



Queensland Building and Construction Commission Act 1991

Current as at 1 November 2017



Queensland

Queensland Building and Construction Commission Act 1991

Contents

		Page
Part 1	Preliminary	
1	Short title	23
3	Objects of Act	23
4	Definitions	24
4A	Value of building work carried out in stages	24
4B	Act binds all persons	24
4C	Certain building contractors not bound	24
Part 2	Queensland Building and Construction Commission	
Division 1	Establishment, functions and powers	
5	Establishment and status	25
6	Constitution	25
7	Functions	25
8	Powers	26
9	Ministerial direction	26
Division 2	Queensland Building and Construction Board	
Subdivision 1	Establishment and functions	
10	Establishment	27
11	Functions	27
Subdivision 2	Membership	
12	Appointment	28
13	Disqualification as member	28
14	Conditions of appointment	28
15	Term of appointment	29
16	Chairperson	29
17	Deputy chairperson	29
18	Resignation	30

Contents

Subdivision 3	Board's policies	
19	Board's policy	30
Subdivision 4	Business	
20	Conduct of business	31
20A	Meetings	31
20B	Committees	31
20C	Disclosure of interests	32
Division 3	Commissioner	
20D	Appointment	34
20E	Disqualification as commissioner	34
20F	Conditions of appointment	34
20G	Term of appointment	34
20H	Resignation	35
20I	Appointment of acting commissioner	35
20J	Role of the commissioner	35
20K	Relationship between commissioner and board	37
20L	Commissioner not to engage in other paid employment	38
20M	Conflicts of interest	38
Division 5	The insurance manager	
21	Appointment of insurance manager	38
22	Role of insurance manager	39
Division 6	Financial provisions	
25	General Statutory Fund	39
26	Insurance Fund	40
26A	Management of statutory insurance scheme	41
27	Application of financial Acts	41
28	Commission's obligation to report suspected offence	41
Division 7	Other provisions	
28A	Commission must give particular information to health and safety regulator	42
28B	Exchange of information between commission and relevant agencies 42	
29	Commission may enter into work performance arrangements ..	43
Part 2A	Queensland Building and Construction Employing Office	
Division 1	Establishment and functions of employing office	
29A	Establishment of employing office	45

29B	Employing office represents the State	45
29C	Functions of employing office	45
Division 2	Executive officer	
29D	Appointment of executive officer	46
29E	Executive officer acting for employing office	46
Division 3	Staff of employing office	
29F	Employing office may employ staff	46
29G	Employing office may enter into work performance arrangements	47
Division 4	Other provisions	
29H	Employing office is statutory body	48
Part 3	Licensing	
Division 1	Classes of licences	
30	Classes of contractors' licences	48
30A	Nominee supervisor's licence	49
30B	Site supervisor's licence	50
30C	Fire protection occupational licence	51
Division 2	Entitlement to licence	
31	Entitlement to contractor's licence	51
31A	No entitlement to contractor's licence if particular partners	53
32	Entitlement to a nominee supervisor's licence	54
32AA	Entitlement to a site supervisor's licence	55
32AB	Entitlement to a fire protection occupational licence	56
32A	Exception for s 30(4) licences	57
Division 3	Grant of licence	
33	Application for licence	57
34	Grant of licence	58
Division 3A	Issue of PINs to licensees	
34A	PINs	59
Division 4	Conditions of licence	
35	Imposition of conditions etc. on grant of licence	59
36	Subsequent imposition of conditions etc.	59
Division 5	Renewal of licences	
37	Period of renewal	61
37A	Commission to advise licensee before licence due for renewal	61
37B	Applications for renewal of licence	61
38	Suspension for non-payment of fee	62

Contents

38A	Receipt of fee does not revive licence	62
Division 6	Restoration of licences	
39	Restoration of licence	63
Division 7	Requirement to be licensed	
42	Unlawful carrying out of building work	63
42A	Exemption from s 42 for up to 6 months	64
42B	Carrying out building work without a nominee	65
42C	Unlawful carrying out of fire protection work	65
42D	Licensed contractor must not engage or direct unauthorised person for fire protection work	66
43	Licensed contractor must ensure building work is personally supervised 67	
43A	Licensed contractor must ensure building work is adequately supervised 68	
43B	Construction manager must ensure building work is personally supervised	69
43C	Construction manager must ensure building work is adequately supervised	70
Division 8	Owner-builders	
43D	Definitions for div 8	71
43E	When owner-builder permit is required	73
44	Application for owner-builder permit	73
44A	Consideration of application for permit	74
44B	Criteria for granting application for permit	74
44C	When permit becomes effective	77
44D	Term of permit	77
44E	Conditions of permit	77
44F	Form of permit	77
44G	Cancellation or suspension of permit	78
44H	Procedure for cancellation or suspension	78
44I	Permit issued to more than 1 person	79
44J	Surrender of permit	79
45	Replacement of permits	79
46	Notification on certificate of title	80
47	Warnings	80
Division 9	Cancellation, suspension or surrender of licence	
48	Cancellation or suspension of licence	81

49	Procedure for cancellation or suspension	82
49A	Immediate suspension of licence	83
49B	Suspension or cancellation for failure to comply with tribunal's orders and directions	84
50	Surrender of licence	84
Division 9A	Monitoring continued satisfaction of financial requirements and compliance with parts 4 and 5, and schedule 1B	
50A	Approved audit program	85
50C	Supply of financial records and other documents under approved audit program or for other reason	85
Division 10	Miscellaneous	
50D	Person must not pretend to be a licensee	87
51	Improper use of licence card, certificate, number or PIN	87
51A	Other offences relating to unlawful carrying out of building work	88
51B	Licensed contractor must not contract with unlicensed person ..	88
52	Signs to be exhibited	89
53	Return of licence	89
53A	Satisfying financial requirements at renewal	89
53B	False or misleading documents about financial requirements ..	90
53C	Advertising by unlicensed person	91
54	Advertisements	91
54A	Notification of particular safety matters	92
55	Notification of company's nominee	93
56	Partnerships	93
56A	Commission may request photographs for licence	94
Part 3A	Excluded individuals and excluded companies	
Division 1	Preliminary	
56AB	Operation of pt 3A	95
56AC	Excluded individuals and excluded companies	95
Division 3	Licence exclusion and cancellation	
56AE	Exclusion from licence	96
56AF	Procedure if licensee is excluded individual	97
56AG	Procedure if licensee is excluded company	97
56AH	Review by tribunal of commission's opinion	98
Part 3B	Permanently excluded individuals	
Division 1	Preliminary	
57	Operation of pt 3B	99

Contents

58	Meaning of permanently excluded individual	99
Division 2	Licence exclusion	
59	Exclusion from licence	101
60	Permanently excluded individual not fit and proper	102
61	When individual no longer permanently excluded individual	102
Part 3C	Convicted company officers	
Division 1	Preliminary	
62	Operation of pt 3C	102
Division 2	Licence exclusion and cancellation	
63	Exclusion from licence	103
64	Procedure if commission considers individual a convicted company officer	103
65	Ending procedure without further action	103
66	Notice of cancellation and that not a fit and proper person to individual who is a licensee	104
67	Notice that not a fit and proper person to individual who is not a licensee 105	
67AA	Notice by commission to company for which a convicted company officer is a director, secretary, influential person or nominee	105
Part 3D	Banned individuals	
Division 1	Preliminary	
67AB	Meaning of tier 1 defective work and carry out tier 1 defective work	106
67AC	Banned individual	107
67AD	Operation of pt 3D	107
Division 2	Licence exclusion and cancellation	
67AE	Exclusion from licence	108
67AF	Procedure if commission considers individual has carried out tier 1 defective work	108
67AG	Ending procedure without further action	109
67AH	Notice of cancellation and that not a fit and proper person to individual who is a licensee	109
67AI	Notice that not a fit and proper person to individual who is not a licensee 111	
67AJ	Notice by commission to director, secretary, influential person or nominee about tier 1 defective work	112
67AK	Ending procedure without further action	113
67AL	Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee	114
67AM	Notice that not a fit and proper person to director, secretary, influential	

	person or nominee who is not a licensee	116
67AN	Notice by commission to company for which a banned individual is a director, secretary, influential person or nominee	118
67AO	Terms of bans	118
Part 3E	Disqualified individuals	
Division 1	Preliminary	
67AQ	Definitions for pt 3E	120
67AR	Meaning of demerit offence	122
67AS	Meaning of judgment debt	122
67AT	Meaning of unsatisfied judgment debt	122
67AU	Disqualified individual	123
67AV	Operation of pt 3E	123
Division 2	Calculation of demerit points and notification of unsatisfied judgment debts	
67AW	Demerit points for demerit matters	123
67AX	When demerit points allocated for demerit offences	124
67AY	When demerit points allocated for unsatisfied judgment debts	125
67AZ	Judgment debtor must notify unsatisfied judgment debt	125
67AZA	Commission must notify person about demerit points	126
67AZB	Limit on demerit points from single audit	126
Division 3	Licence exclusion and cancellation	
67AZC	Exclusion from licence	127
67AZD	Procedure if commission considers individual has accumulated 30 demerit points	127
67AZE	Ending procedure without further action	128
67AZF	Notice of cancellation and that not a fit and proper person to individual who is a licensee	128
67AZH	Notice by commission to director, secretary, influential person or nominee about demerit points	129
67AZI	Ending procedure without further action	130
67AZJ	Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee	131
67AZK	Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee	133
67AZL	Notice by commission to company for which a disqualified individual is a director, secretary, influential person or nominee	134
67AZM	Terms of disqualifications	135
Part 4	Domestic building contracts	

Contents

67AZN	Domestic building contracts	137
Part 4A	Building contracts other than domestic building contracts	
Division 1	Preliminary	
67A	Definitions for pt 4A	137
67AAA	Meaning of building contract	139
67B	Meaning of construction management trade contract	140
67C	Meaning of retention amount in pt 4A	140
67D	Meaning of subcontract in pt 4A	141
67E	Operation of pt 4A	141
Division 2	All building contracts	
67F	Suggested forms of contract	142
67G	Building contracts to be in writing	142
67I	Directions given under building contracts	145
67J	Set-offs under building contracts	146
67K	Limits for retention amounts and securities for building contracts other than subcontracts	146
67L	Limits for retention amounts and securities for subcontracts	147
67M	Limits on deductions for retention amounts	148
67N	Limits for retention amounts and securities for building contracts after practical completion	148
67O	Suspension of works	149
67P	Late progress payments	150
Division 3	Construction management trade contracts and subcontracts	
67R	Application of div 3	151
67S	Lodgement of security instead of retention amount or security in money form	152
67T	Lodgement of security to replace retention amount or security in money form	152
67U	Void payment provision in construction management trade contract or subcontract	153
Division 4	Warning for construction management trade contracts	
67V	Offence of not warning that contract is construction management trade contract	153
Division 5	Commercial building contracts	
67W	Void payment provision in commercial building contract	154
Part 5	The statutory insurance scheme	
Division 1	Preliminary	
67WA	Definitions for pt 5	154

67WB	Work not covered under the statutory insurance scheme	156
67WC	Meaning of primary insurable work	158
67WD	Meaning of associated insurable work	159
67WE	Meaning of residence	160
67WF	Meaning of related roofed building	161
Division 2	Statutory insurance scheme	
67X	Statutory insurance scheme	162
Division 3	Assistance	
67Y	Assistance available under statutory insurance scheme	162
67Z	Optional additional cover	162
68	Persons not entitled to assistance under statutory insurance scheme 163	
Division 4	Insurance premiums	
68A	Licensed contractor pays insurance premium on behalf of consumer 164	
68B	When insurance premium is payable by licensed contractor . . .	165
68C	When insurance premium is payable by construction manager .	165
68D	Setting of insurance premiums	166
68E	Obligation of assessment manager in relation to insurance premium 167	
Division 5	Notice and commencement of cover	
68F	Notice of cover	167
68G	Refund of insurance premium if notice of cover is revoked	167
68H	Cover of residential construction work	168
68I	Commencement of cover	169
Division 6	Cancellation of cover	
69	Cancellation of cover and return of premium	170
Division 7	Variations	
70	Residential construction work carried out under a contract with a consumer	172
70A	Speculative residential construction work	173
70B	Optional additional cover	174
70C	Partial refunds of insurance premiums	174
Division 8	Recovery from licensed contractor	
71	Recovery from licensed contractor etc.	174
Division 9	Rectification work	
71A	Tenders for rectification work	177

Contents

Division 10	Other	
71B	Statutory insurance scheme not to affect licensing decisions . . .	178
71C	Notice of entitlement to assistance under the statutory insurance scheme	178
71D	Multiple contracts for the same residential construction work . . .	178
71E	Protection of expressions associated with statutory insurance scheme 179	
71F	When work is taken to have started	180
Part 6	Rectification of building work and remediation of consequential damage	
Division 1	Preliminary	
71G	Definition for pt 6	180
71H	What is consequential damage	180
71I	Who is taken to carry out building work for this part	181
Division 2	Direction to rectify or remedy	
71J	Requests for rectification of building work or remediation of consequential damage	183
72	Power to require rectification of building work and remediation of consequential damage	184
72A	Powers and limitations of directions to rectify or remedy	185
Division 3	Offences and defences	
73	Offence to fail to comply with direction to rectify or remedy	186
74	Defences for failure to comply with direction to rectify or remedy	186
Part 6AA	Building products	
Division 1	Preliminary	
74AA	Definitions for part	188
74AB	What is a building product and a non-conforming building product	190
74ABA	Extraterritorial application of part	190
Division 2	Duties relating to building products	
Subdivision 1	General provisions about duties	
74AC	Relationship with safety laws	191
74AD	Principles applying to duties	191
74ADA	Code of practice about discharging duties	192
74ADB	Use of code of practice in proceedings	193
Subdivision 2	Duties	
74AE	Who is a person in the chain of responsibility for a building product	193
74AF	Primary duty of person in the chain of responsibility	193

74AG	Additional duty relating to accompanying information	194
74AH	Additional duties relating to recalls	195
74AI	Duty of executive officer of company	196
Subdivision 3	Offences relating to duties	
74AJ	Failing to comply with duty	197
74AK	Duty about representations about building products	197
74AL	Duty to notify non-conforming building product	197
74AM	Duty to notify notifiable incident	198
74AN	Commission may require remedial action	199
Division 3	Enforceable undertakings relating to building products	
74AO	Commission may accept building product undertaking	199
74AP	Notice of decision and reasons for decision	200
74AQ	When building product undertaking is enforceable	200
74AR	Compliance with building product undertaking	200
74AS	Contravention of building product undertaking	200
74AT	Withdrawal or variation of building product undertaking	201
74AU	Proceeding for contravention	202
Division 4	Ministerial recall orders	
74AV	Application of division	202
74AW	Minister may make recall order	203
74AX	Notice required before making recall order	204
74AY	Service of recall order	204
74AZ	Nature of recall order	204
74AZA	Supplier or installer must help responsible person	206
Division 5	Warning statements	
74AZB	Application of division	207
74AZC	Minister may publish warning statement	207
74AZD	Notice required before publishing warning statement	208
Part 6A	Disciplinary proceedings	
74A	Commission may investigate grounds for taking disciplinary action	209
74B	Proper grounds for taking disciplinary action against a licensee and former licensees	209
74C	Proper grounds for taking disciplinary action against person not a licensee	211
74D	Types of disciplinary action that may be taken	212
74E	Notice of proposed disciplinary action	213

Contents

74F	Taking disciplinary action	214
74G	When disciplinary action takes effect	214
74H	Filing of certificate as judgment debt	215
Part 7	Jurisdiction of tribunal	
Division 1	Meaning of central terms	
75	Tribunal work defined	217
76	What is not tribunal work	218
Division 2	Building disputes	
77	Tribunal may decide building dispute	219
78	When major commercial building dispute may be heard by tribunal	220
79	Procedure to decide whether all parties consent	220
80	Procedure if another party discovered	221
81	Consent may not be withdrawn	221
82	Tribunal may make interim order	221
83	Proceeding in tribunal does not affect action by commission ...	223
85	Tribunal may hear dispute while contract still in operation	223
Division 3	Proceedings for review	
Subdivision 1	Internal review	
85A	Definitions for sdiv 1	223
86	Reviewable decisions	224
86A	Who may apply for internal review	226
86B	Requirements for making application	226
86C	Internal review decision	227
86D	Notice of internal review decision	228
Subdivision 2	External review	
86E	Definition for sdiv 2	228
86F	Decisions that are not reviewable decisions	228
87	Application for review	229
87A	No stay by QCAT of particular decisions	230
87AA	Decision of tribunal on review of particular reviewable decisions	231
Division 5	Public examinations	
92	Tribunal may conduct public examination	231
92A	Procedure before public examination starts	232
Division 6	Decisions about debts arising from statutory insurance scheme	
93	Decisions about debts arising from statutory insurance scheme	233
Division 7	Tribunal proceedings	

93A	Representation of parties	233
94	Transfer of proceedings between tribunal and the courts	234
95	Expedited hearing of domestic building disputes or reviews	234
96	Certain minor commercial building disputes may be expedited	237
Division 8	Other powers of the tribunal	
97	Entry and inspection of property by member of tribunal	238
97A	Procedure before entry	239
97C	Suspension orders	239
Part 8	Registers	
98	Definitions for pt 8	240
99	Licensee register	240
100	When information may be included in the licensee register	242
101	Licensees must advise change of circumstances	243
102	When notes must be removed from the licensee register	243
103	Register of holders of owner-builder permits	244
103A	When particulars must be removed from owner-builder register	245
103B	Developer register	245
103C	When notes must be removed from developer register	247
103D	Inspection of registers	247
103E	Publication of registers	247
103F	Certificates	247
Part 9	Inspectors	
Division 1	Preliminary	
103G	Definitions for part	247
103H	References to exercise of powers	250
103I	Reference to document includes reference to reproductions from electronic document	250
Division 2	Appointment of inspectors	
104	Appointment of inspectors	251
Division 3	Entry of places by inspectors	
Subdivision 1	Power to enter	
105	General power to enter places	251
Subdivision 2	Entry by consent	
105A	Application of subdivision	252
105B	Incidental entry to ask for access	253
105C	Matters inspector must tell occupier	253

Contents

105D	Consent acknowledgement	253
Subdivision 3	Entry under warrant	
105E	Application for warrant	254
105F	Issue of warrant	255
105G	Electronic application	256
105H	Additional procedure if electronic application	256
105I	Defect in relation to a warrant	258
105J	Entry procedure	258
Division 4	General powers of inspectors after entering places	
105K	Application of division	259
105L	General powers	259
105M	Power to require reasonable help	260
105N	Offence to contravene help requirement	261
Division 5	Other information-obtaining powers of inspectors	
105O	Power to require name and address	261
105P	Offence to contravene personal details requirement	262
105Q	Power to require production of document	262
105R	Offence to contravene document production requirement	263
105S	Offence to contravene document certification requirement	264
105T	Power to require information or attendance	265
105U	Offence to contravene information or attendance requirement	265
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	266
106A	Seizing evidence at a place that may be entered only with consent or warrant	267
106B	Power to seize non-conforming building products	267
106C	Power to seize dangerous places, structures and things	268
106D	Seizure of property subject to security	268
Subdivision 2	Powers to support seizure	
106E	Power to secure seized thing	269
106F	Offence to contravene seizure requirement	270
106G	Offence to interfere	270
Subdivision 3	Safeguards for seized things	
106H	Receipt and information notice for seized things	270

106I	Access to seized things	271
106J	Return of seized things	272
Subdivision 4	Forfeiture	
106K	Forfeiture by commissioner decision	273
106L	Information notice about forfeiture decision	274
Subdivision 5	Dealing with property forfeited or transferred to State	
106M	When place, structure or thing becomes property of the State . .	274
106N	How property may be dealt with	275
Division 7	Additional powers for building products	
106O	Power to have building products or samples examined	275
106P	Direction about use of non-conforming building product associated with a building or other structure	276
106Q	Direction about action at place where non-conforming building product is present	277
106R	Power to take remedial action	278
Division 8	Other provisions	
107	Evidential immunity for individuals complying with particular requirements	279
107A	Obstructing inspectors	279
108	Obligation of assessment manager	280
Part 9A	Transfer of particular assets, liabilities and employees	
108AA	Relevant entity	280
108AB	Transfer of assets, liabilities etc. to relevant entity	280
108AC	Rights of transferred employees etc.	282
Part 9B	Injunctions and stop work notices	
Division 1	Injunctions	
108AD	Grounds for injunction	283
108AE	Commissioner may apply for injunction	284
108AF	When injunction may be granted	284
108AG	Court's powers for injunctions	284
108AH	Terms of injunction	284
Division 2	Stop work notices	
108AI	Commissioner may issue stop work notice	285
Part 10	Miscellaneous	
108A	Documents that must be kept for 7 years	286
108B	False or misleading statement	287
108C	False or misleading document	287

Contents

108D	Contracting out prohibited	288
109	Access to building sites	288
109A	Service of documents	289
110	Confidentiality of information	289
111	Prosecutions for offences	290
111A	Responsibility for acts or omissions of representatives	290
111B	Liability of executive officer—particular offences committed by company 291	
111C	Liability of directors for amounts	293
112	Appropriation of penalty	294
113	Double jeopardy	294
114	Protection	294
115	Commission may provide services to a professional board	296
115A	Delegations	297
116	Regulations	297
Schedule 1	Transitional and validating provisions	299
Part 1	Transitional provisions for Act No. 98 of 1991 and amending Acts up to and including Act No. 70 of 1997	
1A	Definitions	299
2	Transitional provisions	299
4	References to repealed Acts	301
5	References to registrar/general manager and Home Building Advisory Service	301
Part 2	Validating provisions for Act No. 70 of 1997	
8	Definitions	302
9	Validation of affected licences	303
10	Period of effect of transitional licences—compliance period ended	304
11	Period of effect of transitional licences—compliance period current	305
12	Condition of transitional licences	306
Part 3	Transitional provisions for Queensland Building Services Authority Amendment Act 1999	
13	Existing board goes out of office	306
Part 4	Transitional provisions for GST and Related Matters Act 2000	
14	Residential construction work for s 71	306
15	Building work for s 72	307
16	Delayed operation of definition building work, para (g)	307
Part 5	Validating and transitional provisions for Queensland Building	

	Services Authority and Other Legislation Amendment Act 2003	
Division 1	Interpretation	
17	Definitions for pt 5	307
Division 2	Provision about financial requirements	
18	Validation of provisions about financial requirements	308
Division 3	Terms of insurance policies	
19	Validation of provision about terms of insurance policy	308
20	Existing policies apply for amended s 69(2)	308
Division 4	Licence classes and qualifications and experience	
21	Validation of sch 2, pt 25 of the regulation etc.	309
22	Transitional provision for licences valid	309
Division 5	Non-trading licences	
23	Definition for div 5	310
24	Non-trading licence taken to be valid	310
Division 6	Courses of instruction for owner-builders	
25	Validation of provision about courses of instruction for owner-builders 310	
Division 7	Board's policies	
26	Certain board's policies continue in force	311
Part 6	Transitional provisions for the Building and Construction Industry Payments Act 2004	
27	Definitions for pt 6	312
28	Application of former provisions to existing building contracts ..	312
Part 7	Transitional provisions for Statutory Bodies Legislation Amendment Act 2007	
29	Rights and entitlements of particular employees	312
30	Application of industrial instruments	314
Part 8	Transitional provisions for Queensland Building Services Authority and Other Legislation Amendment Act 2007	
31	Transitional provisions for existing supervisors' licences	314
32	Transitional qualifications for site supervisors' licences	315
33	Transitional provision for fire protection occupational licences ..	316
34	Transitional provision for certain fire protection work	316
35	Transitional provision for photograph on licence	316
36	Transitional provision for continuation of register of licensees ..	316
Part 9	Transitional provisions for Queensland Building Services Authority Amendment Act 2013	

Contents

Division 1	Preliminary	
37	Definitions	317
Division 2	Dissolutions	
38	Dissolutions	317
39	No compensation because of dissolutions	318
Division 3	Migration of matters to the commission	
40	Agreements, assets, liabilities and rights	318
41	Unresolved applications	319
42	Pending legal proceedings	319
43	Ministerial directions to former authority	320
44	Records of the former authority	320
45	Continuing appointments and authorisations	320
46	Annual report of former board	321
47	Other administrative matters	322
Division 4	Other matters	
48	References to former entities	323
49	References to QBSA Act	323
50	Change to name of employing office	323
51	Effect on legal relationships	323
Part 10	Transitional provision for Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013	
52	Application of s 42 (Unlawful carrying out of building work)	325
Part 11	Transitional provisions for the Queensland Building and Construction Commission and Other Legislation Amendment Act 2014	
Division 1	Preliminary	
53	Definitions for pt 11	326
Division 2	General	
54	Continuation of particular reviews	327
55	Existing disciplinary proceedings	328
56	Allocation of demerit points	328
57	Categorisation as excluded individual or permanently excluded individual continues	328
58	Becoming a permitted individual after the commencement	329
59	Categorisation as permitted individual continues	330
Division 3	Rectification of building work	
60	Outstanding applications for rectification of building work that is defective	

	or incomplete	330
61	Outstanding directions to rectify building work that is defective or incomplete	331
Division 4	Repeal of the Domestic Building Contracts Act 2000	
62	Domestic building contracts entered into before repeal	331
63	Continued reference to conduct under the repealed Domestic Building Contracts Act 2000	332
64	Past contraventions of repealed Act	332
Division 5	Statutory insurance scheme	
65	Continuation and finalisation of matters under former part 5	333
66	Existing policies of insurance	334
67	Repeal of board's policies about statutory insurance scheme	334
Part 12	Transitional provision for the Plumbing and Drainage and Other Legislation Amendment Act 2016	
69	Internal review applications of relevant decisions	335
Part 13	Transitional provision for the Planning (Consequential) and Other Legislation Amendment Act 2016	
70	Existing development applications and requests for compliance assessment	336
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	337
72	Grounds for suspending or cancelling licence or disciplinary action	337
73	Recall orders and warning statements	337
74	Current investigations	338
75	Stop orders	338
Schedule 1A	Exemptions from requirement to hold contractor's licence	340
1	Employees	340
2	Subcontractors	340
3	Partnerships	340
4	Owner-builders	341
5	Design work by landscape architects	341
6	Consumers	341
7	Other licences	342
8	Head contracts to carry out building work	342
9	Tenders and offers	342
10	Public-private partnerships	343

Contents

11	Prescribed government projects	343
Schedule 1B	Domestic building contracts	345
Part 1	Interpretation	
1	Definitions for sch 1B	345
2	Meaning of contract price	349
3	Meaning of domestic building contract	350
4	Meaning of domestic building work	351
5	Meaning of regulated contract	353
6	Meaning of level 1 regulated contract	354
7	Meaning of level 2 regulated contract	354
8	Meaning of foundations data	355
9	Meaning of home	355
10	Meaning of provisional sum	356
11	Multiple contracts for the same domestic building work	356
12	References to particular terms	356
Part 2	Contracts and related documents	
Division 1	The contract	
13	Requirements for contract—level 1 regulated contract	357
14	Requirements for contract—level 2 regulated contract	358
Division 2	Copies of documents	
15	Copy of contract for building owner	360
16	Copy of commencement notice	360
17	Copies of certificate of inspection	360
18	Copy of consumer building guide	361
Part 3	Warranties	
Division 1	Incorporation of warranties	
19	Implied warranties	361
Division 2	Implied warranties for all contracts	
20	Suitability of materials	362
21	Compliance with legal requirements	363
22	Standard of work and exercise of care and skill	363
Division 3	Implied warranties for particular contracts	
23	Adherence to plans and specifications	364
24	Suitability of premises for occupation	364
25	Carrying out work with reasonable diligence	364
26	Calculation of provisional sums and prime cost items	364

Division 4	General	
27	Warranties run with building	365
28	Protection of rights given by warranties	365
29	Proceedings for breach of warranties	366
Part 4	Restrictions relating to contracts	
Division 1	Entering into contracts	
30	Contracted services must not start before regulated contract complies with requirements	367
31	Foundations data	367
32	Arbitration clauses	369
Division 2	Payments relating to contracts	
33	Deposits	370
34	Progress payments for regulated contracts	371
Part 5	Cooling-off period and withdrawing from regulated contracts	
35	Right of building owner to withdraw from contract in cooling-off period 371	
36	Restrictions affecting right of withdrawal in cooling-off period . . .	372
37	Withdrawal procedure	373
38	Rights and obligations of parties following withdrawal in cooling-off period	374
39	Waiving right of withdrawal	375
Part 6	Variations of contracts	
40	Variations must be in writing	376
41	General contents of document evidencing a variation	377
42	Extension of time	377
Part 7	Building sites	
43	Building contractor does not acquire interest in land of resident owner 378	
Part 8	Other matters relating to contracts	
44	Effect of failure by building contractor to comply with requirement	379
Part 9	Miscellaneous	
45	Relationship with other Acts	379
46	Consumer building guide	379
Schedule 2	Dictionary	381

Queensland Building and Construction Commission Act 1991

An Act to regulate the building industry

Part 1 Preliminary

1 Short title

This Act may be cited as the *Queensland Building and Construction Commission Act 1991*.

3 Objects of Act

The objects of this Act are—

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

4 Definitions

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

4A Value of building work carried out in stages

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

4B Act binds all persons

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

4C Certain building contractors not bound

Parts 5 and 6 do not bind a building contractor to the extent that the business carried on by the building contractor consists of or includes—

- (a) carrying out completed building inspections; or
- (b) contract administration carried out in relation to building work designed by the building contractor.

Part 2 **Queensland Building and Construction Commission**

Division 1 **Establishment, functions and powers**

5 **Establishment and status**

- (1) The Queensland Building and Construction Commission is established.
- (2) The commission—
 - (a) is a body corporate; and
 - (b) has a common seal; and
 - (c) may sue and be sued in its corporate name.

6 **Constitution**

The commission consists of—

- (a) the Queensland Building and Construction Board; and
- (b) the commissioner and the organisational unit under the control of the commissioner; and
- (c) the Service Trades Council.

Note—

The Service Trades Council is established under the *Plumbing and Drainage Act 2002*, section 5.

7 **Functions**

The commission has the following functions—

- (a) to administer this Act and further its objects;
- (b) any function given to it under another Act.

8 Powers

- (1) The commission has all the powers of an individual and may, for example—
 - (a) enter into contracts or agreements; and
 - (b) acquire, hold, deal with and dispose of, property; and
 - (c) employ staff; and
 - (d) appoint agents and attorneys; and
 - (e) engage consultants; and
 - (f) charge a fee for services and other facilities it supplies; and
 - (g) do anything else necessary or convenient to be done for its functions.
- (2) Without limiting subsection (1), the commission has the powers given to it under an Act.

9 Ministerial direction

- (1) The Minister may give the commission a written direction in relation to the commission and its functions.
- (2) The commission must comply with the direction.
- (3) The Minister must cause a copy of the direction to be tabled in the Legislative Assembly within 7 sitting days after it is given.
- (4) The commission's annual report under the *Financial Accountability Act 2009*, section 63 for the year in which the direction is given must include a copy of the direction.

Division 2 Queensland Building and Construction Board

Subdivision 1 Establishment and functions

10 Establishment

The Queensland Building and Construction Board is established as the commission's governing body.

11 Functions

The board has the following functions—

- (a) deciding the strategies and the operational, administrative and financial policies to be followed by the commission;
- (b) ensuring the commission performs its functions and exercises its powers in a proper, effective and efficient way;
- (c) making and reviewing policies governing the administration of this Act;
- (d) providing guidance and leadership to the commissioner;
- (da) providing guidance and leadership to the Service Trades Council, other than in relation to its function of conferring on national policy development and implementation for the trade under the *Plumbing and Drainage Act 2002*;
- (e) advising the Minister on issues affecting—
 - (i) the building industry; and
 - (ii) consumers; and
 - (iii) the administration of this Act; and
 - (iv) the administration of the commission;

- (f) advising the Minister about unfair or unconscionable trading practices affecting security of payments to contractors and subcontractors;
- (g) consulting the building industry and its consumers and advancing their interests, consistently with the objects of this Act.

Subdivision 2 Membership

12 Appointment

- (1) The board consists of 7 members appointed by the Governor in Council.
- (2) In appointing a person as a member, the Governor in Council must have regard to the person's ability to make a contribution to the effective and efficient performance of the commission's functions.
- (3) The members are appointed under this Act and not the *Public Service Act 2008*.

13 Disqualification as member

A person is disqualified from becoming, or continuing as, a member if the person—

- (a) has a recorded conviction, other than a spent conviction, for an indictable offence; or
- (b) is an insolvent under administration; or
- (c) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (d) is a relevant officer or contractor of the commission.

14 Conditions of appointment

- (1) A member is to be paid the remuneration and allowances decided by the Governor in Council.

