the provision contravened or likely to be contravened; and

(d) the action the person must take to remove or minimise the risk.

106R Power to take remedial action

(1) This section applies in relation to a risk of death or a serious injury or illness if—

(a) a person to whom a direction is given under section 106P or 106Q in relation to the risk fails to comply with the direction; or

(b) an inspector can not give a direction under section 106P or 106Q in relation to the risk because, after taking reasonable steps, a person to whom the direction can be given can not be found.

(2) An inspector may take any remedial action the inspector believes reasonable to remove or

minimise the risk.

- (3) The commission may recover, as a debt, the reasonable costs of any remedial action taken under this section from—
 - (a) if subsection (1)(a) applies—the person to whom the direction was given; or
 - (b) if subsection (1)(b) applies—any person to whom the direction could have been given.

Division 8 Other provisions

107 Evidential immunity for individuals complying with particular requirements

- (1) Subsection (2) applies if an individual gives or produces a document or information to an inspector under section 105M or 105T.
- (2) Evidence of the document or information, and other evidence directly or indirectly derived from the document or information, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence.

23 Amendment of s 107A (Obstructing inspectors)

- (1) Section 107A(1), after ‘Act,’—

insert—

or someone helping an inspector exercising a

power under this Act,

- (2) Section 107A(2), after ‘an inspector’—

insert—

, or someone helping an inspector exercising a power under this Act,

- (3) Section 107A(2)(a), ‘obstruct the inspector’—

omit, insert—

cause an obstruction

24 Replacement of pt 9B, hdg (Injunctions)

Part 9B, heading—

omit, insert—

Part 9B Injunctions and stop work notices

Division 1 Injunctions

25 Insertion of new pt 9B, div 2

Part 9B—

insert—

Division 2 Stop work notices

108AI Commissioner may issue stop work notice

- (1) This section applies if the commissioner is satisfied that something is being done, or is about to be done, in contravention of a prescribed provision.
- (2) The commissioner may issue a notice (a *stop work notice*)—

-
- (a) prohibiting the person who is doing, or about to do, the thing from starting or continuing the thing; and
 - (b) directing the person to take any other action the commissioner considers necessary—
 - (i) to give effect to the prohibition under paragraph (a); or
 - (ii) to ensure the contravention of the prescribed provision is not repeated or does not happen in the future.
- (3) Before issuing a stop work notice to a person, the commissioner must—
- (a) give the person written notice of the commissioner's intention to issue the notice and the reasons for issuing the notice; and
 - (b) ask the person to show cause why the commissioner should not issue the notice.
- (4) If a person wishes to show cause why the stop work notice should not be issued, the person may make written submissions to the commissioner within 5 days after receiving the notice under subsection (3) from the commissioner.
- (5) The commissioner must consider any written submissions made by a person within the period mentioned in subsection (4) before issuing a stop work notice.
- (6) A person must not contravene a stop work notice.
Maximum penalty—500 penalty units.
- (7) In this section—
- prescribed provision*** means a provision of—
- (a) this Act; or
 - (b) the *Building Act 1975*; or
 - (c) the Building Code of Australia.

26 Amendment of s 108B (False or misleading statement)

(1) Section 108B(1), ‘the commission’—

omit, insert—

an official

(2) Section 108B(2)—

omit.

(3) Section 108B(3)—

renumber as section 108B(2).

(4) Section 108B—

insert—

(3) In this section—

official means—

(a) the commission; or

(b) an inspector performing a function or exercising a power under this Act.

27 Amendment of s 108C (False or misleading document)

(1) Section 108C(1), ‘the commission’—

omit, insert—

an official

(2) Section 108C(2)(a), ‘the commission’—

omit, insert—

the official

(3) Section 108C(4)—

omit.

(4) Section 108C(5)—

renumber as section 108C(4).