- (2) For matters not provided for by this Act, a member holds office on the terms and conditions decided by the Governor in Council.

15 Term of appointment

- (1) A member is appointed for the term, of no more than 3 years, stated in the member's instrument of appointment.
- (2) However, a person's appointment as a member ends if, during the term of the appointment, the person becomes disqualified under section 13.

16 Chairperson

- (1) The Governor in Council must appoint a member as the chairperson of the board.
- (2) A person may be appointed as the chairperson when the person is appointed as a member.
- (3) The chairperson holds office for the term, ending no later than the person's term of appointment as a member, stated in the person's instrument of appointment as chairperson.
- (4) However, a person's appointment as chairperson ends if, during the term of the appointment, the person stops being a member.

17 Deputy chairperson

- (1) The Governor in Council must appoint a member, other than the chairperson, as deputy chairperson of the board.
- (2) The deputy chairperson holds office for the term, ending no later than the person's term of appointment as a member, stated in the person's instrument of appointment as deputy chairperson.
- (3) However, a person's appointment as deputy chairperson ends if, during the term of the appointment, the person stops being a member.

- (4) The deputy chairperson must act as chairperson—
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.
- (5) A person may be appointed as the deputy chairperson when the person is appointed as a member.

18 Resignation

- (1) A member may resign by signed notice given to the Minister.
- (2) Also, a member may resign the office of chairperson or deputy chairperson by signed notice given to the Minister.
- (3) The resignation takes effect—
 - (a) on the day the notice is given; or
 - (b) if a later day is stated in the notice—on the later day.
- (4) A person resigning from the office of chairperson or deputy chairperson may continue to be a member.

Subdivision 3 Board's policies

19 Board's policy

- (1) The board may make a policy governing the administration of this Act.
- (2) However, the policies can not prevent the commissioner acting independently when making decisions—
 - (a) about the action to be taken about a licensee's licence; or
 - (b) about rectification of building work or remediation of consequential damage; or
 - (c) relating to the statutory insurance scheme.

-
- (3) Also, the policies do not take effect until they have been approved by regulation.
 - (4) The commission must—
 - (a) publish the policies on its website; and
 - (b) keep copies of them available for inspection, without charge, at the commission's office at any time that office is open to the public; and
 - (c) if asked, advise where copies of them may be obtained.

Subdivision 4 Business

20 Conduct of business

Subject to this division and any requirement prescribed under a regulation, the board may conduct its business, including its meetings, in the way it considers appropriate.

20A Meetings

- (1) The chairperson must convene a meeting when requested by at least 3 members.
- (2) At a meeting of the board—
 - (a) 4 members constitute a quorum; and
 - (b) a question is to be decided by a majority of votes of the members present and voting; and
 - (c) each member present has 1 vote on any question arising for decision and, if the votes are equal, the member presiding at the meeting has a casting vote.
- (3) The board must keep minutes of its meetings.

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.

20C Disclosure of interests

- (1) This section applies to a member if—
- (a) the member has an interest in an issue being considered, or about to be considered, by the board; and

- (b) the interest conflicts or may conflict with the proper performance of the member's duties about the consideration of the issue.
- (2) After the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a board meeting.
- (3) Unless the board otherwise directs, the member must not—
 - (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board about the issue.
- (4) The member must not be present when the board is considering whether to give the direction.
- (5) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
 - (a) be present when the board is considering whether to give the direction; or
 - (b) take part in making the decision about giving the direction.
- (6) Subsections (7) and (8) apply if—
 - (a) because of this section, a member is not present at a board meeting for considering or deciding the issue, or for considering or deciding whether to give the direction; and
 - (b) there would be a quorum if the member were present.
- (7) The remaining members present are a quorum of the board for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (8) If there are no members who may remain present for considering or deciding the issue, the Minister may consider and decide the issue.
- (9) The disclosure must be recorded in the board's minutes.

Division 3 Commissioner

20D Appointment

- (1) The commission must have a commissioner.
- (2) The commissioner must be appointed by the board with the Minister's prior written approval.
- (3) The commissioner is employed under this Act and not under the *Public Service Act 2008*.

20E Disqualification as commissioner

A person is disqualified from becoming, or continuing as, the commissioner if the person—

- (a) has a recorded conviction, other than a spent conviction, for an indictable offence; or
- (b) is an insolvent under administration; or
- (c) is not able to manage a corporation because of the Corporations Act, part 2D.6; or
- (d) is a member or a contractor of the commission.

20F Conditions of appointment

For matters not provided for under this Act or stated in the contract of employment, the commissioner holds office on the terms of appointment decided by the board with the Minister's written approval.

20G Term of appointment

- (1) The commissioner holds office for the term, not more than 3 years, stated in his or her contract of employment.
- (2) However, a person's appointment as commissioner ends if, during the term of the appointment, the person becomes disqualified under section 20E.

- (3) Although the board may, at any time, remove a person appointed as commissioner, the removal does not affect any rights to compensation to which the person is entitled under his or her contract of employment.

20H Resignation

The commissioner may resign by signed notice given to the chairperson of the board.

20I Appointment of acting commissioner

The board may only act under the *Acts Interpretation Act 1954*, section 24B or 25 in appointing a person to act in the office of commissioner with the Minister's prior written approval.

20J Role of the commissioner

- (1) The commissioner is responsible for the following—
- (a) the overall management of the organisational unit under the control of the commissioner;
 - (b) administration of the licensing system established by this Act;
 - (c) administration of a system of inspection;
 - (d) issuing directions for rectification of building work under this Act;
 - (e) monitoring, investigating and enforcing compliance with part 6AA, including giving directions for remedial action for contraventions of part 6AA, division 2, subdivision 2;
 - (f) taking disciplinary and other proceedings under this Act;
 - (g) assessing and approving payment of insurance claims;
 - (h) undertaking strategic planning;

- (i) issuing warnings to the public or any section of the public;
 - (j) providing and promoting consumer education;
 - (k) 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;
 - (l) providing an advisory service to consumers about—
 - (i) their statutory rights and obligations; and
 - (ii) insurance claims that may arise about building work; and
 - (iii) the commission's role, functions and operating procedures; and
 - (iv) any incidental matters;
 - (m) providing courses of instruction for—
 - (i) persons seeking to obtain licences; and
 - (ii) licensees; and
 - (iii) persons proposing to carry out building work as owner-builders; and
 - (iv) other persons seeking to acquire knowledge or expertise in subjects related to the building industry;
 - (n) performing a function given to the commissioner under an Act.
- (2) In undertaking the strategic planning, the commissioner must have regard to cyclical industry conditions to ensure the commission's available revenue base, and its assets and reserves, are enough to allow it to maintain the services it is required to provide.

- (3) The commissioner has all the powers necessary for carrying out those responsibilities and any function (an *additional function*) the commissioner is authorised by another Act to carry out.
- (4) In carrying out an additional function, the commissioner may adopt the procedures of this Act unless the Act authorising the function prescribes another procedure.

20K Relationship between commissioner and board

- (1) In carrying out the commissioner's responsibilities, other than performing an additional function, the commissioner must give effect to any policy or direction of the board relevant to the responsibility.
- (2) However, the commissioner must act independently of the board when making any of the following types of decisions giving effect to the board's policies—
 - (a) a decision about the action to be taken about a licensee's licence;
 - (b) a decision about rectification or completion of building work;
 - (c) a decision relating to the statutory insurance scheme;
 - (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.
- (3) The commissioner must—
 - (a) report regularly to the board on the administration of this Act; and
 - (b) at the request of the board, provide the board with a special report on a particular subject.

(4) In this section—

additional function see section 20J(3).

20L Commissioner not to engage in other paid employment

The commissioner must not, without the board's prior written approval—

- (a) engage in paid employment outside the duties of the office of commissioner; or
- (b) actively take part in the activities of a business, or in the management of a corporation carrying on business.

20M Conflicts of interest

If the commissioner has an interest that conflicts or may conflict with the discharge of the commissioner's responsibilities, the commissioner—

- (a) must disclose the nature of the interest and conflict to the board as soon as practicable after the relevant facts come to the commissioner's knowledge; and
- (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the board.

Division 5 The insurance manager

21 Appointment of insurance manager

- (1) There is to be an insurance manager of the commission.
- (2) The commission must—
 - (a) appoint an individual to be the insurance manager; or
 - (b) enter into a work performance arrangement under which an employee of the employing office or of another

government entity holds office as the insurance manager.

- (3) If the commission appoints a person to be the insurance manager under subsection (2)(a), the remuneration and conditions of appointment of the insurance manager are to be decided by the commission.
- (4) The commission may appoint a person to act, or enter into a work performance arrangement under which an employee of the employing office or of another government entity acts, as insurance manager of the commission—
 - (a) when there is a vacancy in the position of insurance manager of the commission; or
 - (b) for any period, or all periods, when the insurance manager is absent from duty or, for any other reason, can not perform the functions of the position.

22 Role of insurance manager

- (1) The insurance manager must report regularly to the board on the administration of the statutory insurance scheme and, if asked by the board, must give the board a special report on a particular subject.
- (2) The insurance manager is independent of the general manager's direction in reporting under subsection (1), but is otherwise subject to the general manager's direction.

Division 6 Financial provisions

25 General Statutory Fund

- (1) A fund called the General Statutory Fund is established.
- (2) The fund consists of—
 - (a) the balance of the Builders' Registration Board General Fund as at the commencement of this section; and

- (b) any money received or recovered by the commission except in connection with the insurance scheme; and
 - (c) all amounts transferred from the Insurance Fund under section 26.
- (3) The following amounts are to be paid from the fund—
 - (a) costs of administering this Act, apart from the costs of administering the statutory insurance scheme;
 - (b) amounts mentioned in subsection (4A).
- (4) A regulation may state a single amount that is to be transferred from the fund to the Insurance Fund.
- (4A) The commission must, at times decided by the commission, transfer amounts from the fund to the Insurance Fund in payment of the single amount stated in the regulation made under subsection (4).
- (5) The commission may apply any amount surplus to the commission's budgetary requirements for a particular financial year to encourage or assist education or research related to the building industry.

26 Insurance Fund

- (1) A fund called the Insurance Fund is established.
- (2) The fund consists of—
 - (a) the balance of the Builders' Registration Board Insurance Fund as at the commencement of this section; and
 - (b) all money received or recovered by the commission in connection with the statutory insurance scheme; and
 - (c) all amounts transferred from the General Statutory Fund under section 25.
- (3) The following amounts are to be paid from the fund—
 - (a) the costs of administering the statutory insurance scheme;

- (b) the costs of paying out claims under the statutory insurance scheme.
- (4) A regulation may require the fund to be managed—
 - (a) in the way prescribed under a regulation; or
 - (b) in accordance with an external standard of fund administration prescribed under a regulation.

26A Management of statutory insurance scheme

The commission must ensure that the statutory insurance scheme is managed in accordance with actuarially sustainable principles so that the amounts paid into the Insurance Fund under section 26(2) will be sufficient to satisfy the amounts to be paid from the Insurance Fund under section 26(3).

27 Application of financial Acts

- (1) The commission is—
 - (a) a statutory body under the *Financial Accountability Act 2009*; and
 - (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982* (the **SBFA**).
- (2) The SBFA, part 2B, sets out the way in which the commission's powers under this Act are affected by the SBFA.

28 Commission's obligation to report suspected offence

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

Division 7 Other provisions

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.

29 Commission may enter into work performance arrangements

- (1) The commission may enter into, and give effect to, a work performance arrangement with—

- (a) the employing office; or
 - (b) the appropriate authority of another government entity.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
- (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
 - (b) the authorising of a person to exercise powers for the arrangement; and
 - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.
- (4) A person performing work for the commission under a work performance arrangement entered into under subsection (1)—
- (a) is not employed by the commission; and
 - (b) remains an employee of the employing office, or an employee of the other government entity whose appropriate authority is a party to the arrangement.
- (5) To remove any doubt, it is declared that the commission does not have power to employ a person performing work for the commission under a work performance arrangement entered into under subsection (1).

Part 2A **Queensland Building and Construction Employing Office**

Division 1 **Establishment and functions of employing office**

29A **Establishment of employing office**

- (1) The Queensland Building and Construction Employing Office is established.
- (2) The employing office consists of—
 - (a) the executive officer; and
 - (b) the employees of the employing office.
- (3) The employing office is a separate entity from the commission.

29B **Employing office represents the State**

- (1) The employing office represents the State.
- (2) Without limiting subsection (1), the employing office has the status, privileges and immunities of the State.

29C **Functions of employing office**

- (1) The main functions of the employing office are—
 - (a) entering into, for the State, a work performance arrangement with the commission under which employees of the employing office perform work for the commission; and
 - (b) employing, for the State, staff to perform work for the commission under the work performance arrangement; and
 - (c) doing anything incidental to the discharge of the functions mentioned in paragraphs (a) and (b).

[s 29D]

- (2) Also, the employing office has any other function conferred on the employing office under this or another Act.
- (3) This section does not limit the employing office's power to enter into and give effect to a work performance arrangement under section 29G with a government entity other than the commission.

Division 2 Executive officer

29D Appointment of executive officer

- (1) There is to be an executive officer of the employing office.
- (2) The executive officer is to be appointed by the Governor in Council.
- (3) The executive officer is appointed under this Act and not under the *Public Service Act 2008*.

29E Executive officer acting for employing office

- (1) The employing office acts through the executive officer.
- (2) Anything done by the executive officer in the name of, or for, the employing office is taken to have been done by the employing office.

Division 3 Staff of employing office

29F Employing office may employ staff

- (1) The employing office may, for the State, employ staff.
- (2) A person employed under subsection (1) is an *employee of the employing office*.
- (3) The employing office may decide the terms of employment of the employees of the employing office.

-
- (4) Subsection (3) applies subject to any relevant industrial instrument.
 - (5) Employees of the employing office are employed under this Act and not under the *Public Service Act 2008*.

29G Employing office may enter into work performance arrangements

- (1) The employing office may, for the State, enter into and give effect to a work performance arrangement with—
 - (a) the commission; or
 - (b) the appropriate authority of another government entity.
- (2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.
- (3) For example, a work performance arrangement may provide for—
 - (a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and
 - (b) the authorising of a person to exercise powers for the arrangement; and
 - (c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.
- (4) A person performing work for the commission or other government entity under a work performance arrangement entered into under subsection (1)—
 - (a) is not employed by the commission or other government entity; and
 - (b) remains an employee of the employing office.
- (5) To remove any doubt, it is declared that the commission or another government entity does not have power to employ a person performing work for the commission or other

government entity under a work performance arrangement entered into under subsection (1).

Division 4 Other provisions

29H Employing office is statutory body

- (1) The employing office is a statutory body under—
 - (a) the *Financial Accountability Act 2009*; and
 - (b) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) For applying the *Financial Accountability Act 2009* to the employing office as a statutory body—
 - (a) the executive officer is taken to be the chairperson of the employing office; and
 - (b) the *Financial Accountability Act 2009* is taken to require the executive officer to consider the annual financial statements and the auditor-general's report as soon as practicable after they are received by the employing office; and
 - (c) the *Financial Accountability Act 2009* is taken to require the executive officer to consider any observations, suggestions or comments given to the executive officer under the *Auditor-General Act 2009* as soon as practicable after the executive officer receives them.

Part 3 Licensing

Division 1 Classes of licences

30 Classes of contractors' licences

- (1) A licence (a *contractor's licence*) may be issued authorising the licensee—

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- (a) to carry out all classes of building work; or
 - (b) to carry out building work of 1 or more classes specified in the licence.
- (2) Contractors' licences are to be divided into classes by regulation—
- (a) according to whether the licence relates to all classes of building work or is limited to a specified class or specified classes of building work; and
 - (b) if the licence is limited to a specified class, or specified classes, of building work—according to the class or classes of building work to which it relates.
- (3) A contractor's licence may be issued for any class of licence.
- (4) However, a regulation may specify a class of licence to be a class that may be held and renewed by a person who held that class immediately before the commencement of the regulation specifying the class but may not, after the commencement of that regulation, be applied for by, or issued to, another person.

30A Nominee supervisor's licence

- (1) A licence (a *nominee supervisor's licence*) may be issued authorising an individual—
- (a) if the individual is the nominee for a licensed contractor that is a company, to—
 - (i) provide supervisory services for building work carried out under the company's licence; and
 - (ii) perform the functions required of a nominee under this Act; or
 - (b) if the individual is an officer or employee of a company, other than the company's nominee—to personally supervise building work carried out under the company's licence.
- (2) An individual who holds a nominee supervisor's licence and who is the employee of a licensed contractor that is an

individual may personally supervise building work carried out under the contractor's licence.

- (3) Nominee supervisors' licences are to be divided into classes by regulation—
 - (a) according to whether the licence relates to all classes of building work or is limited to a specified class or specified classes of building work; and
 - (b) if the licence is limited to a specified class, or specified classes, of building work—according to the class or classes of building work to which it relates.
- (4) A nominee supervisor's licence may be issued for any class of licence.

30B Site supervisor's licence

- (1) A licence (a *site supervisor's licence*) may be issued authorising an individual, while the individual is an officer or employee of a licensed contractor that is a company, to personally supervise building work carried out under the company's licence.
- (2) A licence (also a *site supervisor's licence*) may be issued authorising an individual, while the individual is an employee of a licensed contractor that is an individual, to personally supervise building work carried out under the contractor's licence.
- (3) Site supervisors' licences are to be divided into classes by regulation—
 - (a) according to whether the licence relates to all classes of building work or is limited to a specified class or specified classes of building work; and
 - (b) if the licence is limited to a specified class, or specified classes, of building work—according to the class or classes of building work to which it relates.
- (4) A site supervisor's licence may be issued for any class of licence.

30C Fire protection occupational licence

- (1) A licence (a *fire protection occupational licence*) may be issued authorising an individual, while the individual is an officer or employee of a licensed contractor that is a company, to personally carry out and personally supervise fire protection work carried out under the company's licence.
- (2) A licence (also a *fire protection occupational licence*) may be issued authorising an individual, while the individual is an employee of a licensed contractor that is an individual, to personally carry out and personally supervise fire protection work carried out under the contractor's licence.
- (3) Fire protection occupational licences are to be divided into classes by regulation—
 - (a) according to whether the licence relates to all classes of fire protection work or is limited to a specified class or specified classes of fire protection work; and
 - (b) if the licence is limited to a specified class, or specified classes, of fire protection work—according to the class or classes of fire protection work to which it relates.
- (4) A fire protection occupational licence may be issued for any class of licence.

Division 2 Entitlement to licence

31 Entitlement to contractor's licence

- (1) A person (not being a company) is entitled to a contractor's licence if the commission is, on application by that person, satisfied that—
 - (a) the applicant is a fit and proper person to hold the licence; and
 - (b) the applicant has the qualifications and experience required by regulation in relation to a licence of the relevant class; and

[s 31]

- (c) the applicant satisfies the relevant financial requirements stated in the board's policies; and
 - (d) the applicant can lawfully work in Queensland; and
 - (e) the applicant is not an excluded individual for a relevant event or a permanently excluded individual; and
 - (f) the applicant is not a disqualified individual; and
 - (g) the applicant is not a banned individual; and
 - (h) the applicant does not have an unpaid judgment debt for an amount the commission may recover under section 71.
- (2) A company is entitled to a contractor's licence if the commission is satisfied, on application by that company for a licence, that—
- (a) the directors, secretary and influential persons for the company are fit and proper persons to exercise control or influence over a company that holds a contractor's licence; and
 - (b) the company's nominee holds a licence specifically identifying, as a class of building work that the nominee may supervise, the same class of building work for which the licence is sought by the company; and
 - (c) the applicant satisfies the relevant financial requirements stated in the board's policies; and
 - (d) the company is not an excluded company; and
 - (e) the company is not a company for which a banned or disqualified individual is a director, secretary, influential person or nominee; and
 - (f) neither the company, nor a director, secretary, influential person or nominee of the company has an unpaid judgment debt for an amount the commission may recover under section 71.
- (3) In deciding whether a particular person is a fit and proper person to hold a contractor's licence or to exercise control or

influence over a company that holds a contractor's licence, the commission may have regard to—

- (a) commercial and other dealings in which that person has been involved and the standard of honesty and integrity demonstrated in those dealings; and
 - (b) any failure by that person to carry out commercial or statutory obligations and the reasons for the failure; and
 - (c) tier 1 defective work carried out by the person, whether or not the person received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and
 - (ca) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order; and
 - (d) any other relevant factor.
- (4) However, the commission may not have regard to the matter mentioned in subsection (3)(ca) if—
- (a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.

31A No entitlement to contractor's licence if particular partners

A person (whether an individual or a company) is not entitled to a contractor's licence if the person carries on, or intends to carry on, business under the licence in partnership with another person who is—

- (a) an excluded individual; or
- (b) a permanently excluded individual; or
- (c) a convicted company officer; or

- (d) a banned individual; or
- (e) a disqualified individual; or
- (f) an excluded company; or
- (g) a company for which a permanently excluded individual is a director, secretary, influential person or nominee; or
- (h) a company for which a convicted company officer is a director, secretary, influential person or nominee; or
- (i) a company for which a banned individual is a director, secretary, influential person or nominee; or
- (j) a company for which a disqualified individual is a director, secretary, influential person or nominee.

32 Entitlement to a nominee supervisor's licence

- (1) An individual is entitled to a nominee supervisor's licence if the commission is, on application by the individual, satisfied that—
 - (a) the applicant has the qualifications and experience required by regulation for a licence of the relevant class; and
 - (b) the applicant can lawfully work in Queensland; and
 - (c) the applicant is not an excluded individual for a relevant event or a permanently excluded individual; and
 - (d) the applicant is not a banned individual; and
 - (e) the applicant is not a disqualified individual; and
 - (f) the applicant does not have an unpaid judgment debt for an amount the commission may recover under section 71; and
 - (g) the applicant is a fit and proper person to hold the licence.
- (2) In deciding whether an applicant is a fit and proper person to hold the licence, the commission may have regard to—

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- (a) commercial and other dealings in which the applicant has been involved and the standard of honesty and integrity demonstrated in those dealings; and
 - (b) any failure by the applicant to carry out commercial or statutory obligations and the reasons for the failure; and
 - (c) tier 1 defective work carried out by the applicant, whether or not the applicant received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and
 - (d) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order; and
 - (e) any other relevant factor.
- (3) However, the commission may not have regard to the matter mentioned in subsection (2)(d) if—
- (a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.

32AA Entitlement to a site supervisor's licence

- (1) An individual is entitled to a site supervisor's licence if the commission is, on application by the individual, satisfied that—
- (a) the applicant has the qualifications required by regulation for a licence of the relevant class; and
 - (b) the applicant can lawfully work in Queensland; and
 - (c) the applicant is not a banned individual; and
 - (d) the applicant is a fit and proper person to hold the licence.

- (2) In deciding whether an applicant is a fit and proper person to hold the licence, the commission may have regard only to—
 - (a) tier 1 defective work carried out by the applicant, whether or not the applicant received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and
 - (b) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.
- (3) However, the commission may not have regard to the matter mentioned in subsection (2)(b) if—
 - (a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.

32AB Entitlement to a fire protection occupational licence

- (1) An individual is entitled to a fire protection occupational licence if the commission is, on application by the individual, satisfied that—
 - (a) the applicant has the qualifications required by regulation for a licence of the relevant class; and
 - (b) the applicant can lawfully work in Queensland; and
 - (c) the applicant is not a banned individual; and
 - (d) the applicant is a fit and proper person to hold a licence.
- (2) In deciding whether an applicant is a fit and proper person, the commission may have regard only to—
 - (a) tier 1 defective work carried out by the applicant, whether or not the applicant received a notice under

section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work; and

- (b) if the person is an enforcement debtor under an enforcement order for an infringement notice offence for this Act—whether the person has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.
- (3) However, the commission may not have regard to the matter mentioned in subsection (2)(b) if—
- (a) the person has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.

32A Exception for s 30(4) licences

This division is subject to section 30(4).

Division 3 Grant of licence

33 Application for licence

- (1) An application for a licence—
- (a) must be made in accordance with the regulations; and
 - (b) must be accompanied by—
 - (i) if the applicant is an individual, 2 recent passport-size photographs of the applicant suitable for inclusion in a licence and certified in the way prescribed by regulation; and
 - (ii) the appropriate application fee fixed by regulation.
- (2) An applicant for a licence must at the request of the commission provide any further information or evidence that the commission may require to decide the application.

[s 34]

- (3) In deciding whether to give a licence, the commission may make inquiries and investigations that are reasonable and appropriate in the circumstances, including for example by—
 - (a) seeking confirmation about the experience of applicants through site inspections and referee checks; and
 - (b) carrying out checks with the Australian Securities and Investment Commission, bankruptcy registers and credit bureaus.

34 Grant of licence

- (1) If the commission is satisfied, on an application under this division, that the applicant is entitled to a licence, the commission must issue a licence of the appropriate class.
- (2) A licence is to be in the form of a card and must—
 - (a) state the licensee's name and licence number; and
 - (b) state the type of licence; and
 - (c) state the class of building work the licensee is licensed to carry out; and
 - (d) if the licensee is an individual, contain a recent photograph of the licensee; and
 - (e) state when the licence is due for renewal.
- (3) The commission may also issue a licence certificate in a form determined by the commission.
- (4) If, on application by a licensee and payment of the fee required by regulation, the commission is satisfied that a licence card or a licence certificate has been lost, damaged or destroyed, the commission may issue a new licence card or licence certificate.

Division 3A Issue of PINs to licensees

34A PINs

- (1) The commission may give a licensee a confidential personal identification number (a *PIN*) for use by the licensee in the licensee's dealings with the commission.
- (2) When the commission gives a PIN to a licensee, the commission must also advise the licensee of the commission's requirements for the licensee's keeping and use of the PIN.

Division 4 Conditions of licence

35 Imposition of conditions etc. on grant of licence

- (1) A licence may be granted subject to such conditions as the commission considers appropriate.
- (2) Without limiting subsection (1), a licence for which an occupational licence is required is taken to be subject to the condition that the licensee hold, and continue to hold, for the term of the licence, the occupational licence.
- (3) Without limiting subsection (1), a contractor's licence is subject to the condition that—
 - (a) the licensee's financial circumstances must at all times satisfy the relevant financial requirements stated in the board's policies; and
 - (b) variations of the contractor's turnover and assets must be notified, or notified and approved, in accordance with the relevant financial requirements stated in the board's policies.

36 Subsequent imposition of conditions etc.

- (1) If the commission has reason to believe—

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

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

- (2) After considering the written representations (if any) made by the licensee, the commission, if satisfied that the condition is appropriate, may, by notice to the licensee, impose the condition.
- (3) A condition may be imposed preventing the licensee from continuing to carry on business until the licensee has lodged with the commission appropriate security against possible liabilities in relation to building work.
- (3A) A condition may be imposed requiring the licensee to complete a course module included in technical or managerial national competency standards relevant to the building industry.
- (3B) A condition may be imposed requiring the licensee to give to the commission specified documents that relate to the licensee's obligations under part 4 or schedule 1B.
- (3C) Subsections (3), (3A) and (3B) do not limit the power to impose conditions under subsection (2).
- (4) The commission may, by subsequent notice to the licensee, vary or revoke a condition imposed under this section.
- (5) A notice imposing or varying a condition must inform the licensee of the licensee's right to apply for a review of the commission's decision to impose or vary the condition.

Division 5 Renewal of licences

37 Period of renewal

A licensee for any of the following licences may choose to renew the licence for a period of either 1 year or 3 years—

- (a) a contractor's licence;
- (b) a nominee supervisor's licence;
- (c) a site supervisor's licence;
- (d) a fire protection occupational licence.

37A Commission to advise licensee before licence due for renewal

- (1) The commission must give notice in writing to a licensee at least 28 days before the renewal day for the licensee's licence.
- (2) The notice must state the following—
 - (a) the renewal day for the licensee's licence;
 - (b) if the licensee is an individual, whether or not the commission requires 2 recent passport-size photographs of the licensee suitable for inclusion in a licence and certified in the way prescribed by regulation;
 - (c) the renewal fee for the licence and that it must be paid on or before the renewal day;
 - (d) for a contractor's licence, when the documentary evidence required by the financial requirements stated in the board's policies must be given to the commission.

37B Applications for renewal of licence

- (1) A licensee may apply to the commission for the renewal of the licensee's licence before the renewal day for the licence.
- (2) The application must—
 - (a) be made in the way prescribed under a regulation; and

[s 38]

- (b) be accompanied by the appropriate fee prescribed by regulation for the renewal; and
 - (c) if the commission has advised that it requires 2 recent passport-size photographs of the licensee suitable for inclusion in a licence and certified in the way prescribed by regulation—be accompanied by the photographs.
- (3) If requested by the commission by written notice, the licensee must, within the reasonable time stated in the notice, give the commission the further information or evidence the commission requires to decide whether the applicant continues to be entitled to hold a licence.

38 Suspension for non-payment of fee

- (1) If a licensee fails to pay the appropriate licence fee within the time allowed under the regulations, the commission may, by notice to the licensee, suspend the licence.
- (2) A suspension imposed under this section terminates on payment of the appropriate fee.
- (3) If a licence has remained in suspension under this section for more than 3 months, the commission may, by notice to the licensee, cancel the licence.

38A Receipt of fee does not revive licence

- (1) This section applies if, despite the cancellation or suspension of a licence under this Act, other than a suspension under section 38(1), the commission accepts the payment of an amount purporting to be the licence fee for the licence.
- (2) The licence does not stop being cancelled or suspended merely because of the commission's acceptance of the payment.
- (3) Subsection (2) applies whether or not the commission gives a receipt for the payment.

Division 6 Restoration of licences

39 Restoration of licence

- (1) This section applies if a licence has been cancelled under section 38(3).
- (2) The licensee may request that the commission restore the licence.
- (3) The commission must restore the licence if the request—
 - (a) is made within 3 months of the licence being cancelled; and
 - (b) is accompanied by the fee prescribed by regulation.

Division 7 Requirement to be licensed

42 Unlawful carrying out of building work

- (1) A person must not carry out, or undertake to carry out, building work unless the person holds a contractor's licence of the appropriate class under this Act.
Maximum penalty—250 penalty units.
- (2) However, subsection (1) does not apply to a person to the extent that the person is exempt under schedule 1A.
- (3) Subject to subsection (4), a person who carries out building work in contravention of this section is not entitled to any monetary or other consideration for doing so.
- (4) A person is not stopped under subsection (3) from claiming reasonable remuneration for carrying out building work, but only if the amount claimed—
 - (a) is not more than the amount paid by the person in supplying materials and labour for carrying out the building work; and
 - (b) does not include allowance for any of the following—

[s 42A]

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

42A Exemption from s 42 for up to 6 months

- (1) This section applies if—
- (a) on or after 1 July 2000, a class of licence (the *new class of licence*) is established under this Act; and
 - (b) immediately before the establishment of the new class of licence a person (the *relevant person*) was carrying on a business that included carrying out work (*relevant work*) within the scope of work for the new class of licence; and
 - (c) either of the following applied immediately before the establishment of the new class of licence—
 - (i) no relevant work was building work;
 - (ii) some relevant work was building work, but its carrying out was incidental to the carrying out of all other relevant work.
- (2) The relevant person does not contravene section 42(1) in carrying out, or undertaking to carry out, relevant work unless—

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

42B Carrying out building work without a nominee

- (1) A licensee that is a company must not carry out, or undertake to carry out, building work unless the licensee has a nominee who holds a contractor's licence or a nominee supervisor's licence for the building work carried out, or undertaken to be carried out, under the company's class of licence.

Maximum penalty—250 penalty units.

- (2) However, a licensee does not commit an offence against subsection (1) if the period the licensee has not had a nominee is less than 28 days.

42C Unlawful carrying out of fire protection work

- (1) An individual must not personally carry out, or personally supervise, fire protection work unless the individual—
 - (a) holds a fire protection occupational licence; or
 - (b) holds a licence, registration or authorisation under this or another Act that allows the person to personally carry out or personally supervise the work.

Maximum penalty—250 penalty units.

- (2) Subsection (1) does not apply to an individual who personally carries out fire protection work if—
 - (a) the fire protection work is a type prescribed under a regulation; and
 - (b) the individual has the technical qualifications prescribed under a regulation for the type of fire protection work; and

[s 42D]

- (c) the individual carries out the fire protection work for a licensed contractor who holds a licence of the relevant class for the work.
- (3) Also, subsection (1) does not apply to—
- (a) an apprentice who personally carries out fire protection work in a calling that requires the apprentice to carry out the work; or
 - (b) a trainee who personally carries out fire protection work in a calling that requires the trainee to carry out the work; or
 - (c) a student who personally carries out fire protection work as part of training under the supervision of teaching staff at—
 - (i) a university; or
 - (ii) a college, school or similar institution conducted, approved or accredited by the State or the Commonwealth; or
 - (d) a student who, for work experience, personally carries out fire protection work as part of a pre-vocational course.

42D Licensed contractor must not engage or direct unauthorised person for fire protection work

A licensed contractor must not engage or direct an employee to carry out fire protection work unless the employee is authorised to carry out the work under this or another Act.

Maximum penalty—250 penalty units.

Note—

This provision is an executive liability provision—see section 111B.

43 Licensed contractor must ensure building work is personally supervised

- (1) For a licensed contractor that is a company, the company and the company's nominee must each ensure that building work carried out by the contractor is personally supervised by—
- (a) the company's nominee; or
 - (b) an officer or employee of the contractor who holds one of the following licences of the relevant class authorising supervision of the building work—
 - (i) a nominee supervisor's licence;
 - (ii) a site supervisor's licence;
 - (iii) a fire protection occupational licence;
 - (iv) an occupational licence; or
 - (c) an individual who holds a contractor's licence of the relevant class.

Maximum penalty—

- (a) for an individual—200 penalty units; or
 - (b) for a company—1,000 penalty units.
- (2) For a licensed contractor that is an individual, the contractor must ensure that building work carried out by the contractor is personally supervised by—
- (a) the contractor; or
 - (b) an employee of the contractor who holds one of the following licences of the relevant class authorising supervision of the building work—
 - (i) a nominee supervisor's licence;
 - (ii) a site supervisor's licence;
 - (iii) a fire protection occupational licence;
 - (iv) an occupational licence; or
 - (c) an individual who holds a contractor's licence of the relevant class.

Maximum penalty—200 penalty units.

- (3) In this section—

licensed contractor does not include a licensed contractor that is a construction manager.

43A Licensed contractor must ensure building work is adequately supervised

- (1) For a licensed contractor that is a company, the company and the company's nominee must each ensure that building work carried out by the contractor is adequately supervised.

Maximum penalty—

- (a) for an individual—200 penalty units; or
 - (b) for a company—1,000 penalty units.
- (2) For a licensed contractor that is an individual, the contractor must ensure that building work carried out by the contractor is adequately supervised.

Maximum penalty—200 penalty units.

- (3) In deciding whether building work is adequately supervised, regard must be had to the following—
- (a) whether the licensed contractor has a system for the supervision of the work and, if so, how the system has been implemented;
 - (b) whether the building work is in accordance with the plans and specifications set out in the contract for the work;
 - (c) whether the work is of a standard expected of a competent holder of a contractor's licence of the relevant class;
 - (d) whether, having regard to the size and complexity of the building work, the following are sufficient—
 - (i) the level of control, oversight and direction exercised by a person authorised to supervise the work;

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- (ii) the number, timing and quality of inspections carried out by a person authorised to supervise the work;
 - (e) whether the building work is checked on its completion and before final payment by a person authorised to supervise the work.
- (4) In this section—
- licensed contractor* does not include a licensed contractor that is a construction manager.

43B Construction manager must ensure building work is personally supervised

- (1) This section applies if a construction manager provides building work services for a principal under a construction management contract for the carrying out of building work.
- (2) For a construction manager that is a company, the company and the company's nominee must each ensure that building work carried out by licensed contractors under construction management trade contracts for the principal is personally supervised by—
 - (a) the company's nominee; or
 - (b) an officer or employee of the company who holds one of the following licences of the relevant class authorising supervision of the building work—
 - (i) a nominee supervisor's licence;
 - (ii) a site supervisor's licence;
 - (iii) a fire protection occupational licence;
 - (iv) an occupational licence; or
 - (c) an individual who holds a contractor's licence of the relevant class.

Maximum penalty—

- (a) for an individual—200 penalty units; or

- (b) for a company—1,000 penalty units.
- (3) For a construction manager that is an individual, the construction manager must ensure that building work carried out by licensed contractors under construction management trade contracts for the principal is personally supervised by—
 - (a) the construction manager; or
 - (b) an employee of the construction manager who holds one of the following licences of the relevant class authorising supervision of the building work—
 - (i) a nominee supervisor’s licence;
 - (ii) a site supervisor’s licence;
 - (iii) a fire protection occupational licence;
 - (iv) an occupational licence; or
 - (c) an individual who holds a contractor’s licence of the relevant class.

Maximum penalty—200 penalty units.

43C Construction manager must ensure building work is adequately supervised

- (1) This section applies if a construction manager provides building work services for a principal under a construction management contract for the carrying out of building work.
- (2) For a construction manager that is a company, the company and the company’s nominee must each ensure that the building work carried out by licensed contractors under construction management trade contracts for the principal is adequately supervised.

Maximum penalty—

- (a) for an individual—200 penalty units; or
- (b) for a company—1,000 penalty units.
- (3) For a construction manager that is an individual, the construction manager must ensure that the building work

carried out by licensed contractors under construction management trade contracts for the principal is adequately supervised.

Maximum penalty—200 penalty units.

- (4) In deciding whether building work is adequately supervised, regard must be had to the following—
- (a) whether the construction manager has a system for the supervision of the work and, if so, how the system has been implemented;
 - (b) whether the building work is in accordance with the plans and specifications set out in the contract for the work;
 - (c) whether the work is of a standard expected of a competent holder of a contractor's licence of the relevant class;
 - (d) whether, having regard to the size and complexity of the building work, the following are sufficient—
 - (i) the level of control, oversight and direction exercised by a person authorised to supervise the work;
 - (ii) the number, timing and quality of inspections carried out by a person authorised to supervise the work;
 - (e) whether the building work is checked on its completion and before final payment by a person authorised to supervise the work.

Division 8 Owner-builders

43D Definitions for div 8

In this division—

carry out, in relation to owner-builder work, means—

- (a) carry out the work personally; or
- (b) do both of the following—
 - (i) engage 1 or more licensed contractors to carry out building work;
 - (ii) provide building work services that would usually be carried out by a licensed contractor in the course of the contractor's business; or
- (c) do a combination of (a) and (b).

Examples of an owner providing building work services—

- directing licensed contractors how to perform building work
- coordinating the scheduling of building work by licensed contractors
- arranging for payment of subcontractors

multiple dwelling means a building comprising 2 or more residential units.

owner includes a person—

- (a) who—
 - (i) holds an estate or interest in land that entitles the person to become an owner (as defined in schedule 2) of the land; or
 - (ii) is the occupier of land under a lease, licence or other authority from the owner (as defined in schedule 2) of the land; and
- (b) who produces, with an application for an owner-builder permit, the written agreement of the owner (as defined in schedule 2) of the land for an owner-builder permit to be issued to the person.

owner-builder course means a course prescribed by regulation.

owner-builder work means building work for a building that is to be used for residential purposes carried out on the owner's land other than the following—

- (a) building work for a multiple dwelling;

- (b) fire protection work, unless the work is carried out by a person who holds a licence to carry out the work;
- (c) building work for which an occupational licence is required (the *occupational work*), unless the work is carried out by a person who holds a licence to carry out the work.

43E When owner-builder permit is required

An owner requires a permit (an *owner-builder permit*) to carry out owner-builder work on the owner's land.

44 Application for owner-builder permit

- (1) The owner of land may apply to the commission for an owner-builder permit.
- (2) The application must be—
 - (a) in writing; and
 - (b) in the form decided by the commission; and
 - (c) signed by—
 - (i) for an owner that is not a company, the owner, or if there is more than 1 owner, by all the owners; or
 - (ii) for a company, by all the directors of the company; and
 - (d) be accompanied by the fee prescribed by regulation.
- (3) The application must—
 - (a) state the name of the owner; and
 - (b) if the owner is a company, state the names of the directors and the company's ACN number; and
 - (c) state the location of the land; and
 - (d) include a description of the work to be carried out; and
 - (e) include other information the commission reasonably requires to decide an application.

[s 44A]

- (4) The application must be accompanied by—
 - (a) proof of the applicant's identity; and
 - (b) if the applicant is a company, a copy of the company's current or historical extract; and
 - (c) proof that the applicant is the owner of the land; and
 - (d) proof that an owner-builder course has been successfully completed by an individual who is—
 - (i) an applicant; or
 - (ii) a director of a company that is an applicant.

44A Consideration of application for permit

- (1) The commission must consider the application and either grant, or refuse to grant, the application.
- (2) However, before deciding the application, the commission may, by written notice given to the applicant, require the applicant to give the commission, within a reasonable period of at least 14 days stated in the notice, further information or a document the commission reasonably considers is needed to decide the application.
- (3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.
- (4) The commission may extend the stated period at the request of the applicant.

44B Criteria for granting application for permit

- (1) The commission may grant the application only if the commission is satisfied—
 - (a) that the applicant, or each applicant, is the owner of the land; and

- (b) that an applicant, or a director of a company that is an applicant, has successfully completed an owner-builder course; and
- (c) if the applicant, or any of the applicants, is an individual, that none of the following has been issued with a permit in the 6 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) a company for which an applicant who is an individual is or was a director; and
- (d) if the applicant, or any of the applicants, is a company, that none of the following has been issued with a permit in the 6 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) an individual who is or was a director of the company; and
- (e) if the applicant, or any of the applicants, is an individual, that none of the following has had an owner-builder permit cancelled in the 3 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) a company for which an applicant who is an individual is or was a director; and
- (f) if the applicant, or any of the applicants, is a company, that none of the following has had an owner-builder permit cancelled in the 3 years preceding the application—
 - (i) the applicant, or any of the applicants;
 - (ii) an individual who is or was a director of the company; and
- (g) none of the applicants is a banned individual; and
- (h) if an applicant is a company, that none of the directors of the company is a banned individual; and

- (i) each applicant is a fit and proper person to hold a permit.
- (2) In deciding whether an applicant is a fit and proper person, the commission may have regard only to—
 - (a) tier 1 defective work carried out by the following persons, whether or not the person received a notice under section 67AH, 67AI, 67AL or 67AM stating a term of ban for the work—
 - (i) the applicant;
 - (ii) if the applicant is a company, a director of the applicant; and
 - (b) if the applicant, or a director of the applicant, is an enforcement debtor under an enforcement order for an infringement notice offence for this Act—whether the applicant or director has taken steps under the *State Penalties Enforcement Act 1999* to discharge the amount stated in the enforcement order.
- (3) However, the commission may not have regard to the matter mentioned in subsection (2)(b) if—
 - (a) the applicant or director has applied for cancellation of the relevant enforcement order and the application for cancellation has not been finally decided; or
 - (b) 28 days have not elapsed since the date of the enforcement order.
- (4) Despite subsection (1)(c) and (d), the commission may grant an application if—
 - (a) a regulation prescribes exceptional circumstances in which the commission may grant an application even though a previous permit has been issued in the 6 years preceding the application; and
 - (b) the commission considers the applicant is able to show the exceptional circumstances.

44C When permit becomes effective

A permit has effect on the day stated in the permit.

44D Term of permit

A permit ends 6 years after its issue or on the earlier date stated in the permit.

44E Conditions of permit

A permit is subject to the following conditions—

- (a) the permittee must comply with this Act;
- (b) the permittee may only carry out the building work as stated in the permit;
- (c) if the permittee engages persons to carry out building work, the persons must be licensed contractors for the work;
- (d) the permittee must not personally carry out building work for which an occupational licence is required;
- (e) the permittee must not personally carry out fire protection work if the value of the work is more than the amount prescribed by regulation, or if no amount is prescribed, more than \$1,100;
- (f) other reasonable conditions—
 - (i) the commission considers appropriate to give effect to this Act; and
 - (ii) stated in the permit.

44F Form of permit

A permit is to be in the form decided by the commission and must state the following particulars—

- (a) the permittee's name;

[s 44G]

- (b) the location of the land on which the owner-builder work is to be carried out;
- (c) the real property description of the land;
- (d) a description of the owner-builder work to be carried out on the land;
- (e) the date of issue of the permit;
- (f) the term of the permit;
- (g) the permit number;
- (h) the conditions of the permit.

44G Cancellation or suspension of permit

The commission may suspend or cancel a permit if—

- (a) the permit was obtained on the basis of incorrect information supplied to the commission, whether or not fraud was intended; or
- (b) the permit was obtained by fraud or other improper means; or
- (c) the permittee carries out tier 1 defective work on the land the subject of the permit; or
- (d) the permittee contravenes a condition to which the permit is subject; or
- (e) the commission becomes aware of the existence of facts that would have allowed the commission to refuse to issue the permit originally.

44H Procedure for cancellation or suspension

- (1) The commission must, before cancelling or suspending a permit, give the permittee notice of its reasons for the proposed cancellation or suspension and allow the permittee 21 days from service of the notice to make written representations on the matter.

- (2) The commission must consider any written representations made within the time allowed under subsection (1) before imposing the cancellation or suspension.
- (3) A cancellation or suspension is imposed by written notice to the permittee.
- (4) The notice of cancellation or suspension must comply with the QCAT Act, section 157(2).

44I Permit issued to more than 1 person

If a permit is issued jointly to more than 1 person, a reference in this part to the permittee is a reference to each of the persons.

44J Surrender of permit

- (1) A permittee may surrender the permit by written notice given to the commission.
- (2) The permit must accompany the notice.
- (3) The surrender takes effect on the later of the following—
 - (a) the day the notice is given;
 - (b) the day specified in the notice.

45 Replacement of permits

- (1) A permittee may apply to the commission for the replacement of a permit if it has been lost, stolen, destroyed or damaged.
- (2) The commission must consider the application and either grant, or refuse to grant, the application.
- (3) The commission must grant the application if the commission is satisfied the permit has been lost, stolen or destroyed, or damaged in a way to require its replacement.
- (4) If the commission grants the application, the commission must, on payment of the reasonable cost of replacing the

permit, issue another permit to the applicant to replace the lost, stolen, destroyed or damaged permit.

46 Notification on certificate of title

- (1) If a permit is issued under this division, the commission must notify the registrar of titles of the granting of the permit.
- (2) If the commission becomes aware that building work has been carried out, and that a permit should have been, but was not, obtained under this division for carrying out the building work, the commission must notify the registrar of titles of the carrying out of the building work without a permit.
- (3) On receiving a notification under this section, the registrar of titles must enter the notification in the file attached to the register and it may not be removed except under this section.
- (4) At the end of 7 years from entry of a notification, the registrar of titles may remove it from the file.
- (5) In this section—
register means—
 - (a) for freehold land—the freehold land register; or
 - (b) for other land—the relevant register for the land.

47 Warnings

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

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

- (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
- (i) the licensee owes an amount to the commission and fails to comply with a demand by the commission to discharge the debt; or
- (ia) the licensee fails to comply with a written request by the commission under this Act; or
- (j) the commission becomes aware of the existence of facts that, having regard to section 31(1)(a) or (2)(a), or 32(1)(g), or 32AA(1)(d), or 32AB(1)(d)—
 - (i) would allow the commission to refuse to issue the licence if it were now being applied for by the licensee; or
 - (ii) would have allowed the commission to refuse to issue the licence originally.

(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.

49 Procedure for cancellation or suspension

- (1) The commission must, before cancelling or suspending a licence, give the licensee notice of its reasons for the proposed cancellation or suspension and allow the licensee 21 days from service of the notice to make written representations on the matter.

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- (2) The commission must consider any written representations made within the time allowed under subsection (1) before imposing the cancellation or suspension.
 - (3) A cancellation or suspension is imposed by written notice to the licensee.
 - (4) The notice of cancellation or suspension must comply with the QCAT Act, section 157(2).

49A Immediate suspension of licence

- (1) The commission may suspend a licensee's licence without allowing the licensee time to make written representations before the suspension takes effect if the commission reasonably believes there is a real likelihood that serious financial loss or other serious harm will happen to any of the following if the licence is not immediately suspended—
 - (a) other licensees;
 - (b) the employees of other licensees;
 - (c) consumers;
 - (d) suppliers of building materials or services.
- (2) The suspension under subsection (1) is imposed by written notice given to the licensee that complies with the QCAT Act, section 157(2) and—
 - (a) states that licensee may make written representations for a lifting of the suspension; and
 - (b) briefly explains how the suspension could lapse under subsection (3).
- (3) The suspension under subsection (1) lapses if—
 - (a) the commission does not, within 10 days after the licensee is given notice of the suspension, give the licensee notice under section 49(1) of the commission's reasons for a proposed cancellation or suspension of the licence under section 48 (a *section 49 notice*); or

[s 49B]

- (b) the commission, within 10 days after the licensee is given notice of the suspension, gives the licensee a section 49 notice, but the licence is not suspended or cancelled under section 48 within 3 months, or a longer period decided under subsections (4) and (5), after the section 49 notice is given; or
 - (c) the commission suspends or cancels the licence under section 48.
- (4) The commission may extend the period of 3 months mentioned in subsection (3)(b), but only if it appears to the commission that, in the circumstances, it is in the interests of the licensee to do so.
- (5) The period may be extended more than once, but whenever it is extended, it must not be extended for more than 1 month.

49B Suspension or cancellation for failure to comply with tribunal's orders and directions

- (1) The tribunal may, in a proceeding to which a licensee is a party, order that the licensee's licence be suspended or cancelled if the licensee fails to comply with an order or direction of the tribunal within the time allowed by the tribunal.
- (2) Before ordering that a licence be suspended or cancelled, the tribunal must give the licensee a reasonable opportunity to show cause why it should not be cancelled or suspended.
- (3) An order under this section operates, of its own force, to suspend or cancel the licence if the licensee fails to comply with the tribunal's order or direction within the time allowed by the tribunal.

50 Surrender of licence

A licensee may, with the consent of the commission, surrender the licence.

**Division 9A Monitoring continued satisfaction
of financial requirements and
compliance with parts 4 and 5, and
schedule 1B**

50A Approved audit program

- (1) The commissioner may approve a program (an *approved audit program*) under which the commission may audit licensees for one of the following purposes—
 - (a) to find out if they continue to satisfy the relevant financial requirements stated in the board’s policies;
 - (b) to find out if they have been complying with part 4A, part 5 or schedule 1B.
- (2) An approved audit program must state the following—
 - (a) the purpose of the program;
 - (b) when the program starts;
 - (c) the period over which the program is to be carried out;
 - (d) objective criteria for selecting licensees who are to be the subject of audit;
 - (e) if the licensees to be audited are to be selected from licensees holding licences of a particular class, a description of the class.

**50C Supply of financial records and other documents under
approved audit program or for other reason**

- (1) This section applies to a licensee if—
 - (a) the licensee is selected to be audited under an approved audit program; or
 - (b) the commission is satisfied, because of information received by the commission, there are reasonable grounds for concern that—

- (i) the licensee does not satisfy the relevant financial requirements stated in the board's policies; or
 - (ii) the licensee is not, or has not been, complying with part 4A, part 5 or schedule 1B.
- (2) The commission may give a written notice to the licensee requiring the licensee to give the commission copies of, or access to—
 - (a) the financial records described in the notice; or
 - (b) the documents described in the notice that relate to the licensee's obligations under part 4A, part 5 or schedule 1B.
- (3) The written notice may describe only—
 - (a) the financial records of the licensee the commission reasonably requires for deciding whether the licensee satisfies the relevant financial requirements stated in the board's policies; or
 - (b) the documents the commission reasonably requires for deciding whether the licensee is, or has been, complying with part 4A, part 5 or schedule 1B.
- (4) The licensee must comply with the written notice within 21 days after the licensee receives the written notice, unless the licensee has a reasonable excuse.

Maximum penalty—100 penalty units.
- (4A) It is not a reasonable excuse to fail to comply with the written notice that complying with the notice might tend to incriminate the person.
- (5) Also, if the licensee does not comply with the written notice within 21 days after the licensee receives it, the licensee is taken, for section 48(1)(h), to have contravened a condition imposed under section 36 on the licensee's licence.

Division 10 Miscellaneous

50D Person must not pretend to be a licensee

- (1) A person must not pretend to be a licensee.
Maximum penalty—250 penalty units.
- (2) Subsection (1) does not apply if the person makes use of another licensee's licence to pretend to be a licensee.

51 Improper use of licence card, certificate, number or PIN

- (1) A licensee must not allow another person to make use of the licensee's licence if the licensee knows, or ought reasonably to know, that the other person intends to make use of the licence—
 - (a) if the other person is not also a licensee—to pretend to be a licensee; or
 - (b) if the other person is also a licensee—to pretend to be the holder of a licence authorising the doing of something the other person is not authorised to do.

Maximum penalty—250 penalty units.

- (2) A person who is not a licensee must not make use of a licensee's licence to pretend to be a licensee.

Maximum penalty—250 penalty units.

- (3) A licensee (the *first licensee*) must not make use of another licensee's licence to pretend to be the holder of a licence authorising the doing of something the first licensee is not authorised to do.

Maximum penalty—250 penalty units.

- (4) In this section—

make use of, a licensee's licence, means make use of the number of the licensee's licence or the licensee's licence card, licence certificate or PIN.

51A Other offences relating to unlawful carrying out of building work

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

Maximum penalty—250 penalty units.

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

Maximum penalty—250 penalty units.

51B Licensed contractor must not contract with unlicensed person

- (1) This section applies to building work for which a person must hold a contractor's licence under this Act.

Note—

A person mentioned in schedule 1A is not required to hold a contractor's licence in the circumstances stated in the schedule.

- (2) A licensed contractor must not contract with a person for the person to carry out the building work unless the person holds a contractor's licence of the appropriate class under this Act.

Maximum penalty—

- (a) for a first offence—80 penalty units; and
(b) for a second offence—120 penalty units; and
(c) for a third or subsequent offence—160 penalty units.
- (3) In a proceeding taken against a licensed contractor for an offence against this section it is a defence for the contractor to prove the contractor took all reasonable action to ensure compliance with this section.
- (4) Subsection (3) does not limit the application of the Criminal Code, section 23 or 24.

52 Signs to be exhibited

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

Maximum penalty—20 penalty units.

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

Maximum penalty—20 penalty units.

53 Return of licence

- (1) A licensee (or former licensee) whose licence is suspended or cancelled must, within 14 days of receiving notice of the suspension or cancellation, return the licence and, if the commission has issued a licence certificate, the licence certificate, to the commission.
- (2) A licensee must, within 14 days of receiving notice of the imposition, variation or revocation of a condition of the licence return the licence and, if the commission has issued a licence certificate, the licence certificate, to the commission for endorsement.
- (3) A person who fails, without reasonable excuse, to comply with a requirement of this section commits an offence.

Maximum penalty—80 penalty units.

53A Satisfying financial requirements at renewal

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

[s 53B]

- (2) The form approved by the board may require some or all of the information to be given by a person suitably qualified and experienced in accountancy.
- (3) If the contractor does not give the commission the information mentioned in subsection (1), the commission may, by written notice given to the licensee, suspend the licence.
- (4) A suspension imposed under this section ends when the commission is given the information.
- (5) If a licence has remained in suspension under this section for more than 3 months, the commission may, by notice to the licensee, cancel the licence.

53B False or misleading documents about financial requirements

- (1) A person must not give a document or information to the commission about a contractor's satisfaction of financial requirements stated in the board's policies if—
 - (a) the person knows—
 - (i) the document contains information that is false or misleading; or
 - (ii) the information is false or misleading; or
 - (b) the document contains information that is false or misleading or the information is false or misleading and the person did not take reasonable steps to make sure that the information was not false or misleading.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1)(a) does not apply to a person who, when giving the document—
 - (a) informs the commission, to the best of the person's ability, how it is false or misleading; and
 - (b) gives the correct information to the commission if the person has, or can reasonably obtain, the correct information.

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

53C Advertising by unlicensed person

- (1) A person who does not hold a contractor's licence must not publish an advertisement that the person is available to carry out building work unless the advertisement complies with this section.
- (2) The advertisement must state the value of the work the person is entitled to carry out without a licence.

Maximum penalty—100 penalty units.

- (3) A regulation may prescribe the following for an advertisement under this section—
- (a) the way the advertisement is to be presented;
 - (b) the words to be included in the advertisement.
- (4) In this section—

building work includes building work of any value, despite any regulation excluding building work of a stated value from the definition *building work* for this Act.

54 Advertisements

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

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

Maximum penalty—35 penalty units.

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.

55 Notification of company's nominee

If a company that holds a licence—

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

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

Maximum penalty—20 penalty units.

56 Partnerships

- (1) A licensed contractor may carry on business under the licence in partnership with an unlicensed person subject to the following conditions—
 - (a) no contract to carry out building work may be entered into, and no offer or tender to carry out building work may be made, on behalf of the partnership except by the licensed contractor;
 - (b) any such contract offer or tender must be signed by the licensed contractor and have endorsed on it the names of the other members of the partnership;
 - (c) any advertisement published in relation to the business carried on, or to be carried on, under the licence must state the name under which the licensed contractor is licensed and conform with any requirements imposed by regulation;
 - (d) the unlicensed person must not be—

- (i) an excluded individual; or
 - (ii) a permanently excluded individual; or
 - (iii) a convicted company officer; or
 - (iv) a banned individual; or
 - (v) a disqualified individual; or
 - (vi) an excluded company; or
 - (vii) a company for which a permanently excluded individual is a director, secretary, influential person or nominee; or
 - (viii) a company for which a convicted company officer is a director, secretary, influential person or nominee; or
 - (ix) a company for which a banned individual is a director, secretary, influential person or nominee; or
 - (x) a company for which a disqualified individual is a director, secretary, influential person or nominee.
- (2) If a condition imposed by subsection (1) is contravened, each member of the partnership commits an offence.
- Maximum penalty—
- (a) for subsection (1)(a) to (c)—80 penalty units; or
 - (b) for subsection (1)(d)—200 penalty units.

56A Commission may request photographs for licence

- (1) Subsection (2) applies to a licensee who is an individual.
- (2) The commission may, at any time by written notice, request the licensee to give the commission 2 passport-size photographs of the applicant that are—
 - (a) recent photographs of the licensee; and
 - (b) certified in the way prescribed by regulation; and
 - (c) suitable for inclusion in the licensee's licence.

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- (3) The licensee must provide the photographs within 28 days of receiving the request.

Part 3A Excluded individuals and excluded companies

Division 1 Preliminary

56AB Operation of pt 3A

This part has effect despite anything in part 3, but does not apply to—

- (a) a site supervisor's licence; or
- (b) a fire protection occupational licence.

56AC Excluded individuals and excluded companies

- (1) This section applies to an individual if—
 - (a) the individual takes advantage of the laws of bankruptcy or becomes bankrupt (*relevant bankruptcy event*); and
 - (b) 3 years have not elapsed since the relevant bankruptcy event happened.
- (2) This section also applies to an individual if—
 - (a) a construction company, for the benefit of a creditor—
 - (i) has a provisional liquidator, liquidator, administrator or controller appointed; or
 - (ii) is wound up, or is ordered to be wound up; and
 - (b) 3 years have not elapsed since the event mentioned in paragraph (a)(i) or (ii) (*relevant company event*) happened; and
 - (c) the individual—

[s 56AE]

- (i) was, when the relevant company event happened, a director or secretary of, or an influential person for, the construction company; or
 - (ii) was, within the period of 1 year immediately before the relevant company event happened, a director or secretary of, or an influential person for, the construction company.
- (3) If this section applies to an individual because of subsection (1), the individual is an *excluded individual* for the relevant bankruptcy event.
- (4) If this section applies to an individual because of subsection (2), the individual is an *excluded individual* for the relevant company event.
- (5) An excluded individual for a relevant event does not also become an excluded individual for another relevant event if the commission is satisfied that both events are consequences flowing from what is, in substance, the one set of circumstances.
- (6) A company is an *excluded company* if an individual who is a director or secretary of, or an influential person for, the construction company is an excluded individual for a relevant event.
- (7) In this section—
construction company means a company that directly or indirectly carries out building work or building work services.

Division 3 Licence exclusion and cancellation

56AE Exclusion from licence

The commission must not grant a person a licence if the person is—

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

56AF Procedure if licensee is excluded individual

- (1) This section applies if the commission considers that an individual who is a licensee is an excluded individual for a relevant event.
- (2) The commission must give the individual a written notice identifying the relevant event and stating the following—
 - (a) why the commission considers the individual is an excluded individual for the relevant event;
 - (b) that the individual may make a submission to the commission about the relevant event within the reply period;
 - (c) the circumstances, stated in subsection (3), in which the commission must cancel the individual's licence.
- (3) The commission must cancel the individual's licence, by written notice given to the individual, if—
 - (a) after considering any submission about the notice made by the individual within the reply period, the commission still considers the individual is an excluded individual for a relevant event; or
 - (b) the individual does not make a submission about the notice within the reply period.
- (4) Section 49 does not apply to a cancellation under subsection (3).
- (5) In this section—

reply period, for a written notice given under subsection (2), means 28 days after the commission gives an individual the written notice.

56AG Procedure if licensee is excluded company

- (1) This section applies if the commission considers that a company that is a licensee is an excluded company.
- (2) The commission must give the company a written notice stating the following—

[s 56AH]

- (a) particulars identifying the individual (the *relevant individual*) who is a director or secretary of, or an influential person for, the company and who is an excluded individual for a relevant event;
 - (b) particulars identifying the relevant event;
 - (c) within 28 days after the commission gives the company the written notice, the relevant individual must stop being a director, secretary or influential person;
 - (d) the circumstances, stated in subsections (3), (4) and (5), in which the commission must cancel the company's licence.
- (3) The commission must cancel the company's licence by written notice given to the company if, within the 28 days mentioned in subsection (2)(c), the relevant individual does not stop being a director or secretary of, or an influential person for, the company.
- (4) Section 49 does not apply to a cancellation under subsection (3).

56AH Review by tribunal of commission's opinion

- (1) This section applies if the commission considers under section 56AF or 56AG (the *relevant section*) that a person is an excluded individual or excluded company, or that an individual is still a director or secretary of, or an influential person for, a company.
- (2) If a person applies for a review of the commission's decision, the application for review does not affect anything already done or in force under the relevant section, but periods of time mentioned in the relevant section are taken to stop running until the review is finished.

Part 3B Permanently excluded individuals

Division 1 Preliminary

57 Operation of pt 3B

This part has effect despite anything in part 3, but does not apply to—

- (a) a site supervisor's licence; or
- (b) a fire protection occupational licence.

58 Meaning of *permanently excluded individual*

- (1) A *permanently excluded individual* is an individual—
 - (a) who has twice been an excluded individual for a relevant event; and
 - (b) who for each relevant event has been given written notice by the commission stating—
 - (i) particulars identifying the relevant event; and
 - (ii) why the commission considers the individual is an excluded individual for the relevant event.
- (2) Notice under subsection (1)(b)—
 - (a) must be given while the individual is an excluded individual for the relevant event to which the notice relates; and
 - (b) if the notice is the second or a subsequent notice the individual has been given about being an excluded individual for a relevant event—
 - (i) must state the effect of the individual becoming a permanently excluded individual; and
 - (ii) may be given at any time after an earlier notice was given.

[s 58]

- (3) An excluded individual who is a licensee is taken to have been given notice under subsection (1)(b) if—
 - (a) the individual has been given notice under section 56AF(2); and
 - (b) for a second or subsequent notice, the notice also includes the information required under subsection (2)(b)(i).
- (4) A second or subsequent notice may be given for a relevant event whether the event happened before or after another event for which the commission has already given notice under subsection (1)(b).
- (5) However, subsection (1) applies only if an individual became an excluded individual for at least one of the relevant events after the commencement of this section, irrespective of when the circumstances resulting in the relevant event arose.
- (6) If a second or subsequent notice does not include the information required under subsection (2)(b)(i) another notice containing the information may be given.
- (7) It is declared that in deciding whether 2 relevant events as mentioned in subsection (1) have happened, a relevant event must be counted—
 - (a) whether the relevant event happened before or after the other relevant event; and
 - (b) whether or not the notices under subsection (1)(b) for the relevant events were given in the order the relevant events happened; and
 - (c) regardless of the length of time between the giving of the notices under subsection (1)(b) for the relevant events; and
 - (d) whether the relevant event happened before or after the commencement of this section, subject to subsection (5).

Example for subsection (2)(a)—

The commission gives a licensee a notice under this section for a relevant event for which the licensee is currently an excluded

individual. The commission later discovers that the licensee was, before the grant of the licensee's licence, an excluded individual for a previous relevant event. However, the licensee is not currently an excluded individual for this relevant event because 5 years have elapsed since the event happened. It may not give the licensee a notice for this event.

Example for subsection (7)(a), (b) and (d)—

The commission gives a licensee a notice under this section for a relevant event that happened after the commencement of this section. It later discovers that the licensee is an excluded individual for another relevant event that happened before the grant of the licensee's licence and before the commencement of this section. It may give the licensee a notice for this relevant event. Also, it is the later notice, about the earlier relevant event, that must state the effect of the individual becoming a permanently excluded individual.