(5) Section 108C—

insert—

(5) In this section—

official means—

- (a) the commission; or
- (b) an inspector performing a function or exercising a power under this Act.

28 Insertion of new s 110

After section 109A—

insert—

110 Confidentiality of information

- (1) This section applies if a person obtains information or gains access to a document in exercising a power or performing a function under this Act.
- (2) The person must not do any of the following—
 - (a) disclose to anyone else—
 - (i) the information; or
 - (ii) the contents of or information contained in the document;
 - (b) give access to the document to anyone else;
 - (c) use the information or document for any purpose.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—
 - (a) about a person, with the person's consent; or
 - (b) that is necessary for the exercise of a power or performance of a function under this Act; or

- (c) that is made or given by the commission or a person authorised by the commission if the commission reasonably believes the disclosure, access or use—
 - (i) is necessary for administering, or monitoring or enforcing compliance with, this Act or the *Building Act 1975*; or
 - (ii) is necessary for the administration or enforcement of another Act prescribed by regulation; or
 - (iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public safety; or
- (d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
- (e) that is required or authorised under a law, including, for example, section 28A or 28B; or
- (f) to a Minister.

29 Amendment of s 114 (Protection)

- (1) Section 114(1), ‘publication act’—

omit, insert—

public interest act

- (2) Section 114(3)—

omit, insert—

- (3) Neither the State, the Minister, the commission nor a relevant officer of the commission incurs

any liability for a public interest act.

(3) Section 114(5), definition *publication act*—

omit, insert—

public interest act means—

- (a) a disclosure or publication made by or for the commissioner in issuing a warning under section 20J(1)(i), or publishing information under section 20J(1)(k), about—
 - (i) building work; or
 - (ii) the commercial or business reputation of any person associated with building work; or
 - (iii) the quality or standard of building work performed by any person; or
 - (iv) a building product being a non-conforming building product for a particular use; or
 - (v) the commercial or business reputation of a person in the chain of responsibility for a building product; or
 - (vi) a contravention or alleged contravention of this Act or the operation or enforcement of this Act; or
- (b) a disclosure or publication made by or for the Minister in publishing a warning statement under section 74AZC; or
- (c) an act done by or for the Minister in relation to a recall order under section 74AW.

30 Amendment of sch 1 (Transitional and validating provisions)

Schedule 1—

insert—

Part 14 Transitional provisions for Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017

71 Information-sharing

Sections 28A and 28B apply in relation to information obtained by the commission before or after the commencement.

72 Grounds for suspending or cancelling licence or disciplinary action

(1) A new ground under section 48 or 74B applies only in relation to an act or omission that happens after the commencement.

(2) In this section—

new ground means—

(a) for section 48—a ground for suspending or cancelling a licence under the section that was not a ground for cancelling or suspending a licence under the section immediately before the commencement; or

- (b) for section 74B—a ground for taking disciplinary action under the section that was not a ground for taking disciplinary action under the section immediately before the commencement.

73 Recall orders and warning statements

- (1) The Minister may make a recall order under part 6AA, division 4, or publish a warning statement under part 6AA, division 5, for a building product in existence on the commencement.
- (2) Subsection (1) applies even if the building product was associated with a building or other structure before the commencement.

74 Current investigations

- (1) This Act as in force after the commencement applies to an investigation under this Act started but not finished before the commencement.
- (2) Without limiting subsection (1)—
 - (a) the commission may—
 - (i) give a direction under section 74AN during or after conducting an investigation under part 6A; and
 - (ii) use information mentioned in section 74A(3) for the investigation, including information obtained before the commencement; and
 - (b) an inspector may exercise powers under part 9 for the investigation.

75 Stop orders

- (1) This Act as in force before the commencement continues to apply to the following as if the

amendment Act had not been enacted—

- (a) a stop order in force immediately before the commencement;
- (b) a proceeding before the tribunal to allow a person to show cause why a stop order should not be confirmed that was started, but not finished, before the commencement;
- (c) the outcome of a proceeding mentioned in paragraph (b).