Examples for subsection (7)(c)—

- 1 The commission becomes aware that a person who is an applicant for a contractor's licence is currently an excluded individual for 2 relevant events one of which happened after the commencement of this section. The commission may give the person a notice for one of the relevant events and immediately give a notice for the other relevant event. Also, it is the later notice that must state the effect of the individual becoming a permanently excluded individual.
- 2 A licensee becomes an excluded individual for a relevant event. The individual's licence is cancelled under section 56AF and the individual is given notice complying with this section for the relevant event. More than 5 years later the licensee applies for and is granted a contractor's licence. Ten years after this, the licensee becomes an excluded individual for another relevant event. The commission gives a notice complying with this section for the latest relevant event. This notice includes the information required for a second or subsequent notice under subsection (2)(b)(i) and the individual becomes a permanently excluded individual.

Division 2 Licence exclusion

59 Exclusion from licence

The commission must not grant a person a licence if the person is—

- (a) a permanently excluded individual; or

[s 60]

- (b) a company for which a permanently excluded individual is a director, secretary, influential person or nominee.

60 Permanently excluded individual not fit and proper

A permanently excluded individual is taken not to be a fit and proper person for part 3, division 2.

61 When individual no longer permanently excluded individual

In deciding whether an individual is, or continues to be, a permanently excluded individual, a relevant event for which the individual has been given notice under section 58(1)(b) must not be counted if the individual applies to the tribunal under section 86(1)(k) for a review of the commission's decision under section 56AF that a person is an excluded individual, and the tribunal reverses or annuls the commission's decision.

Part 3C Convicted company officers

Division 1 Preliminary

62 Operation of pt 3C

This part has effect despite anything in part 3, but does not apply to—

- (a) a site supervisor's licence; or
(b) a fire protection occupational licence.

Division 2 Licence exclusion and cancellation

63 Exclusion from licence

The commission must not grant a person a licence if the person is—

- (a) a convicted company officer; or
- (b) a company for which a convicted company officer is a director, secretary, influential person or nominee.

64 Procedure if commission considers individual a convicted company officer

- (1) This section applies if the commission considers that an individual is a convicted company officer.
- (2) The commission must give the individual a written notice stating—
 - (a) details of the conviction the commission considers makes the individual a convicted company officer; and
 - (b) the effect of the individual being a convicted company officer; and
 - (c) an invitation to the individual to make written submissions, within a stated period, to satisfy the commission that the individual is not a convicted company officer.
- (3) The stated period must be at least 28 days after the written notice is given to the individual.
- (4) The commission must consider any submissions made by the individual.

65 Ending procedure without further action

- (1) This section applies if, after considering submissions made by the individual, the commission is satisfied the individual is not a convicted company officer.

[s 66]

- (2) The commission must, as soon as practicable, advise the individual in writing that no further action under this part will be taken in relation to the notice given under section 64(2).

66 Notice of cancellation and that not a fit and proper person to individual who is a licensee

- (1) For an individual who is a licensee, subsection (3) applies if, after considering submissions made by the individual for the notice under section 64(2), the commission still considers that the individual is a convicted company officer.
- (2) Subsection (3) also applies if there are no submissions for the notice under section 64(2).
- (3) The commission must, by written notice given to the individual—
 - (a) inform the individual that the commission still considers the individual is a convicted company officer; and
 - (b) cancel the individual's licence; and
 - (c) inform the individual—
 - (i) that the individual is taken not to be a fit and proper person for part 3, division 2; and
 - (ii) of the individual's right to apply to the tribunal for a review of the commission's decision.

Note—

An individual may have the commission's decision reviewed by the tribunal under section 86(1)(l).

- (4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.
- (5) Section 49 does not apply to a cancellation under subsection (3).

67 Notice that not a fit and proper person to individual who is not a licensee

- (1) For an individual who is not a licensee, subsection (3) applies if, after considering submissions made by the individual for the notice under section 64(2), the commission still considers that the individual is a convicted company officer.
- (2) Subsection (3) also applies if there are no submissions for the notice under section 64(2).
- (3) The commission must, by written notice given to the individual, inform the individual—
 - (a) that the commission still considers the individual is a convicted company officer; and
 - (b) that the individual is taken not to be a fit and proper person for part 3, division 2; and
 - (c) of the individual's right to apply to the tribunal for a review of the commission's decision; and
 - (d) how, and the period within which, the individual may apply to the tribunal for the review; and
 - (e) any right the individual has to have the operation of the commission's decision stayed by the tribunal.
- (4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.

67AA Notice by commission to company for which a convicted company officer is a director, secretary, influential person or nominee

- (1) This section applies if the commission considers that a company that is a licensee has an individual who is a convicted company officer as a director or secretary of, or an influential person or nominee for, the company.
- (2) The commission must give the company a written notice stating—

[s 67AB]

- (a) particulars identifying the individual (the *relevant individual*) the commission considers is a director or secretary of, or an influential person or nominee for, the company; and

Note—

A company may have the commission's decision reviewed by the tribunal under section 86(1)(m).

- (b) that the relevant individual must stop being a director, secretary, influential person or nominee within 28 days after the commission gives the individual the written notice; and
- (c) the commission must cancel the licensee's licence if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in paragraph (b).
- (3) The commission must cancel the company's licence by written notice given to the company if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in subsection (2)(b).
- (4) Section 49 does not apply to a cancellation under subsection (3).

Part 3D Banned individuals

Division 1 Preliminary

67AB Meaning of *tier 1 defective work* and *carry out tier 1 defective work*

- (1) *Tier 1 defective work* means grossly defective building work that—
- (a) falls below the standard reasonably expected of a licensed contractor for the type of building work; and
- (b) either—

- (i) adversely affects the structural performance of a building to the extent that a person could not reasonably be expected to use the building for the purpose for which it was, or is being, erected or constructed; or
- (ii) is likely to cause the death of, or grievous bodily harm to, a person.

Example for paragraph (b)(i)—

A building is constructed and due to substandard building work all or a significant part of the building requires demolition or substantial reconstruction.

Examples for paragraph (b)(ii)—

A fire protection contractor installs a fire protection system that does not meet the requirements of the Building Code of Australia for the system. In the event of fire, the noncompliance is likely to result in the death of, or grievous bodily harm to, a person.

- (2) **Carry out tier 1 defective work** means—
- (a) carry out tier 1 defective work personally; or
 - (b) directly or indirectly, cause tier 1 defective work to be carried out; or
 - (c) provide advisory, administrative, management or supervisory services for carrying out tier 1 defective work.

67AC Banned individual

- (1) An individual is a **banned individual** if the individual is given notice under this part that the individual is taken not to be a fit and proper person for part 3, division 2.
- (2) The individual continues to be a banned individual for the term calculated under this part and stated in the notice.

67AD Operation of pt 3D

This part has effect despite anything in part 3.

Division 2 Licence exclusion and cancellation

67AE Exclusion from licence

The commission must not grant a person a licence if the person is—

- (a) a banned individual; or
- (b) a company for which a banned individual is a director, secretary, influential person or nominee.

67AF Procedure if commission considers individual has carried out tier 1 defective work

- (1) This section applies if the commission considers that an individual has carried out tier 1 defective work after the commencement of this section.
- (2) The commission may give the individual a written notice stating—
 - (a) details of the tier 1 defective work; and
 - (b) the effect of the individual becoming a banned individual for the tier 1 defective work; and
 - (c) an invitation to the individual to make written submissions, within a stated period, to satisfy the commission that—
 - (i) the individual did not carry out the work stated in the notice; or
 - (ii) the work carried out by the individual was not tier 1 defective work; or
 - (iii) the individual exercised reasonable diligence to ensure that the work carried out was not defective.

Example for subparagraph (iii)—

An individual carried out tier 1 defective work in relation to the footings of a house. However, the individual had reasonably relied on plans for the footings drawn by an engineer and carried out the work in accordance with the

plans. It was the reliance on the plans that caused the tier 1 defective work.

- (3) The stated period must be at least 28 days after the written notice is given to the individual.
- (4) The commission must consider any submissions made by the individual.

67AG Ending procedure without further action

- (1) This section applies if, after considering submissions made by the individual, the commission is satisfied that—
 - (a) the individual did not carry out the work stated in the notice; or
 - (b) the work carried out by the individual was not tier 1 defective work; or
 - (c) the individual exercised reasonable diligence to ensure that the work carried out was not defective.
- (2) The commission must, as soon as practicable, advise the individual in writing that no further action under this part will be taken in relation to the written notice given under section 67AF(2).

67AH Notice of cancellation and that not a fit and proper person to individual who is a licensee

- (1) For an individual who is a licensee, subsection (3) applies if, after considering the submissions made by the individual for the notice under section 67AF(2), the commission—
 - (a) still considers that—
 - (i) the individual carried out the work stated in the notice; and
 - (ii) the work carried out was tier 1 defective work; and
 - (b) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective.

[s 67AH]

- (2) Subsection (3) also applies if there are no submissions for the notice under section 67AF(2).
- (3) The commission must, by written notice given to the individual—
 - (a) inform the individual that the commission—
 - (i) still considers—
 - (A) that the individual carried out the work stated in the notice; and
 - (B) the work carried out was tier 1 defective work; and
 - (ii) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective; and
 - (b) cancel the individual's licence; and
 - (c) inform the individual—
 - (i) that the individual is taken not to be a fit and proper person for part 3, division 2, for the term calculated under section 67AO and stated in the notice; and
 - (ii) of the individual's right to apply to the tribunal for a review of the commission's decision; and
 - (iii) how, and the period within which, the individual may apply to the tribunal for the review; and
 - (iv) any right the individual has to have the operation of the commission's decision stayed by the tribunal.

Note—

An individual who is given notice that they are taken not to be a fit and proper person (a **banned individual**) for a stated term may have the commission's decision reviewed under section 86(1)(n).

- (4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.

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

67AI Notice that not a fit and proper person to individual who is not a licensee

- (1) For an individual who is not a licensee, subsection (3) applies if, after considering the submissions made by the individual for the notice under section 67AF(2), the commission—
- (a) still considers that—
 - (i) the individual carried out the work stated in the notice; and
 - (ii) the work carried out was tier 1 defective work; and
 - (b) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective.
- (2) Subsection (3) also applies if there are no submissions for the notice under section 67AF(2).
- (3) The commission must, by written notice given to the individual, inform the individual—
- (a) that the commission—
 - (i) still considers that—
 - (A) the individual carried out the work stated in the notice; and
 - (B) the work carried out was tier 1 defective work; and
 - (ii) is not satisfied that the individual exercised reasonable diligence to ensure that the work carried out was not defective; and
 - (b) that the individual is taken not to be a fit and proper person for part 3, division 2, for the term calculated under section 67AO and stated in the notice; and
 - (c) of the individual's right to apply to the tribunal for a review of the commission's decision; and

[s 67AJ]

- (d) how, and the period within which, the individual may apply to the tribunal for the review; and
- (e) any right the individual has to have the operation of the commission's decision stayed by the tribunal.

Note—

An individual who is given notice that they are taken not to be a fit and proper person (a **banned individual**) for a stated term may have the commission's decision reviewed under section 86(1)(n).

- (4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.

67AJ Notice by commission to director, secretary, influential person or nominee about tier 1 defective work

- (1) This section applies if the commission considers that a company has carried out tier 1 defective work after the commencement of this section.
- (2) The commission may give an individual who was a director or secretary of, or an influential person or nominee for, the company at the time the work was carried out, a written notice stating—
 - (a) details of the tier 1 defective work; and
 - (b) the effect of the director, secretary, influential person or nominee becoming a banned individual for the tier 1 defective work; and
 - (c) an invitation to the director, secretary, influential person or nominee to make written submissions, within a stated period, to satisfy the commission that—
 - (i) the company did not carry out the work stated in the notice; or
 - (ii) the work carried out by the company was not tier 1 defective work; or

- (iii) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; or
 - (iv) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work.
- (3) The stated period must be at least 28 days after the written notice is given to the director, secretary, influential person or nominee.
- (4) The commission must consider any submissions made by the director, secretary, influential person or nominee.

67AK Ending procedure without further action

- (1) This section applies if, after considering submissions made by the director, secretary, influential person or nominee, the commission is satisfied that—
- (a) the company did not carry out the work stated in the notice; or
 - (b) the work carried out by the company was not tier 1 defective work; or
 - (c) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; or
 - (d) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work.
- (2) The commission must, as soon as practicable, advise the director, secretary, influential person or nominee in writing that no further action under this part will be taken in relation to the notice given under section 67AJ(2).

[s 67AL]

67AL Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee

- (1) For a director, secretary, influential person or nominee who is a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AJ(2), the commission—
 - (a) still considers—
 - (i) that the company carried out the work stated in the notice; and
 - (ii) that the work carried out was tier 1 defective work; and
 - (b) is not satisfied—
 - (i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work; or
 - (ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective.
- (2) Subsection (3) also applies if there are no submissions for the notice under section 67AJ(2).
- (3) The commission must, by written notice given to the director, secretary, influential person or nominee—
 - (a) inform the director, secretary, influential person or nominee that the commission—
 - (i) still considers—
 - (A) that the company carried out the work stated in the notice; and
 - (B) that the work carried out was tier 1 defective work; and
 - (ii) is not satisfied—

-
- (A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work; or
 - (B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; and
- (b) cancel the director's, secretary's, influential person's or nominee's licence; and
 - (c) inform the director, secretary, influential person or nominee—
 - (i) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2, for the term calculated under section 67AO and stated in the notice; and
 - (ii) of the director's, secretary's, influential person's or nominee's right to apply to the tribunal for a review of the commission's decision; and
 - (iii) how, and the period within which, the director, secretary, influential person or nominee may apply to the tribunal for the review; and
 - (iv) any right the director, secretary, influential person or nominee has to have the operation of the commission's decision stayed by the tribunal.

Note—

A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a **banned individual**) for a stated term may have the commission's decision reviewed under section 86(1)(n).

- (4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.
- (5) Section 49 does not apply to a cancellation under subsection (3).

[s 67AM]

67AM Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee

- (1) For a director, secretary, influential person or nominee who is not a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AJ(2), the commission—
 - (a) still considers—
 - (i) that the company carried out the work stated in the notice; and
 - (ii) that the work carried out was tier 1 defective work; and
 - (b) is not satisfied—
 - (i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work; or
 - (ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective.

Note—

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

- (2) Subsection (3) also applies if there are no submissions for the notice under section 67AJ(2).
- (3) The commission must, by written notice given to the director, secretary, influential person or nominee inform the director, secretary, influential person or nominee—
 - (a) that the commission—
 - (i) still considers—
 - (A) that the company carried out the work stated in the notice; and

- (B) that the work carried out was tier 1 defective work; and
- (ii) is not satisfied—
 - (A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to the defective work; or
 - (B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the work carried out was not defective; and
- (b) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2, for the term calculated under section 67AO and stated in the notice; and
- (c) of the director's, secretary's, influential person's or nominee's right to apply to the tribunal for a review of the commission's decision; and
- (d) how, and the period within which, the director, secretary, influential person or nominee may apply to the tribunal for the review; and
- (e) any right the director, secretary, influential person or nominee has to have the operation of the commission's decision stayed by the tribunal.

Note—

A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a **banned individual**) for a stated term may have the commission's decision reviewed under section 86(1)(n).

- (4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.

[s 67AN]

67AN Notice by commission to company for which a banned individual is a director, secretary, influential person or nominee

- (1) This section applies if the commission considers that a company that is a licensee has an individual who is a banned individual as a director or secretary of, or an influential person or nominee for, the company.
- (2) The commission must give the company a written notice stating—
 - (a) particulars identifying the individual (the *relevant individual*) the commission considers is a director or secretary of, or an influential person or nominee for, the company; and

Note—
A company may have the commission’s decision reviewed under section 86(1)(o).
 - (b) that the relevant individual must stop being a director, secretary, influential person or nominee within 28 days after the commission gives the company the written notice; and
 - (c) the commission must cancel the company’s licence if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in paragraph (b).
- (3) The commission must cancel the company’s licence by written notice given to the company if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in subsection (2)(b).
- (4) Section 49 does not apply to a cancellation under subsection (3).

67AO Terms of bans

- (1) This section states the term for which an individual given a notice under section 67AH, 67AI, 67AL or 67AM is taken not

to be a fit and proper person for part 3, division 2 (the *term of ban*).

- (2) Only tier 1 defective work carried out after the commencement of this section may be taken into account in calculating the term of ban.
- (3) The term of ban for an individual given a notice for tier 1 defective work for the first time is 3 years.
- (4) The term of ban for an individual given a notice for tier 1 defective work a second time or subsequent time is the life of the individual.
- (5) A notice may be given to an individual a second time or subsequent time under section 67AH, 67AI, 67AL or 67AM if—
 - (a) a notice for tier 1 defective work has been given under one of the sections stating a ban of 3 years; and
 - (b) the second or subsequent notice relates to tier 1 defective work carried out after the notice stating a ban of 3 years is given.
- (6) It is declared that, in deciding whether a notice for tier 1 defective work has been given to an individual a second time or subsequent time, a notice given to an individual for the first time under section 67AH, 67AI, 67AL or 67AM stating a ban of 3 years must be counted whether or not the individual has served the term of the ban.

Example for subsections (5) and (6)—

An individual who is a licensee is given a notice under section 67AH for tier 1 defective work carried out by the individual. The notice informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for 3 years. After the notice under section 67AH is given, the individual carries out other tier 1 defective work. The commission may give the individual a second notice under section 67AH for the other tier 1 defective work whether or not the 3 years have passed. Also, it is the second notice under section 67AH that informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for the life of the individual.

- (7) However, in deciding whether a notice for tier 1 defective work is given to an individual a second time or subsequent

[s 67AQ]

time, an earlier notice given to an individual under section 67AH, 67AI, 67AL or 67AM must not be counted if—

- (a) the earlier notice was given more than 10 years before the second or subsequent notice; or
 - (b) the commission's decision under the earlier notice was reversed or annulled on review by the tribunal.
- (8) In this section a reference to tier 1 defective work carried out is—
- (a) for an individual given notice under section 67AH(3) or 67AI(3)—a reference to tier 1 defective work carried out by the individual; or
 - (b) for an individual given notice under section 67AL(3) or 67AM(3)—a reference to tier 1 defective work carried out by the company for which the individual was a director, secretary, influential person or nominee.

Part 3E Disqualified individuals

Division 1 Preliminary

67AQ Definitions for pt 3E

In this part—

accumulate—

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

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

building contract see section 67AAA.

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

-
- (a) a court finding the person guilty or accepting the person's plea of guilty, whether or not a conviction is recorded;
 - (b) the person paying a fine under an infringement notice, in full;
 - (c) the person paying the first instalment of a fine under an infringement notice;
 - (d) the registration by the registrar of a default certificate for an infringement notice given to the person;
 - (e) a decision of the commission to take disciplinary action against the person if the disciplinary action has taken effect under section 74G.

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

demerit matter means—

- (a) a conviction for a demerit offence; or
- (b) an unsatisfied judgment debt.

demerit offence see section 67AR.

demerit points means demerit points allocated by the commission under this part for a demerit matter.

disqualified individual see section 67AU.

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

judgment debt see section 67AS.

period of 3 years, in relation to the accumulation of demerit points, means a period of 3 years or less.

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

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

unsatisfied, in relation to a judgment debt, see section 67AT.

[s 67AR]

67AR Meaning of *demerit offence*

A *demerit offence* is—

- (a) an offence against a provision prescribed by regulation;
or
- (b) a contravention of a requirement imposed under this Act and prescribed by regulation.

67AS Meaning of *judgment debt*

- (1) A *judgment debt* is the amount, for which judgment has been entered in a court of competent jurisdiction, owing by a building contractor—
 - (a) in relation to a building contract or a domestic building contract; or
 - (b) for goods or services supplied for—
 - (i) building work to be carried out under a building contract; or
 - (ii) domestic building work to be carried out under a domestic building contract; or
 - (c) to the commission for a claim under the statutory insurance scheme.
- (2) Judgment must be entered after the commencement of this section.
- (3) However, the circumstances giving rise to the judgment debt may have arisen before the commencement of this section.

67AT Meaning of *unsatisfied judgment debt*

- (1) A judgment debt is *unsatisfied* if it has not been paid in full within—
 - (a) 28 days after judgment is entered; or
 - (b) if a longer period is allowed by the court for payment—the longer period.

-
- (2) A judgment debt is not unsatisfied if the judgment creditor has accepted and been paid an amount in full and final settlement within the relevant period mentioned in subsection (1).

67AU Disqualified individual

- (1) An individual is a *disqualified individual* if the individual is given notice under this part that the individual is taken not to be a fit and proper person for part 3, division 2.
- (2) The individual continues to be a disqualified individual for the term calculated under this part and stated in the notice.

67AV Operation of pt 3E

This part has effect despite anything in part 3, but does not apply to—

- (a) a site supervisor's licence; or
- (b) a fire protection occupational licence.

Division 2 Calculation of demerit points and notification of unsatisfied judgment debts

67AW Demerit points for demerit matters

- (1) This section applies to a person who—
- (a) has a conviction for a demerit offence; or
 - (b) is a judgment debtor for an unsatisfied judgment debt.
- (2) The commission must allocate demerit points under this part to the person as follows—
- (a) for a conviction for a demerit offence—the number of points allocated to the offence under a regulation;
 - (b) for an unsatisfied judgment debt—10 points.
- (3) This section is subject to section 67AZB.

67AX When demerit points allocated for demerit offences

- (1) The commission must allocate demerit points to a person for a conviction for a demerit offence as soon as practicable after the points take effect.
- (2) Demerit points for a conviction for a demerit offence take effect—
 - (a) if a court finds a person guilty—on the day after the last day on which the person may appeal the finding; or
 - (b) if a court accepts a person’s plea of guilty—on the day the plea is accepted; or
 - (c) if a person pays the fine under an infringement notice, in full—on the day the fine is paid; or
 - (d) if a person applies to the administering authority to pay the fine under an infringement notice, by instalments—on the day the administering authority receives the first instalment; or
 - (e) if the administering authority gives a default certificate to SPER for registration—on the day the default certificate is registered; or
 - (f) if the commission decides to take disciplinary action against the person—on the day the disciplinary action takes effect under section 74G.
- (3) However, if a conviction for a demerit offence is appealed, demerit points for the conviction must not be allocated until the appeal is finally dealt with or withdrawn.
- (4) Also, if a conviction for a demerit offence is appealed and after the appeal there is no conviction, demerit points stop having effect.
- (5) In this section—

appeal includes a review of a decision of the commission by the tribunal under section 86.

67AY When demerit points allocated for unsatisfied judgment debts

- (1) The commission must allocate demerit points to a person for an unsatisfied judgment debt as soon as practicable after the points take effect.
- (2) Demerit points take effect when the judgment debt becomes an unsatisfied judgment debt.
- (3) However, if a decision relating to a judgment is appealed or an application is made to set the judgment aside, demerit points must not be allocated for the unsatisfied judgment debt until the appeal or application is finally dealt with or withdrawn.
- (4) Also, if a decision relating to a judgment is appealed or an application is made to set the judgment aside and after the appeal or application there is no unsatisfied judgment debt, demerit points stop having effect.

67AZ Judgment debtor must notify unsatisfied judgment debt

- (1) A judgment debtor for a judgment debt must notify the commission within 14 days after the judgment debt becomes an unsatisfied judgment debt.

Maximum penalty—40 penalty units.

- (2) Notification under subsection (1) must include the following—
 - (a) particulars of the debt;
 - (b) the name and address of the judgment debtor;
 - (c) the name and address of the judgment creditor;
 - (d) the date judgment was entered and the amount for which it was entered;
 - (e) the court in which it was entered;
 - (f) the number of the proceeding for which it was entered sufficient to allow a search of the court registry;
 - (g) details of any payments made to reduce the judgment debt.

67AZA Commission must notify person about demerit points

- (1) Subsection (2) applies if the commission allocates demerit points to a person.
- (2) The commission must, as soon as practicable after the demerit points are allocated, notify the person in writing of—
 - (a) the demerit points allocated; and
 - (b) the demerit matters for which they were allocated; and
 - (c) the date the points took effect.

67AZB Limit on demerit points from single audit

- (1) This section applies if a licensee is convicted of demerit offences discovered by the commission as a result of a written notice given to a licensee under section 50C(2).
- (2) The maximum demerit points that may be allocated to the licensee for the convictions for the demerit offences is 20.
- (3) Nothing in this section prevents more demerit points being allocated to the licensee for convictions for demerit offences discovered by the commission as a result of a later written notice given under section 50C(2).
- (4) However, more demerit points must not be allocated—
 - (a) if the earlier notice and the later notice relate to—
 - (i) the same audit under an approved audit program; or
 - (ii) information received by the commission from the same source; or
 - (b) for convictions for demerit offences discovered by the commission as a result of a later notice if the offences—
 - (i) were committed before an earlier notice; and
 - (ii) demerit offences were discovered as a result of the earlier notice and resulted in the allocation of demerit points.

Division 3 Licence exclusion and cancellation

67AZC Exclusion from licence

The commission must not grant a person a licence if the person is—

- (a) a disqualified individual; or
- (b) a company for which a disqualified individual is a director, secretary, influential person or nominee.

67AZD Procedure if commission considers individual has accumulated 30 demerit points

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

[s 67AZE]

counted for an unsatisfied judgment debt paid in full before the end of the stated period.

67AZE Ending procedure without further action

- (1) This section applies if, after considering submissions made by the individual, the commission is satisfied the individual has not accumulated 30 demerit points in a period of 3 years.
- (2) The commission must, as soon as practicable, advise the individual in writing that no further action under this part will be taken in relation to the notice given under section 67AZD(2).

67AZF Notice of cancellation and that not a fit and proper person to individual who is a licensee

- (1) For an individual who is a licensee, subsection (3) applies if, after considering submissions made by the individual for the notice under section 67AZD(2), the commission still considers that the individual has accumulated 30 demerit points in a period of 3 years.
- (2) Subsection (3) also applies if there are no submissions for the notice under section 67AZD(2).
- (3) The commission must, by written notice given to the individual—
 - (a) inform the individual that the commission still considers the individual has accumulated 30 demerit points in a period of 3 years; and
 - (b) cancel the individual's licence; and
 - (c) inform the individual—
 - (i) that the individual is taken not to be a fit and proper person for part 3, division 2 for the term calculated under section 67AZM and stated in the notice; and
 - (ii) of the individual's right to apply to the tribunal for a review of the commission's decision; and

- (iii) how, and the period within which, the individual may apply to the tribunal for the review; and
- (iv) any right the individual has to have the operation of the commission's decision stayed by the tribunal.

Note—

An individual who is given notice that they are taken not to be a fit and proper person (a *disqualified individual*) for a stated term may have the commission's decision reviewed under section 86(1)(p).

- (4) An individual given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.
- (5) Section 49 does not apply to a cancellation under subsection (3).

67AZH Notice by commission to director, secretary, influential person or nominee about demerit points

- (1) This section applies if the commission considers that a company has accumulated 30 demerit points in a period of 3 years.
- (2) The commission may give an individual who was a director or secretary of, or an influential person or nominee for, the company at the times the 30 demerit points were accumulated, a written notice stating—
 - (a) details of the demerit matters for which the demerit points have accumulated and the dates the points took effect; and
 - (b) the effect of the director, secretary, influential person or nominee becoming a disqualified individual because the company has accumulated 30 demerit points in a period of 3 years; and
 - (c) an invitation to the director, secretary, influential person or nominee to make written submissions, within a stated period, to satisfy the commission that—

[s 67AZI]

- (i) the company has not accumulated 30 demerit points in a period of 3 years; or
 - (ii) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that some or all of the matters for which the demerit points accumulated did not happen; or
 - (iii) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to some or all of the matters for which the demerit points accumulated.
- (3) The stated period must be at least 28 days after the written notice is given to the director, secretary, influential person or nominee.
- (4) The commission must consider any submissions made by the director, secretary, influential person or nominee.
- (5) In deciding whether a company has accumulated 30 demerit points in a period of 3 years, demerit points must not be counted for an unsatisfied judgment debt paid in full before the end of the stated period.

67AZI Ending procedure without further action

- (1) This section applies if, after considering submissions made by the director, secretary, influential person or nominee, the commission is satisfied that—
- (a) the company has not accumulated 30 demerit points in a period of 3 years; or
 - (b) the director, secretary, influential person or nominee exercised reasonable diligence to ensure that some or all of the demerit matters for which the demerit points accumulated did not happen; or
 - (c) the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs in relation to some or all of the

demerit matters for which the demerit points accumulated.

- (2) The commission must, as soon as practicable, advise the director, secretary, influential person or nominee in writing that no further action under this part will be taken in relation to the notice given under section 67AZH(2).
- (3) However, subsection (2) does not apply if at least 30 demerit points remain after taking into account the demerit matters mentioned in subsection (1)(b) and (c).

67AZJ Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee

- (1) For a director, secretary, influential person or nominee who is a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AZH(2), the commission—
 - (a) still considers that the company has accumulated 30 demerit points in a period of 3 years; and
 - (b) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—
 - (i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs; or
 - (ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen.
- (2) Subsection (3) also applies if there are no submissions for the notice under section 67AZH(2).
- (3) The commission must, by written notice given to the director, secretary, influential person or nominee—
 - (a) inform the director, secretary, influential person or nominee that the commission—

[s 67AZJ]

- (i) still considers that the company has accumulated 30 demerit points in a period of 3 years; and
- (ii) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—
 - (A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs; or
 - (B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen; and
- (b) cancel the director's, secretary's, influential person's or nominee's licence; and
- (c) inform the director, secretary, influential person or nominee—
 - (i) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2, for the term calculated under section 67AZM and stated in the notice; and
 - (ii) of the director's, secretary's, influential person's or nominee's right to apply to the tribunal for a review of the commission's decision; and
 - (iii) how, and the period within which, the director, secretary, influential person or nominee may apply to the tribunal for the review; and
 - (iv) any right the director, secretary, influential person or nominee has to have the operation of the commission's decision stayed by the tribunal.

Note—

A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a *disqualified individual*) for a stated term may have the commission's decision reviewed under section 86(1)(p).

-
- (4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.
 - (5) Section 49 does not apply to a cancellation under subsection (3).

67AZK Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee

- (1) For a director, secretary, influential person or nominee who is not a licensee, subsection (3) applies if, after considering the submissions made by the director, secretary, influential person or nominee for the notice under section 67AZH(2), the commission—
 - (a) still considers that the company has accumulated 30 demerit points in a period of 3 years; and
 - (b) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—
 - (i) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs; or
 - (ii) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen.
- (2) Subsection (3) also applies if there are no submissions for the notice under section 67AZH(2).
- (3) The commission must, by written notice given to the director, secretary, influential person or nominee inform the director, secretary, influential person or nominee—
 - (a) that the commission—
 - (i) still considers that the company has accumulated 30 demerit points in a period of 3 years; and
 - (ii) is not satisfied, in relation to demerit matters for which at least 30 demerit points accumulated—

[s 67AZL]

- (A) that the director, secretary, influential person or nominee was not in a position to influence the conduct of the company's affairs; or
 - (B) that the director, secretary, influential person or nominee exercised reasonable diligence to ensure that the demerit matters did not happen; and
- (b) that the director, secretary, influential person or nominee is taken not to be a fit and proper person for part 3, division 2, for the term calculated under section 67AZM and stated in the notice; and
 - (c) of the director's, secretary's, influential person's or nominee's right to apply to the tribunal for a review of the commission's decision; and
 - (d) how, and the period within which, the director, secretary, influential person or nominee may apply to the tribunal for the review; and
 - (e) any right the director, secretary, influential person or nominee has to have the operation of the commission's decision stayed by the tribunal.

Note—

A director, secretary, influential person or nominee who is given notice that they are taken not to be a fit and proper person (a *disqualified individual*) for a stated term may have the commission's decision reviewed under section 86(1)(p).

- (4) A director, secretary, influential person or nominee given notice under subsection (3) is taken not to be a fit and proper person for part 3, division 2 as stated in the notice.

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

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

-
- (2) The commission must give the company a written notice stating—
- (a) particulars identifying the individual (the *relevant individual*) the commission considers is a director or secretary of, or an influential person or nominee for, the company; and
- Note—*
- A company may have the commission’s decision reviewed under section 86(1)(q).
- (b) that the relevant individual must stop being a director, secretary, influential person or nominee within 28 days after the commission gives the individual the written notice; and
 - (c) the commission must cancel the licensee’s licence if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in paragraph (b).
- (3) The commission must cancel the company’s licence by written notice given to the company if the relevant individual does not stop being a director, secretary, influential person or nominee within the 28 days mentioned in subsection (2)(b).
- (4) Section 49 does not apply to a cancellation under subsection (3).

67AZM Terms of disqualifications

- (1) This section states the term for which an individual given a notice under section 67AZF, 67AZJ or 67AZK is taken not to be a fit and proper person for part 3, division 2 (the *term of disqualification*).
- (2) Only demerit points accumulated after the commencement of this section may be taken into account in calculating the term of disqualification.
- (3) The term of disqualification for an individual given a notice for accumulating 30 demerit points in a period of 3 years for the first time is 3 years.

[s 67AZM]

- (4) The term of disqualification for an individual given a notice for accumulating 30 demerit points in a period of 3 years a second time or subsequent time is the life of the individual.
- (5) A notice may be given to an individual a second time or subsequent time under section 67AZF, 67AZJ or 67AZK if—
 - (a) a notice for accumulating 30 demerit points in a period of 3 years has been given under one of the sections stating a disqualification of 3 years; and
 - (b) the second or subsequent notice relates to 30 demerit points accumulated in a period of 3 years after the notice stating a disqualification of 3 years is given.
- (6) It is declared that, in deciding whether a notice for accumulating 30 demerit points in a period of 3 years has been given to an individual a second time or subsequent time, a notice given to an individual for the first time under section 67AZF, 67AZJ or 67AZK stating a disqualification of 3 years must be counted whether or not the individual has served the term of the disqualification.

Example for subsections (5) and (6)—

An individual who is a licensee is given a notice under section 67AZF for accumulating 30 demerit points in a period of 3 years. The notice informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for 3 years. After the notice under section 67AZF is given, the individual accumulates a further 30 demerit points in a period of 3 years that may include part of the term of disqualification. The commission may give the individual a second notice under section 67AZF for the further 30 demerit points whether or not the term of disqualification has ended. Also, it is the second notice under section 67AZF that informs the individual that the individual is taken not to be a fit and proper person for part 3, division 2 for the life of the individual.

- (7) However, in deciding whether a notice for accumulating 30 demerit points in a period of 3 years is given to an individual a second time or subsequent time, an earlier notice given to an individual under section 67AZF, 67AZJ or 67AZK must not be counted if—
 - (a) the earlier notice was given more than 10 years before the second or subsequent notice; or

- (b) the commission's decision under the earlier notice was reversed or annulled on review by the tribunal.
- (8) In this section a reference to accumulating 30 demerit points in a period of 3 years is—
- (a) for an individual given notice under section 67AZF(3)—a reference to the individual accumulating 30 demerit points in a period of 3 years; or
 - (b) for an individual given notice under section 67AZJ(3) or 67AZK(3)—a reference to the company for which the individual was a director, secretary, influential person or nominee accumulating 30 demerit points in a period of 3 years.

Part 4 Domestic building contracts

67AZN Domestic building contracts

- (1) Domestic building contracts are regulated under schedule 1B.
- (2) The provisions of schedule 1B apply to domestic building contracts and the parties to those contracts.

Part 4A Building contracts other than domestic building contracts

Division 1 Preliminary

67A Definitions for pt 4A

In this part—

approved security provider means a financial institution that is an approved security provider under the *Financial Accountability Act 2009*.

building contract see section 67AAA.

carry out building work means—

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

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

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

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

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

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

payment claim see the *Building and Construction Industry Payments Act 2004*, schedule 2.

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

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

progress payment see the *Building and Construction Industry Payments Act 2004*, schedule 2.

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

security, for a building contract, means something—

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

subcontract means a building contract described in section 67D.

valuable instrument means any of the following—

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

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

67AAA Meaning of building contract

- (1) For this part, a **building contract** means a contract or other arrangement for carrying out building work in Queensland but does not include—
 - (a) a domestic building contract; or
 - (b) a contract exclusively for construction work that is not building work.

(2) In this section—

construction work see the *Building and Construction Industry Payments Act 2004*, section 10.

67B Meaning of *construction management trade contract*

(1) A building contract is a *construction management trade contract* if—

- (a) the contracting party for the building contract is a principal; and
- (b) the contracted party for the building contract is the holder of a contractor's licence; and
- (c) the building work the subject of the building contract is part of a wider project of building work (the *project*) involving the principal in entering into 1 or more other building contracts, also as a principal, for the carrying out of other building work that is also part of the project; and
- (d) the contracted party is not the construction manager for the project.

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

67C Meaning of *retention amount* in pt 4A

For this part, an amount is a *retention amount* for a building contract if—

- (a) the amount is payable as part of the contract price under the building contract, but, under the contract, may be withheld from payment to the contracted party for the building contract—
 - (i) during the progress of the building work the subject of the contract; or

- (ii) for a period (a *maintenance period*) after the completion of the building work; or
 - (iii) both during the progress of the building work and for a maintenance period; and
- (b) the purpose of withholding the amount is to give financial protection to the contracting party in relation to the need to correct defects in the building work, or otherwise to secure, wholly or partly, the performance of the contract.

67D Meaning of *subcontract* in pt 4A

For this part, a building contract is a *subcontract* if—

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

67E Operation of pt 4A

- (1) Subject to any provision of this part that expressly provides that a building contract, or a provision of a building contract, is void, this part does not have effect to make void or voidable a building contract, or a provision of a building contract, even if—
- (a) in entering into the building contract, or the building contract containing the provision, a party to the building contract commits an offence against this part; or

[s 67F]

- (b) the building contract or the provision of the building contract is inconsistent with a condition to which the building contract is subject under this part.
- (2) However, if a building contract, or a provision of a building contract, is inconsistent with a provision (the *Act provision*) of this part applying to the building contract, the building contract, or the provision of the building contract, has effect only to the extent it is not inconsistent with the Act provision.
- (3) Without limiting subsection (2), a building contract is unenforceable against the contracted party for the contract to the extent that the contract provides for retention amounts or security in a way that is inconsistent with a condition to which the contract is subject under division 2.
- (4) This part—
 - (a) has effect in relation to a building contract despite anything in the building contract; and
 - (b) applies to a building contract even if—
 - (i) the contract was entered into outside Queensland; or
 - (ii) the parties to the contract have agreed that the law of Queensland does not apply to the contract or to a provision of the contract.

Division 2 All building contracts

67F Suggested forms of contract

The commission may prepare and publish suggested forms for building contracts.

67G Building contracts to be in writing

- (1) A building contractor commits an offence if—

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

Maximum penalty—80 penalty units.

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

Maximum penalty—80 penalty units.

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

[s 67G]

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

Maximum penalty—80 penalty units.

- (4) A building contract in writing complies with the formal requirements for a building contract if the contract states the following—
 - (a) the scope of the building work the subject of the contract;
 - (b) when the building work is to be completed;
 - (c) the amount to be paid for carrying out the building work or, if appropriate, how the amount to be paid for carrying out the building work is to be worked out;
 - (d) the parties' agreement about retention amounts and securities to be held;
 - (e) the name of the building contractor who is the contracted party for the building contract;
 - (f) the licence number of the building contractor mentioned in paragraph (e), as it appears on the building contractor's licence card;
 - (g) the address of the land where the building work is to be carried out.
- (5) This section does not apply to a building contractor who enters into a building contract as a principal.
- (6) If, in contravention of subsection (1) or (2), a building contract is not put into writing, a building contractor who is a party to the contract is taken not to commit an offence against the provision if—

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

Example—

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

67I Directions given under building contracts

- (1) This section applies if under a building contract the contracting party for the contract, or another person authorised under the contract, may, without the agreement of the contracted party for the contract, give a direction to the contracted party.
- (2) Unless the building contract otherwise provides, a direction may initially be given other than in writing.
- (3) However, if a direction is given other than in writing, the contracted party—
 - (a) may ask for the direction to be given in writing; and
 - (b) is not required to comply with the direction until it is given in writing.
- (4) If a direction is given other than in writing, the contracting party commits an offence if the direction is not given to the contracted party in writing within 3 business days after it was given other than in writing.

Maximum penalty—80 penalty units.

- (5) In this section—

direction includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

67J Set-offs under building contracts

- (1) The contracting party for a building contract may use a security or retention amount, in whole or in part, to obtain an amount owed under the contract, only if the contracting party has given notice in writing to the contracted party advising of the proposed use and of the amount owed.
- (2) The notice must be given within 28 days after the contracting party becomes aware, or ought reasonably to have become aware, of the contracting party's right to obtain the amount owed.
- (3) If, because of subsections (1) and (2), the contracting party is stopped from using a security or retention amount, the contracting party for the contract is not stopped from recovering the amount owed in another way.
- (4) This section does not apply if, under the contract—
 - (a) work has been taken out of the hands of the contracted party or the contract has been terminated; or
 - (b) the security or retention amount is to be used to make a payment into court to satisfy a notice of claim of charge under the *Subcontractors' Charges Act 1974*.
- (5) In this section—

amount owed, under a building contract, means an amount that, under the contract, is a debt due from the contracted party for the contract to the contracting party for the contract because of circumstances associated with the contracted party's performance of the contract.

use of security or retention amount includes the act of converting securities into cash where the securities are held as negotiable instruments.

67K Limits for retention amounts and securities for building contracts other than subcontracts

- (1) This section applies to a building contract if the contracting party under the contract is a principal or a special purpose vehicle.

-
- (2) The building contract is subject to a condition that at any time before, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 5% of the contract price for the contract—
 - (a) all retention amounts for the contract that are being withheld;
 - (b) all securities for the contract given and still held.
 - (3) Subsection (2) does not apply to retention amounts or securities to the extent that the retention amounts or securities are for the financial protection of the contracting party, having regard to amounts paid by the contracting party that relate to something that has not yet been installed in accordance with the requirements of the contract.
 - (4) The building contract is not subject to the condition mentioned in subsection (2) if—
 - (a) the contract—
 - (i) is in writing; and
 - (ii) explains the condition; and
 - (iii) expressly provides that the contract is not subject to the condition; and
 - (b) the provision of the contract that expressly provides in the way mentioned in paragraph (a)(iii) is initialled by the parties to the contract.

67L Limits for retention amounts and securities for subcontracts

- (1) A subcontract is subject to a condition that, at any time before, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 5% of the contract price for the subcontract—
 - (a) all retention amounts for the subcontract that are being withheld;
 - (b) all securities for the subcontract given and still held.

[s 67M]

- (2) Subsection (1) does not apply to retention amounts or securities to the extent that the retention amounts or securities are for the financial protection of the contracting party, having regard to amounts paid by the contracting party that relate to something that has not yet been installed in accordance with the requirements of the contract.
- (3) Subsection (1) does not apply to a subcontract if the contracting party for the building contract is a special purpose vehicle.

67M Limits on deductions for retention amounts

- (1) This section applies if—
 - (a) an amount (the *relevant amount*) is payable by the contracting party for a building contract to the contracted party for the building contract; and
 - (b) the relevant amount relates to carrying out building work under the contract; and
 - (c) the relevant amount, except for a retention amount for the building contract that is withheld, is paid to the contracted party.
- (2) The building contract is subject to a condition that the retention amount withheld is to be not more than 10% of the relevant amount.

67N Limits for retention amounts and securities for building contracts after practical completion

- (1) A building contract is subject to a condition that, at any time after, under the contract, practical completion of building work is reached, the total value of the following is to be not more than 2.5% of the contract price for the contract—
 - (a) all retention amounts for the contract that are being withheld;
 - (b) all securities for the contract given and still held.

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

67O Suspension of works

- (1) This section applies if—
- (a) the contracting party for a building contract has not complied with an order of a court or of the tribunal given in favour of the contracted party for the contract in relation to an issue arising under the contract; or
 - (b) all of the following apply—
 - (i) an amount is required to be paid to the contracted party for a building contract by a particular time;
 - (ii) the full amount is not paid, other than solely because of the retention of an amount lawfully permitted to be retained;
 - (iii) the requirement to pay the amount is not in dispute between the contracting party and the contracted party.
- (2) The contracted party may give the contracting party a written notice stating—
- (a) details of the circumstance mentioned in subsection (1)(a), or of the circumstances mentioned in subsection (1)(b)(i) to (iii); and
 - (b) that the contracted party intends to suspend building work the subject of the building contract if the order mentioned in subsection (1)(a) is not complied with, or if the amount mentioned in subsection (1)(b) is not paid, within the time stated in the written notice.
- (3) The time stated in the written notice must be not less than 7 days after the written notice is given.

- (4) If the order is not complied with, or the amount is not paid, within the time stated in the written notice, the contracted party may—
 - (a) give the contracting party a further written notice that the contracted party is suspending the building work immediately; and
 - (b) suspend the building work immediately the further written notice is given.
- (5) If the contracted party suspends building work under subsection (4), the contracted party—
 - (a) is not in breach of the building contract; and
 - (b) keeps the contracted party's rights under the contract, including any right to terminate the contract; and
 - (c) may at any time lift the suspension, even if the order has not been complied with or the amount has not been paid.
- (6) Subsection (7) applies if—
 - (a) the order is complied with, or the amount is paid; and
 - (b) the suspension is still in force; and
 - (c) the contracting party gives written notice to the contracted party—
 - (i) advising the order has been complied with or the amount has been paid; and
 - (ii) requiring the contracted party to recommence the building work under the contract.
- (7) The building contract is subject to a condition that the contracted party must recommence carrying out building work under the contract within 7 days after the contracted party receives the written notice mentioned in subsection (6)(c), or at a later time agreed to between the contracting party and the contracted party.

67P Late progress payments

- (1) This section applies if—

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- (a) the contracting party for a building contract is required to pay an amount (the *progress amount*) to the contracted party for the building contract; and
 - (b) the progress amount is payable as the whole or a part of a progress payment; and
 - (c) the time (the *payment time*) by which the progress amount is required to be paid has passed, and the progress amount, or a part of the progress amount, has not been paid.
- (2) For the period for which the progress amount, or the part of the progress amount, is still unpaid after the payment time, the contracting party is also required to pay the contracted party interest at the penalty rate, as applying from time to time, for each day the amount is unpaid.
- (3) In this section—
- penalty rate* means—
- (a) the rate made up of the sum of the following—
 - (i) 10% a year;
 - (ii) the rate comprising the annual rate, as published from time to time by the Reserve Bank of Australia, for 90 day bills; or
 - (b) if the building contract provides for a higher rate of interest than the rate worked out under paragraph (a)—the higher rate.

Division 3 Construction management trade contracts and subcontracts

67R Application of div 3

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

67S Lodgement of security instead of retention amount or security in money form

- (1) This section applies if the contracted party for a building contract is under a lawful obligation to lodge a security in the form of an amount of money (the *relevant amount*).
- (2) The contracted party complies with the obligation if—
 - (a) the contracted party lodges with the contracting party a security, in the form of a government bond or a valuable instrument from an approved security provider, to take the place of the security in the form of money; and
 - (b) the value of the security is equal to the relevant amount.
- (3) If the contracted party lodges a security in the form of a valuable instrument from an entity that is an approved security provider, and the entity stops being an approved security provider, the contracted party must, if asked by the contracting party, lodge a further security, in a form mentioned in subsection (2)(a), to take the place of the security in the form of money.

67T Lodgement of security to replace retention amount or security in money form

- (1) This section applies if, under a building contract, the contracting party is holding—
 - (a) an amount (the *relevant amount*) as a retention amount; or
 - (b) a security in the form of an amount of money (also the *relevant amount*).
- (2) The building contract is subject to a condition that—
 - (a) the contracted party may lodge with the contracting party a security, in the form of a government bond or a valuable instrument from an approved security provider, to take the place of the retention amount or of the security in the form of money; and

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- (b) on the lodging of the security, the contracting party must pay the contracted party the relevant amount.
 - (3) However, subsection (2) applies only if the value of the security lodged is equal to the relevant amount.
 - (4) If the contracted party lodges a security in the form of a valuable instrument from an entity that is an approved security provider, and the entity stops being an approved security provider, the contracted party must, if asked by the contracting party, lodge a further security, in a form mentioned in subsection (2)(a), to take the place of the retention amount or of the security in the form of money.

67U Void payment provision in construction management trade contract or subcontract

A provision in a construction management trade contract or subcontract is void to the extent it provides for payment of a progress payment by a contracting party to a contracted party later than 25 business days after submission of a payment claim.

Division 4 Warning for construction management trade contracts

67V Offence of not warning that contract is construction management trade contract

- (1) The contracting party for a construction management trade contract commits an offence if—
 - (a) the construction management trade contract does not include a warning complying with subsection (2); and
 - (b) the warning is not initialled by the contracted party for the contract.

Maximum penalty—80 penalty units.

- (2) The warning—

[s 67W]

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

Division 5 Commercial building contracts

67W Void payment provision in commercial building contract

A provision in a commercial building contract is void to the extent it provides for payment of a progress payment by a contracting party to a contracted party later than 15 business days after submission of a payment claim.

Part 5 The statutory insurance scheme

Division 1 Preliminary

67WA Definitions for pt 5

In this part—

appropriate insurance premium, for residential construction work, means the insurance premium set for the work under section 68D.

assistance includes arranging and paying for the rectification or completion of residential construction work by a licensed contractor appointed by the commission.

associated insurable work see section 67WD(1).

consumer, for residential construction work—

- (a) means a person who contracts with a licensed contractor to carry out the work; and

- (b) includes a person who purchases the work, once completed, if the work is primary insurable work.

Note—

See also section 68H(1)(c) and (5).

incomplete, in relation to residential construction work—

- (a) means work that has not reached practical completion; but
- (b) does not include—
- (i) work that does not comply with the contract because of a cosmetic difference; or

Example of a cosmetic difference—

a different shade of paint

- (ii) work that is defective.

insurable value, of residential construction work, means an amount representing the reasonable cost to the insurer of having the work carried out by a licensed contractor on the basis that all building and other materials are to be supplied by the contractor (whether or not the work is carried out by a licensed contractor on that basis).

Examples of residential construction work the insurer may have to have carried out—

- relocating, transporting and resiting of an existing residence to another site
- the construction, off-site, of a residence or related roofed building and transportation of the residence or building to the relevant building site
- the erection of scaffolding required to carry out the residential construction work
- transporting labour and materials to the relevant building site.

optional additional cover see section 67Z(4).

other materials, for residential construction work, includes appliances if included as part of the contract for carrying out the residential construction work.

primary insurable work see section 67WC.

related roofed building see section 67WF.

residence see section 67WE.

residential construction work is—

- (a) primary insurable work; or
- (b) associated insurable work.

speculative residential construction work means residential construction work carried out by a building contractor if—

- (a) the work is not carried out under a contract with a consumer; and
- (b) the work is carried out on land owned by the building contractor; and
- (c) the work is a single detached dwelling or a multiple dwelling of not more than 3 storeys; and
- (d) the dwelling has been sold, or is intended for sale, to another person.

67WB Work not covered under the statutory insurance scheme

- (1) The following work is not eligible for assistance from the statutory insurance assistance scheme—
 - (a) building work on, or on the site of, a building or proposed building that is or forms part of any of the following—
 - (i) a backpacker's accommodation, boarding house, caravan park, guest house, holiday accommodation, hostel, hotel, lodging house or motel;
 - (ii) a correctional centre, lockup, prison, reformatory or watchhouse;
 - (iii) a hospital, nursing home or other health care building;
 - (iv) an orphanage or children's home;

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- (v) a retirement village under the *Retirement Villages Act 1999*;
 - (vi) an educational institution;
 - (vii) group accommodation for persons with a physical or mental disability;
 - (viii) commercial or industrial premises;
- (b) building work carried out by a building contractor for a person who is the holder of an owner-builder permit covering the work;
 - (c) loading, unloading or transporting a building that, if it were fixed to land, could be a residence, or a related roofed building, regardless of whether the transport is within the boundaries of land where the building is located or otherwise;
 - (d) off-site prefabrication of the whole of a building that could be a residence, or a related roofed building, whether or not the building is in its final form or in parts;
 - (e) loading, unloading or transporting a completed prefabricated building that could be a residence or a related roofed building, whether the building is transported whole or in parts, regardless of whether the transport is within the boundaries of land where the building is prefabricated, or to be located, or otherwise;
- Example of a building transported in parts—*
- A building is too large to be transported as a completed unit, and is transported on 3 trucks, then joined together on the land where it is to be used.
- (f) other work prescribed by regulation.
- (2) Any work mentioned in subsection (1) is taken not to be primary insurable work or associated insurable work.
 - (3) Associated insurable work is not eligible for assistance from the statutory insurance assistance scheme unless carried out under a contract for primary insurable work and—

[s 67WC]

- (a) for primary insurable work relating to a residence—the work is carried out on the site of the residence or proposed residence and is for residential purposes; or
 - (b) for primary insurable work relating to a related roofed building—the work is carried out on the site of the building or proposed building and is for residential purposes.
- (4) In this section—
- completed prefabricated building*** includes a prefabricated building—
- (a) that has not been placed on land where it is to be used; or
 - (b) to which services have not been connected, including, for example, electricity or plumbing and drainage.

67WC Meaning of *primary insurable work*

- (1) ***Primary insurable work*** is any of the following building work if carried out by a licensed contractor and the insurable value of the work is more than the regulated amount—
- (a) the erection or construction of a residence or related roofed building;
 - (b) building work within the building envelope of a residence or related roofed building;
 - (c) building work for anything attached or connected to a residence or related roofed building that requires building or plumbing approval;
 - (d) the erection, construction or installation of a swimming pool within the meaning of the *Building Act 1975*, schedule 2;
 - (e) other building work prescribed by regulation.
- (2) However, the following is not primary insurable work, but may be associated insurable work—
- (a) fencing;

- (b) landscaping;
- (c) electrical work under the *Electrical Safety Act 2002*;
- (d) installation, renovation, repair or replacement of any of the following—
 - (i) airconditioning;
 - (ii) driveways or paths;
 - (iii) units for heating water regardless of the source of energy for heating, and including units for heating swimming pools;
 - (iv) refrigeration;
 - (v) roller shades and shutter screens;
 - (vi) security doors and grills;
 - (vii) solar power units and associated electrical components;
 - (viii) water tanks that are not part of a primary water supply for a residence or related roofed building;
- (e) other work prescribed by regulation.

(3) In this section—

building envelope, for a residence or related roofed building, means the outermost sides of the aggregation of the components of a building that have the primary function of separating the internal part of the residence or related roofed building from the external environment.

Example of a building envelope—

the slab and footings system, an external wall and a roof

regulated amount means \$3,300 or the higher amount, if any, prescribed by a regulation.

67WD Meaning of ***associated insurable work***

- (1) ***Associated insurable work*** is any additional work that may be contracted to be carried out under a contract for primary insurable work if—

[s 67WE]

- (a) for primary insurable work relating to a residence—the work is carried out on the site of the residence or proposed residence and is for residential purposes; or
 - (b) for primary insurable work relating to a related roofed building—the work is carried out on the site of the building or proposed building and is for residential purposes.
- (2) To remove any doubt, it is declared that associated insurable work may include work that is not building work.

Examples for subsection (2)—

electrical work under the *Electrical Safety Act 2002*, erecting scaffolding, or earthmoving and excavation work

67WE Meaning of *residence*

- (1) Each of the following structures is a ***residence*** if the structure is fixed to land and used for residential purposes—
- (a) a single detached dwelling;
 - (b) 1 or more attached dwellings that are separated by a common wall;
- Examples—*
- a row house, terrace house, townhouse or villa unit
- (c) a building, of not more than 3 storeys, containing 2 or more separate residential units.
- (2) Part of a structure is also a ***residence*** if the structure is fixed to land and the part is designed to be used, and is used, for residential purposes.
- (3) A manufactured home fixed to land in a residential park (whether or not it is permanently fixed) is also a ***residence***.
- (4) For subsection (1)(c), a regulation may prescribe how to calculate the number of storeys of a building.
- (5) Each of the following things is not a ***residence***—
- (a) boats, caravans, motor vehicles, tents, trailers, trains and similar things;

-
- (b) a building designed as a temporary building, including, for example, a demountable building.
- (6) In this section—
- manufactured home** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.
- residential park** see the *Manufactured Homes (Residential Parks) Act 2003*, section 12.
- storey** means a space within a building which is situated between one floor level and the next floor level, or if there is no floor above, the ceiling or roof above, but is not a mezzanine or space that contains only—
- (a) a lift, shaft, stairway or meter room; or
- (b) a bathroom, shower room, laundry, water closet or other sanitary compartment; or
- (c) accommodation intended for not more than 3 vehicles; or
- (d) any combination of a thing mentioned in paragraphs (a) to (c).

67WF Meaning of *related roofed building*

- (1) A ***related roofed building*** means a building that—
- (a) has a roof designed to be—
- (i) part of the building; and
- (ii) impervious to water or wind; and
- (b) is, or is proposed to be, on the site of a residence or proposed residence; and
- (c) is used, or proposed to be used, for a purpose related to the use of a residence or proposed residence.

Example of related roofed building—

A private garage, shed, carport, toilet building or change room on, or proposed to be placed on, the site of an existing or proposed residence.

- (2) However, a building is not a ***related roofed building*** if—

[s 67X]

- (a) the building is a residence; or
- (b) the roof of the building is a sail, umbrella or similar thing.

Division 2 Statutory insurance scheme

67X Statutory insurance scheme

- (1) The statutory insurance scheme previously established under this Act is continued.
- (2) The purpose of the statutory insurance scheme is to provide assistance to consumers of residential construction work for loss associated with work that is defective or incomplete.
- (3) Assistance can not be provided under the scheme to a consumer unless the consumer has suffered loss as a consequence of residential construction that is defective or incomplete.
- (4) The statutory insurance scheme may operate under, and be referred to as, the name prescribed by regulation.

Division 3 Assistance

67Y Assistance available under statutory insurance scheme

The terms of cover under which a person is entitled to assistance under the statutory insurance scheme are prescribed by regulation.

67Z Optional additional cover

- (1) A consumer may obtain optional additional cover for residential construction work if a licensed contractor paid an insurance premium for the work under section 68B(2).
- (2) A licensed contractor who carries out speculative residential construction work may obtain optional additional cover for

the work if the contractor paid an insurance premium for the work under section 68B(3).

- (3) However, optional additional cover is only obtainable by paying the insurance premium—
- (a) for a consumer—by the earlier of the following—
 - (i) 30 business days after the day the consumer enters the relevant contract;
 - (ii) the day the residential construction work, to be carried out under the relevant contract, starts; or
 - (b) for a licensed contractor who carries out speculative residential construction work—before the work starts.
- (4) A regulation may provide for other matters relating to optional additional cover, including, for example—
- (a) the circumstances under which a person is entitled to optional additional cover; or
 - (b) any limitations or exclusions that may apply in relation to optional additional cover.
- (5) In this section—

optional additional cover means additional assistance provided to a person, or the additional compensation to be paid under the statutory insurance scheme, as prescribed by regulation.

relevant contract, for a consumer, means a contract with a licensed contractor for residential construction work.

68 Persons not entitled to assistance under statutory insurance scheme

- (1) A licensed contractor who carries out speculative residential construction work is not entitled to assistance under the statutory insurance scheme for the work.

Note—

See section 68A (Licensed contractor pays insurance premium on behalf of consumer).

[s 68A]

- (2) If a person enters into 1 or more building contracts, in force at the same time, to construct 3 or more living units, the person is not entitled to assistance under the statutory insurance scheme for the work carried out under the contracts.
- (3) For subsection (2)—
 - (a) a single detached dwelling is taken to be 1 living unit; and
 - (b) a residential unit is taken to be 1 living unit; and
 - (c) a duplex is taken to be 2 living units.
- (4) A regulation may prescribe other circumstances under which a person is not entitled to assistance under the statutory insurance scheme.
- (5) Nothing in section (1), (2) or (4) affects the right of a subsequent owner of residential construction work mentioned in this section to make a claim for assistance under the statutory insurance scheme.

Division 4 Insurance premiums

68A Licensed contractor pays insurance premium on behalf of consumer

- (1) A licensed contractor who pays an insurance premium under this division pays the premium on behalf of a consumer.
- (2) A construction manager who pays an insurance premium under this division pays the premium on behalf of the principal who engages the manager.
- (3) The licensed contractor and construction manager are not entitled to assistance under the statutory insurance scheme because the contractor or manager pays the insurance premium under this division.

68B When insurance premium is payable by licensed contractor

- (1) Subsection (2) applies to a licensed contractor who is to carry out residential construction work under a contract with a consumer unless the work is the subject of a construction management contract.
- (2) The licensed contractor must collect from the consumer, and pay to the commission, the appropriate insurance premium before the first of the following to happen—
 - (a) 10 business days elapse from the day the contract was entered into;
 - (b) the residential construction work starts.

Maximum penalty—100 penalty units.

- (3) A licensed contractor who is to carry out residential construction work that is speculative residential construction work must pay the appropriate insurance premium for the work before the work starts.

Maximum penalty—100 penalty units.

68C When insurance premium is payable by construction manager

- (1) This section applies to a construction manager if a principal engages the manager under a construction management contract to manage the carrying out of residential construction work.
- (2) If the construction manager holds a contractor's licence of the relevant class for the construction management contract, the manager must collect from the principal, and pay to the commission, the appropriate insurance premium before the first of the following to happen—
 - (a) 10 business days elapse from the day the manager is engaged under the contract;
 - (b) the residential construction work starts.

Maximum penalty—100 penalty units.

68D Setting of insurance premiums

- (1) This section provides for setting the different insurance premiums payable under the statutory insurance scheme.

Note—

Insurance premiums differ depending on the type of cover or type of work to which the premium relates.

- (2) The commission must state the insurance premiums, or the way the premiums are calculated, in the gazette.
- (3) Before stating the different insurance premiums, or the way the premiums are calculated, the commission must—
 - (a) have regard to the commission's obligation under section 26A; and
 - (b) ensure insurance premiums are sufficient to meet the costs mentioned in section 26(3); and
 - (c) have regard to any regulation made under section 26(4); and
 - (d) obtain the Minister's approval for the premium.
- (4) The commission must review the different insurance premiums at least once every 12 months.
- (5) A regulation may prescribe the way the insurable value of residential construction work is calculated for stating an insurance premium.
- (6) Subsection (7) applies if a principal engages a construction manager under a construction management contract to provide building work services for the carrying out of residential construction work.
- (7) For calculating the insurance premium payable by the construction manager, the amount paid by the principal to the construction manager under the contract must be added to the insurable value of the residential construction work.

68E Obligation of assessment manager in relation to insurance premium

An assessment manager must not, under the Planning Act, give a development approval for building work in relation to residential construction work unless—

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

Maximum penalty—20 penalty units.

Division 5 Notice and commencement of cover

68F Notice of cover

- (1) If the commission accepts an insurance premium for residential construction work, the commission must issue a notice of cover for the work.
- (2) The notice of cover must include the matters prescribed by regulation.
- (3) The notice of cover may be revoked by the commission if the commission becomes aware, after the issuing of the notice, that the work for which the notice was issued is not residential construction work.

68G Refund of insurance premium if notice of cover is revoked

If the commission revokes a notice of cover under section 68F, the commission must refund any insurance premium paid in relation to the work for which the notice was issued.

68H Cover of residential construction work

- (1) Cover under the statutory insurance scheme comes into force if—
- (a) a consumer enters into a contract for the carrying out of residential construction work and—
 - (i) the contract bears the licence number of a licensed contractor and, under the licensed contractor's licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
 - (ii) the contract is with a licensed contractor and, under the licensed contractor's licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
 - (b) a consumer enters into a contract for the carrying out of residential construction work with a building contractor and, at or before the time the contract is entered into, the building contractor makes a representation that would cause a reasonable person to believe that the residential construction work is covered by the statutory insurance scheme; or
 - (c) a person (the *defrauded person*) enters into a contract for the carrying out of residential construction work with a person (the *fraudulent person*) fraudulently claiming to hold a licence under which the fraudulent person may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
 - (d) the work is speculative residential construction work carried out by a licensed contractor and, under the contractor's licence, the contractor may carry out residential construction work covered by the statutory insurance scheme.

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- (2) Subsection (1) applies whether or not an insurance premium has been paid, or a notice of cover has been issued, for residential construction work under this part.
 - (3) Subsection (1) does not apply to optional additional cover.
 - (4) If cover under the statutory insurance scheme comes into force for particular residential construction work under subsection (1) and the insurance premium has not been paid for the cover under sections 68B or 68C, the commission may recover the amount of the premium, as a debt, from—
 - (a) if the premium was required to be paid under section 68B(2)—the consumer required to pay the premium; or
 - (b) if the premium was required to be paid under section 68B(3)—the licensed contractor required to pay the premium; or
 - (c) if the premium was required to be paid under section 68C—the principal required to pay the premium.
 - (5) For subsection (1)(c), this part applies as if—
 - (a) a reference to a consumer were a reference to a defrauded person; and
 - (b) a reference to a licensed contractor were a reference to a fraudulent person.