(2) In this section—

amendment Act means the *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*.

stop order means an order of the tribunal under section 97B as in force before the commencement.

31 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions *document certification requirement*, *document production requirement*, *owner* and *reasonably believes*—

omit.

(2) Schedule 2—

insert—

associated with, in relation to a building or other structure, see section 74AA.

building product see section 74AB(1).

building product undertaking, for part 6AA, see section 74AO(1).

code of practice, for part 6AA, see section 74AA.

compliance purpose, for part 9, see section 103G.

document certification requirement, for part 9, see section 105Q(6).

document production requirement, for part 9, see section 105Q(2).

electronic document, for part 9, see section 103G.

examine, for part 9, see section 103G.

general power, for part 9, see section 105L(1).

help requirement, for part 9, see section 105M(1).

identity card, for part 9, see section 103G.

information notice, for part 9, see section 103G.

intended use, for a building product, see section 74AA.

non-compliance risk, for part 6AA, see section 74AA.

non-conforming building product see section 74AB(2).

notifiable incident means—

- (a) the death or serious injury or illness of a person; or
- (b) an incident that exposes a person to a risk of serious injury or illness.

Example for paragraph (b)—

the collapse or partial collapse of a building

occupier, for part 9, see section 103G.

offence warning, for part 9, see section 103G.

owner—

- (a) of land generally, means—
 - (i) for freehold land—the registered owner of the land under the *Land Title Act 1994*; or
 - (ii) for land held under a statutory lease or licence giving a right to possession of the land—the lessee or licensee; and
- (b) of land, for part 3, division 8—see also section 43D; and
- (c) of a seized thing under part 9—see section 103G.

personal details requirement, for part 9, see section 105O(5).

person in control, for part 9, see section 103G.

person in the chain of responsibility, for a building product, see section 74AE.

place, for part 9, see section 103G.

premises, for part 9, see section 103G.

public place, for part 9, see section 103G.

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably practicable, for part 6AA, see section 74AA.

reasonably suspects, for part 9, see section 103G.

recall order, for part 6AA, see section 74AW(1).

relevant Act, for part 9, see section 103G.

relevant regulatory provisions, for part 6AA, see section 74AA.

relevant work, for part 6AA, see section 74AA.

representation, for part 6AA, see section 74AA.

safe, for part 6AA, see section 74AA.

safety risk, for part 6AA, see section 74AA.

seized thing, for part 9, see section 103G.

serious injury or illness, of a person, means an injury or illness requiring the person to have—

- (a) immediate treatment as an inpatient in a hospital; or
- (b) immediate treatment for—
 - (i) the amputation of any part of his or her body; or
 - (ii) a serious head injury; or
 - (iii) a serious eye injury; or
 - (iv) a serious burn; or

- (iv) repealed section 97B of the *Queensland Building and Construction Commission Act 1991*; or
 - (v) the *Queensland Building and Construction Commission Act 1991*, part 6A or section 97C or 108AI;
- (2) Section 14(2)—
insert—

repealed section 97B of the Queensland Building and Construction Commission Act 1991 means section 97B of that Act as in force before the section was omitted by the *Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017*.

Part 4 Other amendments

34 Acts amended

Schedule 1 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments

section 34

Building Act 1975

1 Section 3(11)—

insert—

Note—

The QBCC Act also provides for enforcement action relating to building work.

Plumbing and Drainage Act 2002

1 Section 32(f), after ‘this Act’—

insert—

or the QBCC Act

Queensland Building and Construction Commission Act 1991

1 Section 49A(1), ‘believes, on reasonable grounds,’—

omit, insert—

reasonably believes

2 Section 50C(5), ‘48(h)’—

omit, insert—

48(1)(h)

3 Schedule 1B, section 1, definition *reasonably believes*—

omit.

© State of Queensland 2017