68I Commencement of cover

- (1) For residential construction work carried out under a contract with a consumer (other than work that is the subject of a construction management contract), cover under the statutory insurance scheme for the work comes into force on the earliest of the following to happen—
 - (a) a licensed contractor pays the appropriate insurance premium for the work under section 68B(2);
 - (b) the consumer enters into the contract with a licensed contractor for the carrying out of the work;
 - (c) a licensed contractor starts carrying out the work.

[s 69]

- (2) For speculative residential construction work, cover under the statutory insurance scheme for the work comes into force on the earlier of the following to happen—
 - (a) the licensed contractor who is to carry out the work pays the appropriate insurance premium for the work under section 68B(3);
 - (b) the contractor starts carrying out the work.
- (3) For residential construction work managed by a construction manager under a construction management contract, cover under the statutory insurance scheme for the work comes into force on the earlier of the following to happen—
 - (a) the construction manager pays the appropriate insurance premium for the work under section 68C(2);
 - (b) a licensed contractor starts carrying out the work.
- (4) Optional additional cover comes into force when the appropriate insurance premium for the relevant residential construction work is paid under section 67Z(3).

Division 6 Cancellation of cover

69 Cancellation of cover and return of premium

- (1) Cover under the statutory insurance scheme for residential construction work, for which a licensed contractor paid the insurance premium on behalf of a consumer, may be cancelled by the contractor if—
 - (a) the contractor asks the commission in writing to cancel the cover; and
 - (b) the contract for the work has ended; and
 - (c) a deposit under the contract for the work has been refunded, less any amounts that may be lawfully deducted from the deposit; and
 - (d) the work covered has not started; and

- (e) not more than 1 year has elapsed from the day the contract for the work was entered into.
- (2) Cover under the statutory insurance scheme, including optional additional cover, for speculative residential construction work for which a licensed contractor paid the insurance premium on behalf of a consumer, may be cancelled by the contractor if—
- (a) the contractor asks the commission in writing to cancel the cover; and
 - (b) development approval has not been granted for the work, or has been rescinded; and
 - (c) the work covered has not started; and
 - (d) not more than 1 year has elapsed from the day the premium was paid.
- (3) Cover under the statutory insurance scheme for residential construction work, for which a construction manager paid the insurance premium on behalf of a principal, may be cancelled by the construction manager if—
- (a) the construction manager asks the commission in writing to cancel the cover; and
 - (b) the relevant construction management contract and all the construction management trade contracts for the work have ended; and
 - (c) deposits paid under the relevant construction management contract and all the construction management trade contracts have been refunded, less any amounts that may be lawfully deducted from the deposits; and
 - (d) the work covered has not started; and
 - (e) not more than 1 year has elapsed from the day the construction management contract for the work was entered into.
- (4) Optional additional cover obtained by a consumer may be cancelled by the consumer if—

[s 70]

- (a) the consumer asks the commission in writing to cancel the cover; and
 - (b) the contract between the consumer and a licensed contractor relevant to the cover (the *relevant contract*) has ended; and
 - (c) a deposit under the relevant contract has been refunded, less any amounts that may be lawfully deducted from the deposit; and
 - (d) the work covered has not started; and
 - (e) not more than 1 year has elapsed from the day the relevant contract was entered into between the consumer and the licensed contractor.
- (5) On cancellation of cover under this section, the commission must refund the insurance premium paid for the cover to—
- (a) if the cover was cancelled under subsection (1), (2) or (3)—the licensed contractor or construction manager, or a person nominated in writing by the contractor or manager; or
 - (b) if the cover was cancelled under subsection (4)—the consumer.
- (6) A fee, prescribed by regulation, may be deducted from any refund made under this section.

Division 7 Variations

70 Residential construction work carried out under a contract with a consumer

- (1) This section applies if—
- (a) the residential construction work to be carried out under a contract with a consumer is to be varied; and
 - (b) the commission is satisfied that the value of the residential construction work will change because of the variation.

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- (2) If the value of the residential construction work will increase by \$5,000 or more because of the variation, the licensed contractor carrying out the work must pay an additional insurance premium on behalf of the consumer for the work to the commission before any work relating to the variation starts.

Maximum penalty—100 penalty units.

- (3) If the value of the residential construction work will decrease because of the variation, the commission may refund part of the insurance premium paid for the work to the consumer.

70A Speculative residential construction work

- (1) This section applies if—
- (a) a licensed contractor is carrying out residential construction work that is speculative residential construction work; and
 - (b) the residential construction work is to be varied after the licensed contractor paid the insurance premium for the work under section 68B(3); and
 - (c) the commission is satisfied that the value of the residential construction work will change because of the variation.
- (2) If the value of the residential construction work will increase by \$5,000 or more because of the variation, the licensed contractor must pay the additional insurance premium for the work to the commission before any work relating to the variation starts.

Maximum penalty—100 penalty units.

- (3) If the value of the residential construction work will decrease because of the variation, the commission may refund part of the insurance premium paid for the work to the person who paid the premium.

70B Optional additional cover

- (1) This section applies if—
 - (a) a consumer for a contract for the carrying out of residential construction work obtained optional additional cover for the work; and
 - (b) the residential construction work is to be varied after the consumer obtained the optional additional cover; and
 - (c) the commission is satisfied that the value of the residential construction work will change because of the variation.
- (2) If the value of the residential construction work will increase by \$5,000 or more because of the variation, the consumer must pay the additional insurance premium for the work to the commission before any work relating to the variation starts.
- (3) If the value of the residential construction work will decrease because of the variation, the commission may refund part of the insurance premium paid for the work to the consumer.
- (4) If the consumer fails to pay the additional insurance premium under subsection (2), the commission may recover the amount of the premium, as a debt, from the consumer.

70C Partial refunds of insurance premiums

A regulation may provide how part of an insurance premium refunded under this division is calculated.

Division 8 Recovery from licensed contractor

71 Recovery from licensed contractor etc.

- (1) If the commission makes any payment on a claim under the statutory insurance scheme, the commission may recover the amount of the payment, as a debt, from the building contractor by whom the relevant residential construction work was, or

was to be, carried out or any other person through whose fault the claim arose.

(2) For subsection (1)—

(a) a building contractor by whom the relevant residential construction work was, or was to be, carried out is taken to include—

(i) a licensed contractor whose licence card is imprinted on the contract for carrying out the work; and

(ii) a licensed contractor whose name, licence number and address are stated on the contract; and

(iii) a licensed contractor whose name is stated on the contract for carrying out the work; and

(iv) a licensed contractor whose name is stated on an insurance notification form for the work; and

(v) a licensed contractor whose licence number is stated on the contract for carrying out the work; and

(vi) a licensed contractor whose licence number is stated on an insurance notification form for the work; and

(vii) a licensed contractor whose PIN was used for putting in place, for the work, insurance under the statutory insurance scheme; and

(viii) a building contractor by whom the work was, or was to be, carried out; and

(ix) a person who, for profit or reward, carried out the work; and

(b) a person through whose fault the claim arose is taken to include a person who performed services for the work if the services were performed without proper care and skill.

(3) The commission is subrogated, to the extent of any payment that the commission has made, or has undertaken to make, to

[s 71]

the rights of a person to whom, or for whose benefit, the payment has been, or is to be, made in respect of the matter out of which the insurance claim arose.

- (4) In a proceeding brought by the commission under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(i), it is a defence for the licensed contractor to prove that—
 - (a) the licensed contractor's licence card was imprinted on the contract for carrying out the work without the licensed contractor's authority; and
 - (b) the licensed contractor took all reasonable steps to ensure that the licence card was imprinted on contracts only with the licensed contractor's authority.
- (5) In a proceeding brought by the commission under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(ii), it is a defence for the licensed contractor to prove that—
 - (a) the licensed contractor's name, licence number and address were stated on the contract for carrying out the work without the licensed contractor's authority; and
 - (b) the licensed contractor took all reasonable steps to ensure that the licensed contractor's name, licence number and address were stated in contracts only with the licensed contractor's authority.
- (6) In a proceeding brought by the commission under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(iii), (iv), (v), (vi) or (vii), it is a defence for the licensed contractor to prove—
 - (a) for a licensed contractor mentioned in subsection (2)(a)(iii)—that the licensed contractor's name was stated on the contract for carrying out the work without the licensed contractor's authority; and
 - (b) for a licensed contractor mentioned in subsection (2)(a)(iv)—that the licensed contractor's name was stated on the insurance notification form for the work without the licensed contractor's authority; and

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

Division 9 Rectification work

71A Tenders for rectification work

- (1) The commission may seek tenders for carrying out building work if the commission is of the opinion that a person may be entitled to assistance under the statutory insurance scheme.
- (2) The commission may accept any tender that it considers appropriate, whether or not the tender was for the lowest cost.
- (3) Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the commission to be reasonable in the circumstances.
- (4) If the estimate to rectify the building work is less than the amount prescribed by regulation, the commission need only seek a tender for carrying out the building work from 1 licensed contractor.

[s 71B]

- (5) The commission may authorise any of the following persons to act for the commission in seeking the tenders for carrying out building work—
 - (a) the person for whom the building work requiring rectification was, or was to be, carried out;
 - (b) a claims management consultant.
- (6) The commission may only have work carried out under this section to the extent that the cost of the work is covered by the assistance under the statutory insurance scheme that the person may be entitled to.

Division 10 Other

71B Statutory insurance scheme not to affect licensing decisions

In deciding the action to be taken in relation to a licensee's licence, the commissioner must not have regard to the implications for the statutory insurance scheme.

71C Notice of entitlement to assistance under the statutory insurance scheme

A person claiming to be entitled to assistance under the statutory insurance scheme must give notice of the claim to the commission in compliance with the requirements prescribed by regulation.

71D Multiple contracts for the same residential construction work

- (1) This section applies if a licensed contractor and a consumer enter into 2 or more separate contracts that—
 - (a) could be the subject of a single contract to carry out residential construction work; and

- (b) if they were the subject of a single contract, would be a contract to carry out residential construction work.
- (2) For this part, the separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.

Example of separate contracts—

A licensed contractor that manufactures and installs kitchens enters into one contract with a building owner for the manufacture of a kitchen and a second contract for its installation.

71E Protection of expressions associated with statutory insurance scheme

- (1) A person must not use a declared expression in connection with selling the right to participate in any warranty or insurance scheme unless—
- (a) the scheme is that to which this Act relates; and
 - (b) the person does so on behalf of the commission.

Maximum penalty—100 penalty units.

- (2) A person must not—
- (a) use any variation of a declared expression; or
 - (b) use any word (either alone or in conjunction with any other word) similar in sight or sound to a declared expression;

in connection with selling the right to participate in any insurance or warranty scheme, being a use likely to afford reasonable grounds for believing the scheme is or is associated with the scheme to which this Act relates, unless—

- (c) the scheme in question is one to which this Act relates; and
- (d) the person does so on behalf of the commission.

Maximum penalty—100 penalty units.

- (3) In this section—

[s 71F]

declared expression means the name prescribed under section 67X or another name prescribed by regulation.

71F When work is taken to have started

A regulation may prescribe when residential construction work is taken to start for the purpose of this part.

Part 6 Rectification of building work and remediation of consequential damage

Division 1 Preliminary

71G Definition for pt 6

In this part—

direction to rectify or remedy means a direction given under section 72(2).

71H What is *consequential damage*

- (1) *Consequential damage* is damage—
- (a) caused by, or as a consequence of, carrying out building work at a building site (the *relevant site*), regardless of any intention, negligence or recklessness of the person carrying out the work; and
 - (b) to a residential property at the relevant site, containing the relevant site or adjacent to the relevant site.
- (2) In this section—
- building work* includes any work prescribed by regulation.
- damage*, to a residential property, includes any of the following—

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- (a) the impairment of drainage at the property;
 - (b) the undermining of a fence, retaining wall or other structure along the boundary of the property;
 - (c) the compromising of the structural integrity of a building, swimming pool or wall on the property;
 - (d) the cracking, lifting or cratering of a driveway or pathway on the property;
 - (e) water penetration of the property;
 - (f) infestation of the property by termites.

residential property includes—

- (a) a single detached dwelling or a duplex; or
- (b) a lot or the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (c) a lot or the common property for a building units plan or a group titles plan under the *Building Units and Group Titles Act 1980*.

71I Who is taken to carry out building work for this part

- (1) A person who carries out building work is taken, for this part, to include—
 - (a) a building contractor whose licence card is imprinted on the contract for carrying out the building work; and
 - (b) a building contractor whose name, licence number and address are stated on the contract; and
 - (c) a building contractor whose name is stated on the contract for carrying out the building work; and
 - (d) a building contractor whose name is stated on an insurance notification form for the building work; and
 - (e) a building contractor whose licence number is stated on the contract for carrying out the building work; and

[s 71I]

- (f) a building contractor whose licence number is stated on an insurance notification form for the building work; and
- (g) a building contractor whose PIN was used for putting in place, for the building work, a term of cover under the statutory insurance scheme; and
- (h) a building contractor by whom the building work was carried out; and
- (i) a person who, for profit or reward, carried out the building work; and
- (j) a person who is a building contractor under a domestic building contract who managed the carrying out of the building work; and
- (k) a construction manager engaged under a construction management contract to provide building work services for the building work; and
- (l) a principal who was the contracting party for a building contract for building work for a building, or part of a building, intended for sale if—
 - (i) the building, or part of a building, is not, and has never been, the principal place of residence of the principal; and
 - (ii) the principal engages a building contractor or a construction manager to carry out the building work in a way, or using materials, likely to result in the work being defective or incomplete; and
 - (iii) the principal knew, or ought to have known, that the way the work was to be carried out, or the materials to be used, was likely to result in the work being defective or incomplete; and

Example of principal knowing that work or materials were likely to result in defective or incomplete building work—

A principal may know materials are likely to result in work being defective because of advice received from a building contractor or construction manager.

- (m) a person who was the nominee for a licensed contractor that is a company, for work carried out by the company while the person was the company's nominee.
- (2) For the purposes of subsection (1)(h) and (i)—
 - (a) a person carries out building work whether the person—
 - (i) carries it out personally; or
 - (ii) directly or indirectly causes it to be carried out; and
 - (b) a person is taken to carry out building work if the person provides administration services, advisory services, management services or supervisory services for the work.

Division 2 Direction to rectify or remedy

71J Requests for rectification of building work or remediation of consequential damage

- (1) A consumer may ask the commission to give a direction to rectify building work the consumer considers is defective or incomplete.
- (2) The owner or occupier of a residential property adjacent to a building site may ask the commission to give a direction to remedy any consequential damage to the property.
- (3) A person making a request under subsection (1) or (2) must give the commission—
 - (a) details of—
 - (i) for a request under subsection (1)—the building work the consumer considers is defective or incomplete; or
 - (ii) for a request under subsection (2)—the consequential damage to the property; and
 - (b) other details the commission reasonably requires to consider the request; and

- (c) the fee prescribed by regulation.

72 Power to require rectification of building work and remediation of consequential damage

- (1) This section applies if the commission is of the opinion that—
 - (a) building work is defective or incomplete; or
 - (b) consequential damage has been caused by, or as a consequence of, carrying out building work.
- (2) The commission may direct the person who carried out the building work to do the following within the period stated in the direction—
 - (a) for building work that is defective or incomplete—rectify the building work;
 - (b) for consequential damage—remedy the damage.
- (3) In deciding whether to give the direction, the commission may take into consideration all the circumstances it considers are reasonably relevant and, in particular, is not limited to a consideration of the terms of the contract for carrying out the building work (including the terms of any warranties included in the contract).
- (4) 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 defective or incomplete building work or consequential damage; or
 - (b) the defective or incomplete building work, or consequential damage, will cause a significant hazard to public safety or the environment generally.
- (5) The commission is not required to give the direction if the commission is satisfied that, in the circumstances, it would be unfair to the person to give the direction.

Example for subsection (5)—

The commission might decide not to give a direction for the rectification of building work because an owner refuses to allow a building contractor to return to the owner's home or because an owner's failure to properly maintain a home has exacerbated the extent of defective building work carried out on the home.

- (6) The commission may, before it considers whether building work is defective or incomplete, require the consumer for the building work comply with a process established by the commission to attempt to resolve the matter with the person who carried out the work.
- (7) In subsection (3), a reference to a contract for carrying out building work includes a reference to a domestic building contract for managing the carrying out of building work.
- (8) To remove any doubt, it is declared that the commission may act under this section in relation to consequential damage whether or not an owner or occupier has made a request under section 71J.

72A Powers and limitations of directions to rectify or remedy

- (1) A direction to rectify or remedy may be given to more than 1 person for the same building work.
- (2) A direction to rectify or remedy may require that a building, or part of a building, be demolished and building work be recommenced if, in order to rectify building work, it is necessary to do so.
- (3) If a direction to rectify or remedy is given to a person who is not currently licensed to carry out the required work, the person must have the work carried out by a licensed contractor.
- (4) A direction to rectify or remedy cannot be given more than 6 years and 3 months after the building work to which the direction relates was completed or left in an incomplete state unless the tribunal is satisfied, on application by the commission, that there is in the circumstances of a particular

[s 73]

case sufficient reason for extending the time for giving the direction and extends the time accordingly.

- (5) The fact that a direction is given under section 72(2) does not prevent the commission from taking additional action against a person under this Act for the building work to which the direction relates.

Division 3 Offences and defences

73 Offence to fail to comply with direction to rectify or remedy

A person must not fail to rectify building work that is defective or incomplete, or to remedy consequential damage, as required by a direction given to the person under section 72(2).

Maximum penalty—250 penalty units.

74 Defences for failure to comply with direction to rectify or remedy

- (1) This section applies for—
- (a) a prosecution of a licensed contractor for an offence against section 73; or
 - (b) taking disciplinary action against a licensed contractor under part 6A on the ground that the contractor failed to comply with a direction given to the contractor under section 72(2).
- (2) It is a defence for the licensed contractor to prove that—
- (a) for a licensed contractor mentioned in section 71I(1)(a)—
 - (i) the contractor's licence card was imprinted on the contract for carrying out the building work without the contractor's authority; and

- (ii) the contractor took all reasonable steps to ensure that the licence card was imprinted on contracts only with the contractor's authority; or
- (b) for a licensed contractor mentioned in section 71I(1)(b)—
 - (i) the contractor's name, licence number and address were stated on the contract for carrying out the building work without the contractor's authority; and
 - (ii) the contractor took all reasonable steps to ensure that the contractor's name, licence number and address were stated in contracts only with the contractor's authority; or
- (c) for a licensed contractor mentioned in section 71I(1)(c)—the contractor's name was stated on the contract for carrying out the building work without the contractor's authority; or
- (d) for a licensed contractor mentioned in section 71I(1)(d)—the contractor's name was stated on the insurance notification form for the building work without the contractor's authority; or
- (e) for a licensed contractor mentioned in section 71I(1)(e)—the contractor's licence number was stated on the contract for carrying out the building work without the contractor's authority; or
- (f) for a licensed contractor mentioned in section 71I(1)(f)—the contractor's licence number was stated on the insurance notification form for the building work without the contractor's authority; or
- (g) for a licensed contractor mentioned in section 71I(1)(g)—
 - (i) the contractor's PIN was used for putting in place, for the building work, insurance under the statutory insurance scheme without the contractor's authority; and

- (ii) the contractor took all reasonable steps to ensure the contractor's PIN was kept and used in accordance with the commission's requirements for the keeping and use of the PIN.

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.

[s 74AB]

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.

[s 74ADA]

- (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.

74ADA Code 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.

74ADB Use 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

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- (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—1,000 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

[s 74AM]

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—1,000 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

[s 74AP]

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.

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- (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.

[s 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.

[s 74AZD]

- (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.

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- (3) The Minister must consider any written submissions made by the person within the period mentioned in subsection (2) before publishing the warning statement.

Part 6A Disciplinary proceedings

74A Commission may investigate grounds for taking disciplinary action

- (1) The commission may investigate whether proper grounds exist for taking disciplinary action against a person under this part.
- (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.

74B Proper grounds for taking disciplinary action against a licensee and former licensees

- (1) Proper grounds exist for taking disciplinary action against a licensee or former licensee if—
- (a) the licensee contravenes a requirement imposed under this Act or the *Building Act 1975*; or
 - (b) the licensee is convicted of an indictable offence; or
 - (c) if the licensee is a corporation—a director or secretary of, or an influential person for, the company is not a fit and proper person to exercise control or influence of the company's affairs; or

[s 74B]

- (d) the licensee is carrying on business under the licence in partnership with a person who is not a fit and proper person to have an interest in the business; or
- (e) the licensee is bankrupt or insolvent; or
- (f) the licensee has committed an offence involving fraud or dishonesty relating to the business carried on under the licence; or
- (g) the licensee knowingly helps a person to carry out building work in contravention of this Act; or
- (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
- (i) the licensee is negligent or incompetent in carrying out building work under the licence; or
- (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
- (k) the licensee contravenes a condition of the licence; or
- (l) the licensee owes an amount to the commission and fails to comply with a demand by the commission to pay the amount; or
- (m) the licensee fails to comply with an order of the tribunal; or

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- (n) the licensee fails to pay a subcontractor in compliance with a building contract that is a subcontract under section 67D.
- (2) However, proper grounds exist for taking disciplinary action against a former licensee only if the former licensee was a licensee at the time the grounds first existed.
- (3) In this section—

former licensee means a person who was a licensee.

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.

74C Proper grounds for taking disciplinary action against person not a licensee

- (1) Proper grounds exist for taking disciplinary action against a person who is not a licensee if the person—
- (a) carries out, or undertakes to carry out, building work for which a licence is required without holding a licence of the appropriate class; or
- (b) has committed an offence involving fraud or dishonesty relating to the performance of building work; or
- (c) contravenes or is taken to have contravened the *Fair Trading Act 1989* in relation to building work carried out by the person; or

[s 74D]

Note—

A contravention of the *Fair Trading Act 1989* includes a contravention of the Australian Consumer Law (Queensland) which forms part of that Act.

- (d) is negligent or incompetent in carrying out building work for which a licence is required; or
 - (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.
- (2) In this section—

undertakes to carry out, building work, means enters into a contract to carry out building work or submits a tender or makes an offer to carry out building work, unless the contract, submission or offer is conditional on the person obtaining a licence of the appropriate class.

74D Types of disciplinary action that may be taken

The types of disciplinary action the commission may take against a person are—

- (a) for defective or incomplete building work carried out by the person for a building owner—directing the person pay, within a stated period, the building owner an amount sufficient to rectify the work; or
- (b) for consequential damage caused by, or as a consequence of, building work carried out by the

- person—directing the person pay, within a stated period, the owner of the residence affected by the consequential damage an amount sufficient to remedy the damage; or
- (c) directing the person to pay, within a stated period, compensation to someone else who has suffered loss or damage because of the act or omission that resulted in the disciplinary action; or
 - (d) imposing a penalty on the person of not more than—
 - (i) for an individual—an amount equivalent to 200 penalty units; or
 - (ii) for a corporation—an amount equivalent to 1,000 penalty units; or
 - (e) if the person is a licensee—
 - (i) reprimanding the licensee; or
 - (ii) suspending the licence; or
 - (iii) imposing conditions on the licence; or
 - (iv) cancelling the licence.

74E Notice of proposed disciplinary action

If, after conducting an investigation, the commission believes that appropriate grounds exist for taking disciplinary action against a person, the commission must give the person a written notice of—

- (a) the grounds the commission believe exist for taking disciplinary action against the person; and
- (b) the disciplinary action the commission proposes to take against the person; and
- (c) that the person may, within the period stated in the notice, make written submissions to the commission about the matters mentioned in paragraphs (a) and (b).

74F Taking disciplinary action

- (1) If the commission has given a person a notice under section 74E, the commission must consider all submissions made by the person within the period stated in the notice and decide to—
 - (a) take no further action; or
 - (b) take 1 or more of the types of disciplinary action mentioned in section 74D.
- (2) Subsection (3) applies if—
 - (a) the decision is to take disciplinary action of a type mentioned in section 74D(a), (b) or (c); and
 - (b) the disciplinary action takes effect under section 74G; and
 - (c) the person does not comply with the disciplinary action as required.
- (3) The commission may immediately decide to take another type of disciplinary action against the person.
- (4) As soon as practicable after making a decision to take no further action under subsection (1), the commission must give the person written notice of the decision.
- (5) As soon as practicable after making a decision to take disciplinary action against the person under subsection (1) or (3), the commission must give the person written notice of the decision that—
 - (a) complies with the QCAT Act, section 157(2); and
 - (b) informs the person of their option of applying to the commission for an internal review of the decision under section 86A.

74G When disciplinary action takes effect

- (1) If the commission decides to take disciplinary action against a person under section 74F, the action takes effect from the later of the following days—

- (a) the day that is 29 days after the person is given notice of the decision under section 74F(5);
 - (b) the day stated in the notice of the decision under section 74F(5).
- (2) However, the decision to take the disciplinary action is stayed if—
- (a) the disciplinary action relates to any matter other than a matter mentioned in section 74B(1)(j) or 74C(1)(e); and
 - (b) the person applies to the commission to have the decision reviewed under section 86A.
- (3) The stay under subsection (2) is only for the period of a proceeding to decide the review.
- (4) The person need not comply with the disciplinary action if—
- (a) the person applied to the tribunal for a review of the decision under section 87; and
 - (b) the tribunal orders a stay of the decision.
- (5) The commission may recover an amount imposed as a penalty, as a debt, from the person on whom the penalty is imposed.
- (6) Subsection (7) applies if the decision to take the disciplinary action is stayed under subsection (2) or the tribunal orders a stay of the decision.
- (7) The decision to take the disciplinary action is taken not to have taken effect for the duration of the stay.

74H Filing of certificate as judgment debt

- (1) This section applies if—
- (a) the commission decides to take disciplinary action, against a person, of a type mentioned in section 74D(a), (b) or (c); and
 - (b) the disciplinary action takes effect under section 74G.

- (2) The commission may prepare a certificate stating the following matters—
 - (a) the name of the person entitled to the payment of an amount (the *claimant*);
 - (b) the name of the person who is liable to pay the amount (the *respondent*);
 - (c) the amount;
 - (d) the date on which payment of the amount was required to be paid to the claimant.
- (3) The certificate may be filed by the commission as a judgment for a debt for the claimant, and the judgment may be enforced by the claimant, in a court of competent jurisdiction.
- (4) The certificate can not be filed under this section unless it is accompanied by an affidavit by the commission stating that the whole or a part of the amount has not been paid at the time the certificate is filed.
- (5) If the affidavit states that part of the amount has been paid, the judgment is for the unpaid part of the amount only.
- (6) If the respondent commences proceedings to have the judgment set aside, the respondent—
 - (a) is not, in those proceedings, entitled—
 - (i) to bring any counterclaim against the commission or claimant; or
 - (ii) to challenge the commission’s decision to take disciplinary action against the respondent; and
 - (b) is required to pay into the court as security the unpaid portion of the amount pending the final decision in those proceedings.

Part 7 Jurisdiction of tribunal

Division 1 Meaning of central terms

75 *Tribunal work defined*

- (1) The following is *tribunal work*—
 - (a) the erection or construction of a building;
 - (b) the renovation, alteration, extension, improvement or repair of a building;
 - (c) the provision of electrical work, water supply, sewerage or drainage or other like services for a building;
 - (d) the demolition, removal or relocation of a building;
 - (e) any site work (including the construction of retaining structures, driveways, landscaping and the construction of a swimming pool) related to tribunal work of a kind mentioned in paragraphs (a) to (d);
 - (f) the preparation of plans, specifications or bills of quantity for the carrying out of tribunal work;
 - (fa) fire protection work;
 - (g) the inspection of a completed building;
 - (h) subject to subsection (3), work prescribed under a regulation.
- (2) To remove doubt, it is declared that reviewable domestic work is tribunal work.
- (3) A person carries out tribunal work whether the person carries it out personally, or directly or indirectly causes it to be carried out.
- (4) A person is taken to carry out tribunal work if the person provides advisory services, administration services, management services or supervisory services relating to the tribunal work.

[s 76]

- (5) A person undertakes to carry out tribunal work if the person enters into a contract to carry it out or submits a tender or makes an offer to carry it out.

76 What is not *tribunal work*

- (1) The following is not *tribunal work*—
- (a) the construction, extension, repair or replacement of a water reticulation system, sewerage system or storm water drain, outside the boundaries of private property;
 - (b) the building or maintenance of a road as defined under the *Land Act 1994*;
 - (c) the construction, maintenance or repair of a bridge, other than a bridge on private property;
 - (d) the construction, maintenance or repair of railway tracks, signals or associated structures, unless the structures are buildings for residential purposes, or are storage or service facilities;
 - (e) the construction, maintenance or repair of airport runways, taxiways and aprons;
 - (f) the construction, maintenance or repair of ports or ports infrastructure, unless the structures are buildings for residential purposes, or are storage or service facilities;
 - (g) the construction, maintenance or repair of a dam;
 - (h) the construction, maintenance or repair of communications installations performed for a public company or public body engaged in radio or television broadcasting or in some other form of communications business or undertaking;
 - (i) the installation of manufacturing equipment or equipment for hoisting, conveying or transporting materials or products (including primary produce), other than the installation of fixed structures providing shelter for the equipment;
 - (j) construction work in mining;

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- (k) work consisting of monumental masonry, sculpture, or the erection or construction of statues, fountains or other works of art, other than work affecting the way in which a building is constructed;
 - (l) tribunal work carried out by the State for the State or for an entity representing the State;
 - (m) tribunal work carried out by a local government for a local government, the State or an entity representing a local government or the State;
 - (n) tribunal work carried out outside Queensland.
- (2) For subsection (1)(l), tribunal work is not carried out by the State if the work is carried out for the State by an independent contractor.
- (3) For subsection (1)(m), tribunal work is not carried out by a local government if the work is carried out for the local government by an independent contractor.

Division 2 Building disputes

77 Tribunal may decide building dispute

- (1) A person involved in a building dispute may apply, as provided under the QCAT Act, to the tribunal to have the tribunal decide the dispute.
- (2) However, the person may not apply to the tribunal unless the person has complied with a process established by the commission to attempt to resolve the dispute.
- (3) Without limiting the tribunal's powers to resolve the dispute, the tribunal may exercise 1 or more of the following powers—
 - (a) order the payment of an amount found to be owing by 1 party to another;
 - (b) order relief from payment of an amount claimed by 1 party from another;

[s 78]

- (c) award damages, and interest on the damages at the rate, and calculated in the way, prescribed under a regulation;
- (d) order restitution;
- (e) declare any misleading, deceptive or otherwise unjust contractual term to be of no effect, or otherwise vary a contract to avoid injustice;
- (f) avoid a policy of insurance under the statutory insurance scheme;
- (g) order rectification or completion of defective or incomplete tribunal work;
- (h) award costs.

78 When major commercial building dispute may be heard by tribunal

A major commercial building dispute may be decided by the tribunal only if the tribunal is satisfied all parties to the dispute consent to it doing so.

79 Procedure to decide whether all parties consent

- (1) An application to start a proceeding for a major commercial building dispute must be accompanied by the written consent of all parties to the dispute.
- (2) The written consent must include an acknowledgement by the consenting party that the consent can not be withdrawn.
- (3) The tribunal may, before another step is taken in the proceeding, conduct a pre-hearing conference to decide whether there is another person who should be joined as a party to the dispute.
- (4) If the tribunal decides that there is another person who should be joined as a party to the dispute, the tribunal—
 - (a) must give the consenting parties an opportunity to obtain the written consent of the other person; and
 - (b) may hear the dispute only if the other person consents.

- (5) If the consenting parties obtain the consent of the other person, the tribunal must join the other person as a party to the dispute.
- (6) The consent of all parties to the dispute must be obtained before another step is taken in the proceeding.

80 Procedure if another party discovered

- (1) This section applies if the tribunal becomes aware that there is another person who should be joined as a party to a major commercial building dispute (other than at a pre-hearing conference under section 79).
- (2) The tribunal does not have jurisdiction to decide the dispute.
- (3) The tribunal must order that the proceeding be removed to a court under section 94.

81 Consent may not be withdrawn

A party that gives written consent to have a major commercial building dispute heard and decided by the tribunal can not withdraw the consent.

82 Tribunal may make interim order

- (1) Before finally deciding a building dispute, the tribunal may make 1 or more of the interim orders mentioned in subsections (2) to (4).
- (2) The tribunal may make an order requiring a building contractor to rectify or complete defined tribunal work, or tribunal work to be defined by a process identified in the order, that is the subject of the dispute.
- (3) The tribunal may make an order requiring a building owner, in relation to the amount claimed to be owing from the building owner to a building contractor, to do 1 or more of the following—

[s 82]

- (a) pay an amount decided by the tribunal into the tribunal's trust account to be held until the tribunal is satisfied that the building contractor has completed the tribunal work;
 - (b) provide security of a type and for an amount decided by the tribunal until the tribunal is satisfied that the building contractor has completed the tribunal work;
 - (c) pay an amount decided by the tribunal to the building contractor.
- (4) The tribunal may make an order requiring a person, in relation to the amount claimed to be owing from the person to a subcontractor, to do 1 or more of the following—
- (a) pay an amount decided by the tribunal into the tribunal's trust account to be held until the tribunal is satisfied that the subcontractor has completed the tribunal work;
 - (b) provide security of a type and for an amount decided by the tribunal until the tribunal is satisfied that the subcontractor has completed the tribunal work;
 - (c) pay an amount decided by the tribunal to the subcontractor.
- (5) On being satisfied the tribunal work has been completed the tribunal must order—
- (a) the amount paid into the tribunal's trust account under subsection (3)(a) or (4)(a) be paid to the building contractor or subcontractor; or
 - (b) the application of the security in satisfaction of the amount decided by the tribunal under subsection (3)(b) or (4)(b) in favour of the building contractor or subcontractor.
- (6) However for subsection (5)(b), the tribunal may order that the security be discharged if an amount equal to the amount of the security is paid to the building contractor or subcontractor.

83 Proceeding in tribunal does not affect action by commission

- (1) If a proceeding about a building dispute is started in, or removed from, a court to the tribunal, the commission is not prevented from acting in relation to the dispute.
- (2) Without limiting subsection (1), the commission may—
 - (a) decide whether or not to give a direction to rectify or remedy; or
 - (b) decide to allow or disallow a claim under the statutory insurance scheme.

85 Tribunal may hear dispute while contract still in operation

The tribunal may make an order to resolve a building dispute even though the contract under which the dispute arose has not been terminated or finalised.

Division 3 Proceedings for review

Subdivision 1 Internal review

85A Definitions for sdiv 1

In this subdivision—

internal review application means an application for review under this subdivision.

internal review decision see section 86C(1).

internal reviewer, for an internal review application, means—

- (a) if the application is for a decision of the commissioner under the *Plumbing and Drainage Act 2002*, section 68—the Service Trades Council; or
- (b) if the application is for a reviewable decision not mentioned in paragraph (a)—the commission.

reviewable decision see section 86.

86 Reviewable decisions

- (1) Each of the following decisions of the commission under this Act is a *reviewable decision*—
- (a) a decision to refuse an application for a licence or a permit;
 - (aa) a decision to refuse an application for renewal of a licence;
 - (b) a decision to impose or vary a condition of a licence;
 - (c) a decision to suspend or cancel a licence or permit;
 - (d) a decision that there are reasonable grounds for concern that a licensee does not satisfy the relevant financial requirements for a licence;
 - (e) a decision to give a direction to rectify or remedy or not to give the direction;
 - (f) a decision that building work undertaken at the direction of the commission is or is not of a satisfactory standard;
 - (g) a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete tribunal work;
 - (h) a decision to disallow a claim under the statutory insurance scheme wholly or in part;
 - (i) a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the statutory insurance scheme;
 - (j) a decision of the commission to take disciplinary action against a person under section 74F;
 - (k) a decision under section 56AF or 56AG that—
 - (i) a person is an excluded individual or excluded company; or

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- (ii) an individual is still a director or secretary of, or an influential person for, a company;
 - (l) a decision under section 66 or 67 that a person is a convicted company officer;
 - (m) a decision under section 67AA that a company that is a licensee has an individual who is a convicted company officer as a director or secretary of, or an influential person or nominee for, the company;
 - (n) a decision under section 67AH, 67AI, 67AL or 67AM that an individual is a banned individual for a stated term;
 - (o) a decision under section 67AN that a company that is a licensee has an individual who is a banned individual as a director or secretary of, or an influential person or nominee for, the company;
 - (p) a decision under section 67AZF, 67AZJ or 67AZK that an individual is a disqualified individual for a stated term;
 - (q) a decision under section 67AZL that a company that is a licensee has an individual who is a disqualified individual as a director or secretary of, or an influential person or nominee for, the company;
 - (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) Also, a decision of the commissioner under any of the following provisions is a **reviewable decision**—
- (a) the *Building Act 1975*, section 157, 169, 177, 204, 246BJ, 246BP, 246BT, 246BZ or 246CY;

[s 86A]

- (b) the *Plumbing and Drainage Act 2002*, section 40, 59 or 68;
 - (c) section 106J(4)(a), 106K or 108AI.
- (3) Further, a decision of the commissioner relating to the accumulation of demerit points by a pool safety inspector under the *Building Act 1975* is a **reviewable decision**.
- (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.

86A Who may apply for internal review

- (1) A person who is given, or is entitled to be given, notice of a reviewable decision may apply to the internal reviewer to have the decision reviewed.
- (2) However, subsection (1) does not apply if the person has applied to the tribunal for a review of the reviewable decision under subdivision 2.
- (3) Also, if—
- (a) the person applies for an internal review of the reviewable decision; and
 - (b) before the application is decided, the person applies to the tribunal for review of the reviewable decision under subdivision 2;

the application for internal review of the decision lapses.

86B Requirements for making application

An internal review application must—

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- (a) be made within the following period—
 - (i) 28 days after the applicant is given notice of the reviewable decision to which the application relates or otherwise becomes aware of the decision; or
 - (ii) a longer period allowed by the internal reviewer, whether before or after the end of the 28-day period mentioned in subparagraph (i); and
 - (b) be lodged at an office of the commission.

86C Internal review decision

- (1) If an internal review application is made under section 86B, the internal reviewer must, as soon as practicable but within the required period, make a new decision (the *internal review decision*) as if the reviewable decision the subject of the application had not been made.
- (2) For subsection (1), the *required period* is—
 - (a) 28 days after the internal review application is made; or
 - (b) a longer period agreed to by the applicant.
- (3) However, if the internal reviewer does not decide the application within the required period, the internal reviewer is taken to have made an internal review decision at the end of the required period that is the same as the reviewable decision.
- (4) If the internal reviewer is the commission, the application must not be dealt with by—
 - (a) the person who made the reviewable decision; or
 - (b) a person in a less senior office than the person who made the reviewable decision.
- (5) Subsection (4)—
 - (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
 - (b) does not apply to a reviewable decision made by the commissioner personally.

[s 86D]

86D Notice of internal review decision

- (1) As soon as practicable after an internal review decision is made, or is taken to have been made, under section 86C, the internal reviewer must give the applicant and any other person affected by the decision written notice (the *review notice*) of the decision.
- (2) The review notice must state—
 - (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) that the person may, if dissatisfied with the internal review decision, within 28 days after the person is given the notice apply to the tribunal for external review of the decision under subdivision 2; and
 - (d) how to apply for review of the decision.

Subdivision 2 External review

86E Definition for sdiv 2

In this subdivision—

reviewable decision means—

- (a) a reviewable decision within the meaning of subdivision 1, other than a decision that was the subject of an internal review under subdivision 1; or
- (b) an internal review decision within the meaning of subdivision 1.

86F Decisions that are not reviewable decisions

- (1) The following decisions of the commission under this Act are not reviewable decisions under this subdivision—
 - (a) a decision to recover an amount under section 71;

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- (b) a decision to give a person a direction to rectify or remedy, and any finding by the commission in arriving at the decision if—
- (i) 28 days have elapsed from the date the direction was served on a person and the person has not, within that time, applied to the tribunal for a review of the decision; and
 - (ii) the commission has—
 - (A) started a disciplinary proceeding against the person under part 6A; or
 - (B) served a notice on the person advising a claim under the statutory insurance scheme has been approved in relation to the building work relevant to the direction; or
 - (C) started a prosecution, or served an infringement notice, for an offence against section 73 in relation to the direction;
- (c) a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify or complete tribunal work if 28 days have elapsed since the decision was served on the building contractor and the contractor has not, within that time, applied to the tribunal for a review of the decision;
- (d) a decision to give information to a health or safety regulator under section 28A.
- (2) Also, a decision of the commissioner to issue an infringement notice for an offence against this Act, the *Building Act 1975* or the *Plumbing and Drainage Act 2002* is not a reviewable decision under this subdivision.

87 Application for review

A person affected by a reviewable decision of the commission may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.

87A No stay by QCAT of particular decisions

- (1) This section applies if a person applies to the tribunal for a review under section 87 of any of the following decisions of the commission—
 - (a) a decision to give a direction to rectify or remedy or not to give the direction;
 - (b) a decision that building work undertaken at the direction of the commission is or is not of a satisfactory standard;
 - (c) a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify building work that is defective or incomplete;
 - (d) a decision to disallow a claim under the statutory insurance scheme wholly or in part;
 - (e) a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the statutory insurance scheme;
 - (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.
- (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.
- (2) QCAT must not grant a stay of the decision.

87AA Decision of tribunal on review of particular reviewable decisions

- (1) Subsection (2) applies if—
 - (a) an application is made to the tribunal for a review of a reviewable decision mentioned in section 86(1)(n); and
 - (b) the tribunal is, after reviewing the matters mentioned in section 67AH(1)(a) and (b), 67AI(1)(a) and (b), 67AL(1)(a) and (b) or 67AM(1)(a) and (b), satisfied that an individual is a banned individual.
- (2) The tribunal may not vary the term of ban applying to the individual if it has been correctly calculated under section 67AO.
- (3) Subsection (4) applies if—
 - (a) an application is made to the tribunal for a review of a reviewable decision mentioned in section 86(1)(p); and
 - (b) the tribunal is, after reviewing the matters mentioned in section 67AZF(1), 67AZG(1), 67AZJ(1)(a) and (b) or 67AZK(1)(a) and (b), satisfied that an individual is a disqualified individual.
- (4) The tribunal may not vary the term of disqualification applying to the individual if it has been correctly calculated under section 67AZM.

Division 5 Public examinations

92 Tribunal may conduct public examination

The tribunal may, on application by the commission, conduct a public examination—

- (a) that investigates the conduct or competence of a person who has carried out tribunal work or undertaken to carry out tribunal work; or
- (b) that investigates whether a person—

[s 92A]

- (i) meets the financial requirements imposed for the licence held by the person; or
 - (ii) has the qualifications and experience required for the licence held by the person; or
 - (iii) if the person is the nominee for a corporation that holds a licence—has the qualifications and experience required for the licence held by the corporation; or
 - (iv) is a fit and proper person to hold a licence; or
 - (v) if the person exercises control over a corporation that holds a licence—is a fit and proper person to exercise control over the corporation; or
 - (vi) has breached a condition imposed on the person's licence; or
- (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.

92A Procedure before public examination starts

- (1) Before the start of a public examination, the tribunal must be satisfied each person to be examined has received written grounds for the public examination.
- (2) On being satisfied under subsection (1), the tribunal must—
 - (a) decide a time and place for the public examination; and
 - (b) issue an attendance notice to each person to be examined.
- (3) If a person to be examined is a corporation, the tribunal must issue the attendance notice requiring the executive officer of the corporation to attend the tribunal for examination.
- (4) The attendance notice must state—

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- (a) the time and place for the public examination decided by the tribunal; and
 - (b) that the person may make oral and written submissions at the examination.
- (5) The commission must serve the attendance notice on the person to whom it was issued.

Division 6 Decisions about debts arising from statutory insurance scheme

93 Decisions about debts arising from statutory insurance scheme

- (1) The commission may recover a debt under section 71 by application to the tribunal under this section.
- (2) The tribunal may exercise 1 or more of the following powers—
 - (a) order the payment of an amount the tribunal has found to be owing to the commission;
 - (b) order the payment of interest on the amount mentioned in paragraph (a);
 - (c) order the payment of costs;
 - (d) order that amounts mentioned in paragraphs (a), (b) and (c) be paid by instalments or another way directed by the tribunal.

Division 7 Tribunal proceedings

93A Representation of parties

- (1) This section applies to a party in a proceeding before the tribunal relating to a matter under this Act.
- (2) The party may be represented by a lawyer if—

[s 94]

- (a) the proceeding relates to an application under section 93; or
- (b) the proceeding is a public examination.

94 Transfer of proceedings between tribunal and the courts

If proceedings relating to a major commercial building dispute are brought in a court, the court may order that the proceeding be transferred to the tribunal only if all parties to the dispute apply for the order.

95 Expedited hearing of domestic building disputes or reviews

- (1) The tribunal must decide a minor domestic building dispute at an expedited hearing if the dispute has been to mediation but has not been settled, unless the tribunal considers the dispute is too complex to be properly dealt with at an expedited hearing.

Example of too complex to be properly dealt with—

The dispute involves complex legal and contractual issues for which the tribunal is unaware of any authoritative precedent.

- (2) Subject to subsection (3), the tribunal may decide a domestic building dispute that is not a minor domestic building dispute at an expedited hearing only if—
 - (a) all parties to the proceeding apply, as provided under the QCAT Act, to the tribunal for the matter to be dealt with at an expedited hearing; and
 - (b) the tribunal considers it appropriate for the dispute to be decided at an expedited hearing.
- (3) The tribunal may decide a domestic building dispute between a building owner and a building contractor at an expedited hearing if—
 - (a) the building contractor applied to the tribunal to have the tribunal decide the dispute; and

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- (b) prior to the proceedings the building owner applied under section 71A for the commission to consider whether to direct the following rectification of building work—
- (i) to complete incomplete domestic building work;
 - (ii) to remedy defective domestic building work relating to a building that—
 - (A) adversely affects the structural performance of the building; or
 - (B) adversely affects the health or safety of a person occupying the building; or
 - (C) adversely affects the functional use of the building; or
 - (D) allows water penetration into the building; and
- (c) the tribunal considers the building owner may suffer undue hardship if the matter is not dealt with by expedited hearing; and
- (d) having regard to the complexity of the dispute, the tribunal considers that it may properly be dealt with at an expedited hearing.
- (4) The tribunal may decide a review of a decision of the commission at an expedited hearing if—
- (a) a building contractor applied to the tribunal for the review; and
 - (b) the review is of a decision of the commission—
 - (i) to direct or not to direct rectification or completion of tribunal work in relation to domestic building work; or
 - (ii) that a domestic building contract has been validly terminated having the consequence of allowing a claim for noncompletion under the statutory insurance scheme; and

- (c) prior to the review being commenced, the relevant building owner for the decision applied under section 71A for the commission to consider whether to direct the following rectification of building work—
 - (i) to complete incomplete domestic building work;
 - (ii) to remedy defective domestic building work relating to a building that—
 - (A) adversely affects the structural performance of the building; or
 - (B) adversely affects the health or safety of a person occupying the building; or
 - (C) adversely affects the functional use of the building; or
 - (D) allows water penetration into the building; and
 - (d) the tribunal considers the relevant building owner for the decision may suffer undue hardship if the matter is not dealt with by expedited hearing; and
 - (e) having regard to the complexity of the review the tribunal considers that it may properly be dealt with at an expedited hearing.
- (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.

96 Certain minor commercial building disputes may be expedited

- (1) The tribunal may conduct an expedited hearing for a minor commercial building dispute between a subcontractor and another person if—
 - (a) neither the claim nor any counterclaim exceeds \$10,000; and
 - (b) the dispute relates only to a claim for moneys owing by a person to the subcontractor for tribunal work completed by the subcontractor under a written contract; and
 - (c) the subcontractor files an application for an expedited hearing, a copy of the contract and an affidavit by the subcontractor stating that—
 - (i) the tribunal work under the contract has been completed by the subcontractor to the standard required under the contract; and
 - (ii) a claim for payment payable under the contract has been given to the other person by the subcontractor; and
 - (iii) the amount claimed by the subcontractor has not been paid by the other person; and
 - (iv) no complaint about the tribunal work under the contract has been made to the subcontractor by the other person.

[s 97]

- (2) A hearing under this section may proceed only if the subcontractor has given the other person a copy of the application and all documents filed by the subcontractor at least 5 days before the hearing.

Division 8 Other powers of the tribunal

97 Entry and inspection of property by member of tribunal

- (1) A member of the tribunal may, if it is necessary to do so for the purposes of a proceeding before the tribunal—
- (a) enter and inspect a building or land relevant to the proceeding accompanied by the parties to the proceeding; or
 - (b) authorise a person in writing to take the following action and report to the tribunal on the action taken—
 - (i) enter and inspect a building or land relevant to the proceeding;
 - (ii) take photographs, video film or an image of the building or land or anything relevant to the proceeding;
 - (iii) carry out tests approved by the tribunal.

Examples of building or land relevant to the proceeding—

- a display home mentioned in a contract as the model to be followed by a building contractor if the display home is occupied by a third party
 - land adjoining other land on which is situated building work the subject of a proceeding to better inspect the building work from the adjoining land
- (2) A person must not obstruct a member of the tribunal, or a person authorised under subsection (1)(b), in the exercise of a power mentioned in subsection (1).

Maximum penalty—200 penalty units.

97A Procedure before entry

- (1) This section applies to entry under section 97.
- (2) Before entering a building or land the member or a person authorised to enter must do or make a reasonable attempt to do the following—
 - (a) give an occupier or, if there is no occupier, the owner, reasonable notice of the entry;
 - (b) on arriving at the building or land, identify himself or herself to a person present who is an occupier of the building or land by producing—
 - (i) for the member—a copy of a document that evidences the member's appointment; or
 - (ii) for a person authorised to enter—a copy of the authorisation and evidence that the person is the person authorised;
 - (c) give the person present a copy of the things produced under subsection (2)(b);
 - (d) tell the person present the member or authorised person is permitted to enter the building or land.

97C Suspension orders

- (1) If the tribunal is satisfied, on application by the commission, that a licence should be suspended, the tribunal may, by order, suspend the licence—
 - (a) for the period the tribunal considers reasonable; or
 - (b) until the holder of the licence (the *suspended person*) complies with a condition imposed on the licence by the tribunal.
- (2) The order may direct the suspended person to deliver the licence to the commission and include any other directions the tribunal considers necessary or convenient to give effect to the order.

[s 98]

- (3) The tribunal may make an order under this section on application made without notice to the suspended person but, in that case, the tribunal must allow the suspended person a reasonable opportunity to show cause why the order should be rescinded.
- (4) If the tribunal after considering the suspended person's evidence and submissions, if any, and any further evidence or submissions of the commission, is not satisfied the order should continue in force, the tribunal must rescind the order.
- (5) The holder of a licence who contravenes a direction under subsection (2) commits an offence.

Maximum penalty—80 penalty units.

Part 8 Registers

98 Definitions for pt 8

In this part—

developer register see section 103B.

licensee register see section 99.

owner-builder register see section 103.

99 Licensee register

- (1) A register of licensees (the *licensee register*) must be kept by the commission.
- (2) The register must include the following particulars in relation to each licensee—
 - (a) the licensee's full name, business address and licence number;
 - (b) if the licensee is a company—the full name and business address of the nominee and each director;
 - (c) the class of licence held by the licensee and any conditions to which the licence is, or has been, subject;

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- (d) any disciplinary action taken against the licensee that has taken effect under section 74G and is not the subject of an internal review or review by the tribunal;
 - (e) any particulars required by regulation.
- (3) The register must also contain against the name of each licensee a note of—
- (a) each direction of the commission requiring the licensee to rectify building work or to remedy consequential damage; and
 - (d) each time the licensee is convicted of an offence against this Act and the provision of this Act that was contravened; and
 - (e) each offence for which the licensee has for this Act been served with an infringement notice and—
 - (i) the licensee has paid the fine in full or in part; or
 - (ii) a default certificate has been registered for the infringement notice; and
 - (f) any demerit points allocated to the licensee, the demerit matters for which they were allocated and the dates the points took effect; and
 - (g) any cancellation or suspension of the licensee's licence including the circumstances that led to the cancellation or suspension; and
 - (h) if the licensee has been a permanently excluded individual, an excluded individual, a banned individual or a disqualified individual—the details of the circumstances that led to the exclusion, ban or disqualification; and
 - (i) if the licensee is a company that has a director, secretary, influential person or nominee that became a permanently excluded individual, an excluded individual, a banned individual or a disqualified individual in the last 10 years—the details of the circumstances that led to the exclusion, ban or disqualification; and

[s 100]

- (j) the number and cost of claims approved under the statutory insurance scheme that relate to residential construction work for which the licensee paid, or ought to have paid, an insurance premium.
- (4) A reference in subsection (3) to something happening in relation to a person who is a licensee includes something happening—
 - (a) in relation to the person before the person became a licensee; and
 - (b) before the commencement of this section.
- (5) In this section—
licensee includes a person who was previously a licensee.

100 When information may be included in the licensee register

- (1) No information may be included in the register under section 99(3)(a) until—
 - (a) all periods for seeking a review of the direction, and for making any appeal arising out of review of the direction, have ended; and
 - (b) any review or appeal about the direction is finally decided or is not proceeded with.
- (2) No information may be included in the register under section 99(3)(b) or (c) until—
 - (a) all periods for making an appeal arising out of the tribunal's order or decision have ended; and
 - (b) any appeal about the order or decision is finally decided or is not proceeded with.
- (3) No information may be included in the register under section 99(3)(d) until—
 - (a) all periods for making an appeal arising out of the conviction have ended; and

- (b) any appeal about the conviction is finally decided or is not proceeded with.
- (4) No information may be included in the register under section 99(3)(e)(ii) if a licensee has applied for cancellation of the enforcement order and the application for cancellation has not been finally decided.

101 Licensees must advise change of circumstances

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

Maximum penalty—20 penalty units.

- (2) Particulars may be given under subsection (1)—
 - (a) by written notice; or
 - (b) in another way approved by the commission, and advised generally to licensees, as a suitable way for advising particulars to the commission.

102 When notes must be removed from the licensee register

- (1) A note made in the register under section 99(3) must be taken off—
 - (a) for information mentioned in section 99(3)(g) and (h), 10 years after it is made; or
 - (b) for information mentioned in section 99(3)(f), 3 years after it is made; or
 - (c) for information mentioned in section 99(3)(i), the earlier of—
 - (i) when the director, secretary, influential person or nominee is no longer a director, secretary, influential person or nominee for the company; or

- (ii) 10 years from the time the director, secretary, influential person or nominee became a permanently excluded individual, excluded individual, banned individual or a disqualified individual; or
 - (d) otherwise, 5 years after it is made.
- (2) However, details of demerit points and the demerit matters for which points were allocated must be removed from the register—
 - (a) if the points stop having effect; or
 - (b) if the points relate to an unsatisfied judgment debt, when the commission is satisfied the judgment debt has been paid.
- (3) Also, for section 99(3)(e), details of an offence must be removed from the register if—
 - (a) the infringement notice for the offence is withdrawn by the commission; or
 - (b) the enforcement order stops having effect, other than because the amount owing under the enforcement order has been paid or the order has been otherwise discharged.
- (4) Also, a note that states that an individual is prevented, for the life of the individual, from obtaining a licence under this Act must not be removed from the register.

103 Register of holders of owner-builder permits

- (1) A register of persons holding owner-builder permits (the *owner-builder register*) must be kept by the commission.
- (2) The register must include the following particulars in relation to each permittee—
 - (a) the permittee's full name, or if the permittee is a company the full name and business address of each of the directors of the company;

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- (b) the location of the land on which the owner-builder work is to be carried out;
 - (c) the real property description of the land;
 - (d) a description of the owner-builder work to be carried out on the land;
 - (e) the date of issue of the permit;
 - (f) the term of the permit;
 - (g) the permit number;
 - (h) the conditions of the permit;
 - (i) any particulars required by regulation.
- (3) If circumstances change so that the particulars recorded in the register in relation to a particular permittee no longer reflect the current position, the permittee must, within 14 days after the date of the change, give the commission particulars of the change.
- (4) Particulars under subsection (3) may be given—
- (a) by written notice; or
 - (b) in another way approved by the commission.

103A When particulars must be removed from owner-builder register

Particulars relating to a permittee must be removed from the owner-builder register when the term of the permittee's permit ends.

103B Developer register

- (1) A register (the *developer register*) containing details about each principal (the *relevant developer*) mentioned in section 72(5)(g) given a direction under section 72(1) must be kept by the commission.
- (2) The register must contain against the name of a relevant developer a note of—

[s 103B]

- (a) each direction of the commission requiring the relevant developer to rectify building work; and
 - (b) each time the relevant developer is convicted of an offence against section 72(10).
- (3) However, no information may be included in the register under subsection (2)(a) until—
- (a) all periods for seeking a review of the direction, and for making any appeal arising out of a review of the direction, have ended; and
 - (b) any review or appeal about the direction is finally decided or is not proceeded with.
- (4) Also, no information may be included in the register under subsection (2)(b) until—
- (a) all periods for making an appeal arising out of the conviction have ended; and
 - (b) any appeal about the conviction is finally decided or is not proceeded with.
- (5) Subsection (6) applies if—
- (a) the register contains the name of a relevant developer that is a company because the company has been convicted of an offence against section 72(10); and
 - (b) an executive officer of the company is convicted of an offence under section 111B in relation to the offence under section 72(10); and
 - (c) all periods for making an appeal arising out of the conviction of the executive officer have ended; and
 - (d) any appeal about the conviction by the executive officer is finally decided or is not proceeded with.
- (6) A note of the conviction of the executive officer must be included in the register.

103C When notes must be removed from developer register

A note made in the developer register must be taken off the register 5 years after it is made.

103D Inspection of registers

A person may, on payment of the fee, and subject to the conditions, prescribed by regulation, inspect a register at the commission's offices at any time the offices are open to the public.

103E Publication of registers

The commission may publish a register on the commission's internet site.

103F Certificates

- (1) The commission may, on application by any person and payment of the fee fixed by regulation, issue a certificate certifying any matter contained in a register kept under this Act.
- (2) A certificate under this section is admissible in legal proceedings as evidence of any matter stated in the certificate.

Part 9 Inspectors

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

[s 103H]

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

104 Appointment of inspectors

- (1) The commission may appoint relevant officers of the commission as inspectors.
- (2) The commission must issue an identity card, containing a photograph of the inspector, to each inspector.
- (3) A person who ceases to be an inspector must, as soon as practicable, return the identity card to the commission.

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

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

[s 105A]

- (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

[s 105E]

- (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.

[s 105M]

- (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

105O 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.

[s 105P]

- (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—

[s 105S]

- (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

[s 106C]

(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 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

[s 106L]

- (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—

[s 106P]

- (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.

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- (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—

[s 106R]

- (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.

107A **Obstructing inspectors**

- (1) A person must not obstruct an inspector who is exercising a power under this Act, or someone helping an inspector exercising a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector, or someone helping an inspector exercising a power under this Act, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
 - (a) it is an offence to cause an obstruction, unless the person has a reasonable excuse; and
 - (b) the inspector considers the person's conduct an obstruction.
- (3) Subsection (2) does not apply if the obstruction is an assault.
- (4) In this section—

obstruct includes assault, hinder or resist or attempt or threaten to obstruct.

108 Obligation of assessment manager

An assessment manager must allow a relevant officer of the commission, at any reasonable time, to examine and make copies of, or take extracts from, books, documents, papers and records of the local government relating to building work or proposed building work.

Part 9A Transfer of particular assets, liabilities and employees

108AA Relevant entity

- (1) Each of the following entities is a *relevant entity*—
 - (a) the commission;
 - (b) the department administering this Act;
 - (c) an entity prescribed by regulation for this section.
- (2) However, the regulation may only prescribe—
 - (a) a department; or
 - (b) an entity established under an Act; or
 - (c) an entity ultimately owned by a relevant entity or the State.

108AB Transfer of assets, liabilities etc. to relevant entity

- (1) A regulation (a *transfer regulation*) may make provision about all or any of the following for a relevant entity—
 - (a) the transfer of an asset or liability of the relevant entity to another relevant entity;

- (b) the consideration for an asset or liability transferred under paragraph (a);
 - (c) whether and, if so, the extent to which the relevant entity is the successor in law of another relevant entity;
 - (d) a legal proceeding that is being, or may be, taken by or against the relevant entity to be continued or taken by or against another relevant entity;
 - (e) the transfer of an employee of the relevant entity to another relevant entity;
 - (f) the employees of the relevant entity transferred under paragraph (e), and their terms and conditions of employment, rights and entitlements;
 - (g) the application of a particular industrial instrument to—
 - (i) the employees mentioned in paragraph (f); or
 - (ii) the relevant entity to which the employees mentioned in paragraph (f) are transferred; or
 - (iii) other employees of the relevant entity mentioned in subparagraph (ii).
- (2) A transfer regulation—
- (a) may transfer an asset attached to land without transferring the land, even though the asset would otherwise be a part of the land; and
 - (b) has effect despite any other law or instrument; and
 - (c) may provide for a matter by reference to a document held by an entity.
- (3) To remove any doubt it is declared that a transfer regulation applies despite—
- (a) the *Industrial Relations Act 2016*; and
 - (b) any industrial instrument.
- (4) A transfer regulation may make provision about an accounting treatment in relation to a matter mentioned in subsection (1).

108AC Rights of transferred employees etc.

- (1) This section applies if there is a transfer of an employee (a *transferred employee*) from a relevant entity (the *transferor*) to another relevant entity (the *transferee*) under a transfer regulation made under section 108AB.
- (2) The transfer does not—
 - (a) reduce the transferred employee's total remuneration; or
 - (b) prejudice the transferred employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave; or
 - (c) affect a right or entitlement of the transferred employee to be employed as a public service employee accrued—
 - (i) immediately before the commencement of this section; or
 - (ii) before, on or after the commencement of this section; or
 - (iii) before, on or after the commencement of this section under the *Public Service Act 2008*, section 123; or
 - (d) interrupt continuity of service, except that the transferred employee is not entitled to claim the benefit of a right or entitlement more than once for the same period of service; or
 - (e) constitute a termination, retrenchment or redundancy of the transferred employee's employment by the transferor; or
 - (f) entitle the transferred employee to a payment or other benefit merely because he or she is no longer employed by the transferor; or
 - (g) require the transferor to make any payment to the transferred employee for the transferred employee's accrued rights to recreation, sick, long service or other leave irrespective of any arrangement between the transferor and the transferred employee.

- (3) The transfer has effect despite any other contract, law or instrument.
- (4) If the transfer regulation provides for the application of a particular industrial instrument to an employee of the transferee (other than a transferred employee), the provision does not reduce the employee's total remuneration.

Part 9B Injunctions and stop work notices

Division 1 Injunctions

108AD Grounds for injunction

The Supreme Court may grant an injunction against a person if the court is satisfied that the person (a *respondent*) has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of this Act or the *Building Act 1975*; or
- (b) an attempt to contravene this Act or the *Building Act 1975*; or
- (c) the aiding, abetting, counselling or procuring of another person to contravene this Act or the *Building Act 1975*; or
- (d) the inducement of, or attempt to induce, whether by threats, promises or otherwise, another person to contravene this Act or the *Building Act 1975*; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by another person of this Act or the *Building Act 1975*; or
- (f) conspiring with other persons to contravene this Act or the *Building Act 1975*.

108AE Commissioner may apply for injunction

The commissioner may apply to the Supreme Court for an injunction granted under this division.

108AF When injunction may be granted

An injunction may be granted under this division by the Supreme Court against a respondent at any time.

108AG Court's powers for injunctions

- (1) The power of the Supreme Court to grant an injunction restraining a respondent from engaging in conduct may be exercised—
 - (a) whether or not it appears to the court that the respondent intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the respondent has previously engaged in conduct of that kind.
- (2) The power of the court to grant an injunction requiring a respondent to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the respondent intends to fail again, or to continue to fail, to do the act or thing; and
 - (b) whether or not the respondent has previously failed to do the act or thing.
- (3) An interim injunction may be granted under this division until the application of the commissioner is finally decided.
- (4) The Supreme Court may rescind or vary an injunction granted under this division at any time.

108AH Terms of injunction

- (1) The Supreme Court may grant an injunction on the terms the court considers appropriate.

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- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a respondent from carrying on a business (whether or not the respondent is a building contractor or the business is carried on as part of, or incidental to, the carrying on of another business)—
 - (a) for a stated period; or
 - (b) except on stated terms and conditions.
 - (3) Also, the court may grant an injunction requiring a respondent to take stated action, including action to disclose information or publish advertisements, to remedy any adverse consequences of the respondent's contravention of this Act or the *Building Act 1975*.

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—

[s 108A]

- (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.

Part 10 Miscellaneous

108A Documents that must be kept for 7 years

- (1) Subsection (2) applies to the following documents—
- (a) a building contract entered into by a building contractor and the plans, specifications and variations relating to the contract;
 - (b) a building contractor's financial records relevant to the financial requirements stated in the board's policies.
- (2) The contractor must keep each document for 7 years from the date it is put into writing.

Maximum penalty—100 penalty units.

108B False or misleading statement

- (1) A person must not state anything to an official the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) This section does not apply to information to which section 53B applies.

- (3) In this section—

official means—

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

108C False or misleading document

- (1) A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

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

- (3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (4) This section does not apply to a document to which section 53B applies.

[s 108D]

- (5) In this section—
official means—
- (a) the commission; or
 - (b) an inspector performing a function or exercising a power under this Act.

108D Contracting out prohibited

- (1) A person can not contract out of the provisions of this Act.
- (2) A domestic building contract is void to the extent to which it—
 - (a) is contrary to this Act; or
 - (b) purports to annul, exclude or change a provision of this Act.
- (3) An agreement (other than a domestic building contract) is void to the extent to which it seeks to exclude, change or restrict a right conferred under this Act in relation to a domestic building contract.
- (4) Nothing in this section prevents the parties to a domestic building contract from including provisions in the contract that impose greater or more onerous obligations on a building contractor than are imposed under this Act.
- (5) Subsections (2) and (3) apply subject to any contrary intention in this Act.

109 Access to building sites

- (1) A building contractor must, at the request of a consumer, allow the consumer reasonable access to a building site at which building work is being carried out for the consumer.
- (2) A contractual provision that is inconsistent with subsection (1) is void.

109A Service of documents

- (1) A document may be served under this Act on a licensee by leaving it at, or sending it by post, telex, facsimile or similar facility to, the address of the licensee in the register of licensees kept by the commission.
- (2) Subsection (1) does not limit the *Acts Interpretation Act 1954*, section 39.
- (3) In this section—
address includes a postal address.

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—

[s 111]

- (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.

111 Prosecutions for offences

- (1) A prosecution for an offence against this Act may be started within 2 years after the alleged date of commission of the offence or within 1 year after the offence comes to the knowledge of the commission, whichever is the later.
- (2) A prosecution may only be started by a person authorised by the commission (either generally or in the particular case) to bring the prosecution or the Attorney-General.
- (3) The authorisation required by subsection (2) is to be presumed in the absence of evidence to the contrary.
- (4) Subsection (1) does not limit the *State Penalties Enforcement Act 1999*, section 32.

111A Responsibility for acts or omissions of representatives

- (1) This section applies for—
 - (a) a proceeding for an offence against this Act; and

-
- (b) an inquiry conducted by the tribunal under part 7, division 4 to decide whether proper grounds exist for taking disciplinary action under the division.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
- (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—
- representative* means—
- (a) of a company—an executive officer, employee or agent of the company; or
- (b) of an individual—an employee or agent of the individual.
- state of mind* of a person includes—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

111B Liability of executive officer—particular offences committed by company

- (1) An executive officer of a company commits an offence if—
- (a) the company commits an offence against an executive liability provision; and

[s 111B]

- (b) the officer did not take all reasonable steps to ensure the company did not engage in the conduct constituting the offence.

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

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
- (a) whether the officer knew, or ought reasonably to have known, of the company's conduct constituting the offence against the executive liability provision; and
- (b) whether the officer was in a position to influence the company's conduct in relation to the offence against the executive liability provision; and
- (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the company has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
- (a) the liability of the company for the offence against the executive liability provision; or
- (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the company, for the company's offence against the executive liability provision.
- (5) In this section—
- executive liability provision*** means either of the following provisions—
- section 42(9)
 - section 42D.

111C Liability of directors for amounts

- (1) This section applies if—
 - (a) a company is convicted of an offence against a provision of this Act; and
 - (b) a penalty for the offence is imposed on the company; and
 - (c) the amount of the penalty is not paid within the time required for its payment.
- (2) This section also applies if—
 - (a) a penalty is imposed on a company as the outcome of disciplinary action taken against the company; and
 - (b) the disciplinary action takes effect under section 74G; and
 - (c) the amount of the penalty is not paid within the time required for its payment.
- (3) This section also applies if a company owes the commission an amount because of a payment made by the commission on a claim under the insurance scheme.
- (4) If this section applies because of subsection (1), the liability to pay the penalty attaches to—
 - (a) each individual who was a director of the company when the offence was committed; and
 - (b) each individual who is a director of the company when the penalty is imposed.
- (5) If this section applies because of subsection (2), the liability to pay the penalty attaches to—
 - (a) each individual who was a director of the company when the act or omission happened giving rise to the finding of the tribunal; and
 - (b) each individual who is a director of the company when the penalty is imposed.

[s 112]

- (6) If this section applies because of subsection (3), the liability to pay the amount attaches to—
 - (a) each individual who was a director of the company when building work the subject of the claim was, or was to have been, carried out; and
 - (b) each individual who was a director of the company when the payment was made by the commission.
- (7) A liability under subsection (4), (5) or (6) to pay a penalty or an amount applies regardless of the status of the company, including, for example, that the company is being or has been wound up.
- (8) If a liability under subsection (4), (5) or (6) attaches to 2 or more persons, the persons are jointly and severally liable.

112 Appropriation of penalty

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

113 Double jeopardy

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

114 Protection

- (1) Neither the State, the commissioner nor a relevant officer of the commission incurs any civil liability for an honest act or omission, other than a public interest act, in the performance

or purported performance of functions under this Act or the *Building Act 1975*.

- (1A) A relevant entity does not incur any civil liability for an honest act or omission in the performance or purported performance of functions under the *Plumbing and Drainage Act 2002*.
- (2) A civil liability that would, apart from subsection (1) or (1A), attach to an entity other than the commission attaches instead to the commission.
- (3) Neither the State, the Minister, the commission nor a relevant officer of the commission incurs any liability for a public interest act.
- (4) This section does not affect the liability of a person other than the commission to disciplinary action under the conditions of the person's employment.
- (5) In this section—
- 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

[s 115]

- (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.

relevant entity means any of the following entities—

- (a) the State;
- (b) the commissioner;
- (c) a relevant officer of the commission;
- (d) a member, deputy member or temporary member of the Service Trades Council.

115 Commission may provide services to a professional board

- (1) The commission may provide services to a professional board in relation to a disciplinary proceeding being, or that may be, conducted by the tribunal.

Example—

The commission might make a lawyer performing work for it under a work performance arrangement available to represent a professional board at a disciplinary proceeding being conducted by the tribunal.

- (2) The commission may enter into arrangements with a professional board about the fees to be paid to the commission for services provided under subsection (1).
- (3) In this section—

disciplinary proceeding means—

- (a) a disciplinary proceeding under the *Architects Act 2002*; or
- (b) a disciplinary proceeding under the *Professional Engineers Act 2002*.

professional board means —

- (a) the Board of Architects of Queensland established under the *Architects Act 2002*; or
- (b) the Board of Professional Engineers of Queensland established under the *Professional Engineers Act 2002*.

115A Delegations

- (1) The board or commissioner may delegate their functions or powers under an Act to an appropriately qualified relevant officer of the commission.
- (2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to perform the function or exercise the power.

Example of standing—

a person's seniority level in an entity

116 Regulations

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may—
 - (aa) prescribe the procedure for, and other matters relating to, the application for, or renewal of, licences under this Act; and
 - (a) set fees payable under this Act and the matters for which the fees are payable; and
 - (b) provide for the refunding of fees in stated circumstances; and
 - (c) impose a penalty of not more than 20 penalty units for a contravention of a provision of the regulation; and
 - (d) provide for the continuing professional development to be undertaken by a building contractor; and

- (e) fix the number of demerit points for demerit offences, including the differing number of demerit points for any repeat of a demerit offence by a person.

Schedule 1 Transitional and validating provisions

Part 1 Transitional provisions for Act No. 98 of 1991 and amending Acts up to and including Act No. 70 of 1997

1A Definitions

In section 2—

authority means the former Queensland Building Services Authority established under the *Queensland Building Services Authority Act 1991*, section 5.

former board means the Builders' Registration Board of Queensland established under the repealed Act.

repealed Act means the *Builders' Registration and Home-Owners' Protection Act 1979*.

2 Transitional provisions

- (3) The provisions of the repealed Act about insurance continue to apply, with the changes prescribed by regulation under this Act, to building work started before 1 July 1992 and—
- (a) the provisions continue to apply to the building work whether the work is carried out before or after the date as if the repealed Act had not been repealed; and
 - (b) the authority may exercise any of the powers of the former board about the insurance.
- (3A) Instruments of guarantee and indemnity entered into under section 31(3) of the repealed Act and in force immediately before 1 July 1992 continue to have effect, with all necessary changes and any changes prescribed by regulation under this Act, until the instruments are discharged by the authority.

Schedule 1

- (3B) Without limiting subsection (3A), a reference in the instruments to the former board is taken to be a reference to the authority.
- (3C) The instruments guarantee the payment by the guarantors of amounts payable to the authority under—
- (a) section 70 of the repealed Act because of subsection (3); and
 - (b) section 71 of this Act.
- (3D) A house purchaser's agreement that the former board is taken to have entered into under the repealed Act continues in force for the balance of its term and all rights, duties, obligations and liabilities of the former board under the agreement are taken to be the rights, duties, obligations and liabilities of the authority.
- (3E) An amount paid by the former board under its obligations under section 69 of the repealed Act and not recovered at 1 July 1992—
- (a) is taken to be a debt owing to the authority; and
 - (b) the authority has the same rights under section 71 of this Act as if the amount had been paid by the authority on a claim under the insurance scheme mentioned in that section.
- (4) A direction or order for rectification of building work may be made under this Act in relation to building work, as defined in the repealed Act, carried out before 1 July 1992 by a person who was a registered builder, registered general builder or registered house builder within the meaning of the repealed Act as if references in this Act to a licensed contractor extended to the person.
- (5) An order in force under section 59 of the repealed Act immediately before the commencement of part 6 is, on the commencement of that part, taken to be a direction under that part.
- (6) The provisions of the repealed Act relating to building work carried out by owner-builders continue to apply, subject to any adaptations and modifications prescribed under this Act, to

any such building work that had been carried out or started before the commencement of part 3 and an approval mentioned in section 53(3) of the repealed Act may be given by the authority.

- (7) A proceeding for an offence against the repealed Act may, subject to the limitation of time prescribed by section 58 of the repealed Act, be brought by a person authorised by the authority, either generally or in the particular case, to bring the proceeding.
- (8) A person who was, immediately before the commencement of part 3, carrying on the business of a class of building work for which a licence is required under this Act, but for which registration was not required under the repealed Act, is taken to be licensed to carry out and supervise that class of building work—
- (a) until a day 6 months after the commencement of part 3 or, if another day is fixed by regulation for the purposes of this subsection in relation to the relevant class of building work, that other day; or
- (b) until the day the person is granted or refused a licence under this Act;
- whichever is earlier.

4 References to repealed Acts

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

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

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

In an Act or document—

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

Part 2 Validating provisions for Act No. 70 of 1997

8 Definitions

In this part—

affected licence means a document purporting to be a licence that—

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

authority means the former Queensland Building Services Authority established under the *Queensland Building Services Authority Act 1991*, section 5.

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

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

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

compliance period, for a transitional licence, means—

- (a) the basic compliance period for the licence; or

- (b) if the authority extended or further extended the period—the period as extended.

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

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

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

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

9 Validation of affected licences

- (1) An affected licence is taken to be, and at all times to have been, a validly issued licence.
- (2) Subsection (3) applies if—
- (a) before the commencement day, an affected licence was suspended, cancelled or surrendered; and
 - (b) for a suspension or cancellation—the decision to suspend or cancel the licence was or is not subsequently annulled or terminated under this Act.
- (3) Despite subsection (1), the licence is taken to have been a validly issued licence only until it was suspended, cancelled or surrendered.

10 Period of effect of transitional licences—compliance period ended

- (1) This section applies to a transitional licence if—
 - (a) the licence is not an expired licence; and
 - (b) the compliance period for the licence ended before the commencement day.
- (2) The licence is taken to have remained in force for the period starting when the compliance period ended and ending on the day before the commencement day.
- (3) Also, the licence remains in force, subject to this Act, until the end of the period of 3 months starting on the commencement day.
- (4) Subsection (6) applies if—
 - (a) before the commencement day, the relevant licensee entered into a building contract; and
 - (b) neither of the following things happens before the end of the period of 3 months mentioned in subsection (3)—
 - (i) practical completion under the contract;
 - (ii) termination of the contract.
- (5) However, subsection (6) applies only for the contract or contracts to which it relates.
- (6) Despite subsection (3), the licence remains in force, subject to this Act—
 - (a) if, by the application of subsection (4), there is only 1 contract involved—until one of the following things happens—
 - (i) the stage of practical completion is reached under the contract;
 - (ii) the contract is terminated; or
 - (b) if, by the application of subsection (4), there is more than 1 contract involved—until there is no contract either under which the stage of practical completion has not been reached or that has not been terminated.

11 Period of effect of transitional licences—compliance period current

- (1) This section applies to a transitional licence if—
 - (a) the licence is not an expired licence; and
 - (b) the compliance period for the licence has not ended before the commencement day.
- (2) The licence remains in force, subject to this Act, until the later of the following—
 - (a) the end of the compliance period;
 - (b) the end of the period of 3 months starting on the commencement day.
- (3) Subsection (5) applies if—
 - (a) before the commencement day, the relevant licensee entered into a building contract; and
 - (b) neither of the following things happens before the end of the period for which the licence remains in force under subsection (2)—
 - (i) practical completion under the contract;
 - (ii) termination of the contract.
- (4) However, subsection (5) applies only for the contract or contracts to which it relates.
- (5) Despite subsection (2), the licence remains in force, subject to this Act—
 - (a) if, by the application of subsection (3), there is only 1 contract involved—until one of the following things happens—
 - (i) the stage of practical completion is reached under the contract;
 - (ii) the contract is terminated; or
 - (b) if, by the application of subsection (3), there is more than 1 contract involved—until there is no contract either under which the stage of practical completion has not been reached or that has not been terminated.

12 Condition of transitional licences

- (1) This section applies to a transitional licence that is not an expired licence.
- (2) The licence is subject to a condition that the relevant licensee must not, while the licence remains in force under section 10 or 11, enter into a building contract on the basis of being a licensee under the licence.
- (3) The authority must promptly give written notice of the condition to the relevant licensee.
- (4) A failure by the authority to comply with subsection (3) does not affect the effectiveness of the condition.

Part 3 Transitional provisions for Queensland Building Services Authority Amendment Act 1999

13 Existing board goes out of office

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

Part 4 Transitional provisions for GST and Related Matters Act 2000

14 Residential construction work for s 71

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

15 Building work for s 72

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

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

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

Part 5

Validating and transitional provisions for Queensland Building Services Authority and Other Legislation Amendment Act 2003

Division 1 Interpretation

17 Definitions for pt 5

In this part—

authority means the former Queensland Building Services Authority established under the *Queensland Building Services Authority Act 1991*, section 5.

board means the former Queensland Building Services Board established under the *Queensland Building Services Authority Act 1991*, section 8.

the regulation means the *Queensland Building Services Authority Regulation 1992*.

Division 2 Provision about financial requirements

18 Validation of provisions about financial requirements

- (1) This section applies to section 7 of the regulation as in force, or purporting to be in force, before 1 October 1999 and section 7A of the regulation as in force, or purporting to be in force, before 19 November 1993 so far as the sections related to financial requirements.
- (2) The sections are taken to have been valid at all times and to have imposed financial requirements under section 31 of the Act as in force at a time mentioned in subsection (1).
- (3) Without limiting subsection (2), the authority and board are taken to have had the power to make the determinations and policies mentioned in the sections of the regulation.

Division 3 Terms of insurance policies

19 Validation of provision about terms of insurance policy

- (1) This section applies to section 24 of the regulation as in force, or purporting to be in force, before the commencement of this section.
- (2) The section is taken to have been valid at all times including for the purpose of prescribing the terms of a policy of insurance under section 69(2) of the Act as in force at a time mentioned in subsection (1).
- (3) Without limiting subsection (2), the board is taken to have had the power to make the policies mentioned in the section of the regulation.

20 Existing policies apply for amended s 69(2)

- (1) Board policies in force, or purporting to be in force, immediately before the commencement of this section for the purpose of section 24 of the regulation continue in force for

the purpose of section 69(2) of the Act as amended by the *Queensland Building Services Authority and Other Legislation Amendment Act 2003*.

- (2) Subsection (1) does not prevent the board amending or repealing the policies.

Division 4 Licence classes and qualifications and experience

21 Validation of sch 2, pt 25 of the regulation etc.

- (1) This section applies to schedule 2, part 25 of the regulation as in force, or purporting to be in force, before the commencement of the *Queensland Building Services Authority Amendment Regulation (No. 2) 2002*.
- (2) The part is taken to have been valid at all times before the commencement of the *Queensland Building Services Authority Amendment Regulation (No. 2) 2002* for the purpose of specifying a class of building work by regulation under section 30(2) of the Act and having stated the qualifications and experience required by regulation under section 31(1)(b) or 32(b) of the Act.
- (3) Without limiting subsection (2), the authority is taken to have had the power to give the directions mentioned in the part and to make decisions for deciding qualifications and experience requirements for the part.
- (4) A board policy, or purported board policy, giving a direction or containing a decision about scope of work, qualifications or experience requirements is taken, for this section, to have been a direction or decision of the authority given for the part.

22 Transitional provision for licences valid

Section 35 of the regulation as inserted by the *Queensland Building Services Authority Amendment Regulation (No. 2) 2002* is taken to have been valid for the purpose mentioned in the section.

Division 5 Non-trading licences

23 Definition for div 5

In this division—

non-trading licence means an instrument purporting to be a contractor's licence issued or renewed by the authority, in the period starting on 19 November 1999 and ending immediately before 27 August 2001, stating that it was a non-trading licence or containing an expression indicating that it was a non-trading licence.

Example of contractor's licence containing an expression indicating the licence was a non-trading licence—

a contractor's licence containing the expression 'NTL'

24 Non-trading licence taken to be valid

- (1) A non-trading licence is taken to have been and to be a valid contractor's licence subject to a valid condition under section 35 or 36 of the Act that the licensee must not carry out, undertake to carry out or supervise the carrying out of building work.
- (2) If the authority removed or removes the statement or expression on the licence stating or indicating that it was a non-trading licence, the authority is taken to have validly revoked the condition.

Division 6 Courses of instruction for owner-builders

25 Validation of provision about courses of instruction for owner-builders

- (1) This section applies to section 13(4) and (5) of the regulation as in force, or purporting to be in force, before the commencement of this section.

- (2) Section 13(4) and (5) are taken to have been, and to be, valid at all times including for the purpose of specifying a course of instruction under section 44(3) of the Act.
- (3) Without limiting subsection (2), the board is taken to have had the power to make the policies mentioned in section 13(4) and (5) of the regulation.

Division 7 Board's policies

26 Certain board's policies continue in force

- (1) The board's policies that are general policies in force under the Act before amendment—
 - (a) continue in force as board's policies under the Act after amendment; and
 - (b) may be reviewed by the board and amended or repealed as if they were made under section 9A of the Act after amendment.
- (2) The board's policies that are supervision policies continue in force only until the commencement of section 17 of the amendment Act.
- (3) In this section—

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

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

amendment Act means the *Queensland Building Services Authority and Other Legislation Amendment Act 2003*.

conditions on which the person would have been employed by the authority, immediately before the person became an employee of the employing office, if the authority had never become an employer under the *Workplace Relations Act 1996* (Cwlth).

- (3) Also—
- (a) the person keeps all rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, that—
 - (i) have accrued or were accruing to the person as an employee of the authority; and
 - (ii) would have accrued to the person if the authority had never become an employer under the *Workplace Relations Act 1996* (Cwlth); and
 - (b) if the person is a member of a superannuation scheme—
 - (i) the person keeps all entitlements accrued or accruing to the person as a member of the scheme; and
 - (ii) the person's membership of the scheme is not affected.
- (4) Without limiting subsection (3), for working out the person's rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, employment of the person by the employing office is a continuation of employment of the person by the authority.
- (5) If the person was a seconded employee immediately before becoming an employee of the employing office, the arrangement under which the person was performing work for a government entity other than the authority may continue until the arrangement ends, and, if the arrangement does continue—
- (a) subsection (2) does not apply to the person; and
 - (b) on the ending of the arrangement, the person is taken to be employed under section 29F of the Act on the conditions on which the person would have been

employed by the authority, on the ending of the arrangement, if—

- (i) the person had continued to be an employee of the authority; and
 - (ii) the authority had never become an employer under the *Workplace Relations Act 1996* (Cwlth).
- (6) Subsections (2) and (5)(b) do not limit section 29F(3) and (4) of the Act.
- (7) In this section—

authority means the former Queensland Building Services Authority established under the *Queensland Building Services Authority Act 1991*, section 5.

employee of the authority includes a seconded employee.

seconded employee means an employee of the authority performing work for another government entity under an arrangement entered into, before the commencement of this section, by the authority with the appropriate authority of the other government entity.

30 Application of industrial instruments

The employing office is taken to be bound by the industrial instruments that bound the authority immediately before it became an employer under the *Workplace Relations Act 1996* (Cwlth).

Part 8 Transitional provisions for Queensland Building Services Authority and Other Legislation Amendment Act 2007

31 Transitional provisions for existing supervisors' licences

- (1) This section applies to a licensee who at the commencement of this section holds a supervisor's licence.

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- (2) The licensee is taken to hold a nominee supervisor's licence for the classes of building work to which the supervisor's licence applies.
 - (3) In this section—
supervisor's licence means a licence authorising the licensee to supervise (but not to carry out) building work.

32 Transitional qualifications for site supervisors' licences

- (1) This section applies if a person who does not have the required qualifications applies for a site supervisor's licence during the transitional period.
- (2) The authority may grant the application even though the applicant does not have the required qualifications for the licence if —
 - (a) the authority has sighted a declaration by a licensed contractor stating that—
 - (i) the applicant has carried out building work as an officer or employee of the contractor for a period of not less than 12 months; and
 - (ii) the contractor has had an opportunity to assess the skills of the applicant during the period; and
 - (iii) the contractor is satisfied that the applicant has the skills to carry out the duties of a site supervisor for a licence of the class applied for; and
 - (b) the authority is satisfied that the applicant has the skills to be a site supervisor for that class.
- (3) If the licensed contractor is a company, the declaration must be by the company's nominee.
- (4) Nothing in this section limits the powers the authority may exercise under section 33(2) or (3).
- (5) In this section—
required qualifications means the qualifications required for a site supervisor's licence under section 32AA.

transitional period means the period of 1 year from the commencement of section 30B.

33 Transitional provision for fire protection occupational licences

Sections 42C and 42D do not apply to anything happening before 2 years from the commencement of section 30C.

34 Transitional provision for certain fire protection work

Section 42 does not apply to the following building work until 2 years after the commencement of this section—

- (a) the design of a fire protection system;
- (b) the development, approval or certification of emergency evacuation procedures for a controlled evacuation during a fire emergency;
- (c) the formulation or provision of alternative solutions relating to fire safety;
- (d) the inspection or investigation of, and the provision of advice or a report about compliance with the *Building Act 1975* or the Building Code of Australia relating to fire safety.

35 Transitional provision for photograph on licence

- (1) Subsection (2) applies to the grant or renewal of a licence that happens before 2 years from the commencement of this section.
- (2) The licence may, or may not, contain a recent photograph of the licensee.

36 Transitional provision for continuation of register of licensees

- (1) The register of licensees under section 39, as in force immediately before the commencement of section 99, continues as the licensee register under section 99.

- (2) The authority may continue to exercise its powers under part 8 in relation to the licensee register.

Part 9 Transitional provisions for Queensland Building Services Authority Amendment Act 2013

Division 1 Preliminary

37 Definitions

In this part—

amending Act means the *Queensland Building Services Authority Amendment Act 2013*.

transfer day means the day the amending Act, section 5 commences.

document includes a policy of the former board.

former authority means the former Queensland Building Services Authority established under the QBSA Act.

former board means the Queensland Building Services Board established under the QBSA Act.

general manager means the person holding the office under the QBSA Act immediately before the transfer day.

QBSA Act means this Act as in force immediately before its amendment under the amending Act, section 5.

Division 2 Dissolutions

38 Dissolutions

On the transfer day the following end or cease to exist—

- (a) the former authority;

- (b) the former board;
- (c) the appointment of the members of the former board;
- (d) office of the general manager;
- (e) the general manager's employment.

39 No compensation because of dissolutions

- (1) No amount, whether by way of compensation, reimbursement or otherwise, is payable by the State or the commission to any person for or in connection with the enactment of section 38.
- (2) However, to avoid any doubt, subsection (1) does not limit or otherwise affect the general manager's right to a benefit or entitlement that, under the existing conditions of appointment, had accrued or was accruing immediately before the transfer day.
- (3) On the transfer day, a benefit or entitlement mentioned in subsection (2) ceases to accrue and becomes payable as if—
 - (a) the general manager's appointment had, according to its conditions, been terminated on the transfer day; and
 - (b) the termination is other than by the general manager.
- (4) In this section—
existing conditions of appointment, for the general manager, means the general manager's conditions of appointment as determined by the Minister under the QBSA Act, section 17.

Division 3 Migration of matters to the commission

40 Agreements, assets, liabilities and rights

- (1) On the transfer day—
 - (a) the former authority's assets, liabilities and rights vest in the commission; and

- (b) the commission is substituted for the former authority in all agreements to which the former authority is a party.
- (2) In this section—
- agreement* includes leases, undertakings and contractual arrangements.

41 Unresolved applications

- (1) On the transfer day, the commission stands in place of the former authority for any unresolved application made—
- (a) under the QBSA Act to the former authority; or
 - (b) by the former authority to the tribunal.
- (2) For subsection (1)(a), the commission may be satisfied about a matter merely because the former authority was satisfied about the matter under the relevant provision of the QBSA Act.
- (3) In this section—
- unresolved application* means an application made, but not finally decided or withdrawn, before the transfer day.

42 Pending legal proceedings

- (1) If, immediately before the transfer day, the former authority was a party to a legal proceeding, the commission is substituted for the former authority as the party.
- (2) For section 111(1), the commission is taken to have knowledge of the commission of a past offence—
- (a) if the offence came to the former authority's knowledge; and
 - (b) when the offence came to the former authority's knowledge.

Note—

See section 45(6) for the continued authorisation of particular persons to bring prosecutions for offences against this Act.

- (3) In this section—

legal proceeding means a proceeding before a court or tribunal.

past offence means an offence against this Act for which—

- (a) the alleged date of commission of the offence was before the transfer day; and
- (b) the prosecution for the offence had not yet started on the transfer day.

43 Ministerial directions to former authority

- (1) A pending Ministerial direction to the former authority applies, if the context permits, to the commission as it would have applied to the former authority.
- (2) In this section—

pending Ministerial direction means a direction by the Minister under section 7 of the QBSA Act and in effect immediately before the transfer day.

44 Records of the former authority

- (1) On the transfer day, a record of the former board becomes a record of the commission.
- (2) In this section—

record includes a register kept by the former authority under the QBSA Act.

45 Continuing appointments and authorisations

- (1) The appointment of an individual as the insurance manager under section 21 of the QBSA Act continues and is taken to have been made by the commission.
- (2) The remuneration and conditions of appointment of the insurance manager decided by the former authority under the QBSA Act continue to apply for the appointment.

-
- (3) The appointment of a relevant officer of the former authority as an inspector under section 104 of the QBSA Act continues and is taken to have been made by the commission.
 - (4) Subsection (5) applies if, immediately before the transfer day—
 - (a) a relevant officer of the former authority had been issued a card (however called) identifying the officer as a person holding an authorisation under section 104 of the QBSA Act; and
 - (b) the card had not expired according to its terms.
 - (5) The card is taken to be an identity card issued to the officer as an inspector until the earlier of the following—
 - (a) the person is issued a new identity card by the commission under this Act;
 - (b) the card expires according to its terms.
 - (6) A person authorised by the former authority to bring a prosecution for an offence against this Act under section 111(2) of the QBSA Act continues to be authorised and the authorisation is taken to have been given by the commission.

46 Annual report of former board

- (1) This section applies unless the transfer day is 1 July in a year.
- (2) The commission's annual report for the financial year in which the commission is established must include information about the former authority's operations that would have been required to be included in the commission's annual report if the QBSA Act had not been amended by the amending Act.
- (3) In this section—

annual report means annual report under the *Financial Accountability Act 2009*.

47 Other administrative matters

- (1) From the transfer day, each of the following things in effect immediately before the transfer day continue in effect as if the thing was approved, given or made by the commission when the thing first took effect—
- (a) a direction or notice given by the former authority under the QBSA Act;
Example—
a direction to a licensee to rectify or complete tribunal work
 - (b) a demand, request or requirement made by the former authority under the QBSA Act that has not been fully complied with on the transfer day;
Examples—
 - 1 a demand of a licensee to pay an amount owed to the former authority
 - 2 a request of an applicant to provide the former authority with further information or evidence to decide an application
 - (c) a certificate, licence or permit issued by the former authority under the QBSA Act;
 - (d) a decision of the former authority made under the QBSA Act.
- (2) A policy of the former board, approved under section 9A of the QBSA Act and still in effect immediately before the transfer day, continues in effect as if the policy was made by the board.
- (3) For a provision of this Act enabling the taking of action by an entity if the commission had previously taken a particular action, a reference to the commission having previously taken the action is taken to include a reference to the former authority having previously taken it.

Division 4 Other matters

48 References to former entities

In an Act or document—

- (a) a reference to the former authority may, if the context permits, be taken to be a reference to the commission; and
- (b) a reference to the former board may, if the context permits, be taken to be a reference to the board; and
- (c) a reference to the general manager under the QBSA Act may, if the context permits, be taken to be a reference to the commissioner.

49 References to QBSA Act

In an Act or document, a reference to the QBSA Act may, if the context permits, be taken as a reference to this Act as in force after the transfer day.

50 Change to name of employing office

A change in the name of the employing office under the amending Act does not affect the status of that office.

51 Effect on legal relationships

- (1) Nothing done under the amendments to the QBSA Act under the amending Act (the *Act amendments*)—
 - (a) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information; or
 - (b) except as provided for under the Act amendments, is taken to fulfil a condition that—
 - (i) terminates, or allows a person to terminate, an instrument or obligation; or

- (ii) modifies, or allows a person to modify, the operation or effect of an instrument or obligation; or
 - (iii) allows a person to avoid or enforce an obligation or liability contained in an instrument or requires a person to perform an obligation contained in an instrument; or
 - (iv) requires any money to be paid before its stated maturity; or
- (c) releases a surety or other obligee, wholly or partly, from an obligation.
- (2) If, apart from this subsection, the advice, consent or approval of a person would be necessary to do something under the Act amendments, the advice is taken to have been obtained or the consent or approval is taken to have been given unconditionally.
- (3) If, apart from this Act, giving notice to a person would be necessary to do something under the Act amendments, the notice is taken to have been given.
- (4) In this section—
relevant entity means—
 - (a) the State or an employee or agent of the State; or
 - (b) the commission, a member or a relevant officer of the commission.

Part 10**Transitional provision for
Residential Tenancies and
Rooming Accommodation and
Other Legislation Amendment
Act 2013****52 Application of s 42 (Unlawful carrying out of building work)**

- (1) Section 42(4) applies to building work carried out on or after 1 July 1992, unless the entitlement to payment for the carrying out of the building work was—
- (a) before the commencement of this section, decided by—
 - (i) a court; or
 - (ii) the tribunal; or
 - (iii) an arbitrator or another entity authorised to make a binding decision about the entitlement; or
 - (b) before 2 March 1999, the subject of—
 - (i) a claim or counterclaim filed in a court; or
 - (ii) an application made to the tribunal; or
 - (iii) a reference to an arbitrator or another entity authorised to make a binding decision about the entitlement; or
 - (c) provided for as a term of a binding agreement entered into before the commencement of this subsection, but only if the binding agreement—
 - (i) is between—
 - (A) 1 or more consumers and 1 or more building contractors; or
 - (B) 1 or more building contractors and 1 or more other building contractors; and
 - (ii) was entered into to resolve a dispute between some or all of the parties to the binding agreement; and

(iii) is not the contract for the carrying out of the building work as originally entered into, or as originally entered into and as subsequently varied.

(2) In this section—

tribunal means the former Queensland Building Tribunal previously established under this Act, part 7, before amendment of this Act under the repealed *Queensland Building Tribunal Act 2000*.

Part 11 Transitional provisions for the Queensland Building and Construction Commission and Other Legislation Amendment Act 2014

Division 1 Preliminary

53 Definitions for pt 11

In this part—

Amendment Act means the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014*.

commencement means the commencement of the provision in which the term is used.

former, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the Amendment Act.

Division 2 General

54 Continuation of particular reviews

- (1) This section applies if, before the commencement, a person could have applied to the commission or tribunal for a review of any of the following decisions under former part 7, division 3—
 - (a) a decision to direct or not to direct rectification or completion of tribunal work;
 - (b) a decision that tribunal work undertaken at the direction of the commission is or is not of a satisfactory standard;
 - (c) a decision not to categorise an individual as a permitted individual for a relevant event.
- (2) If the person had not applied before the commencement, the person may make the application in compliance with the requirements of former part 7, division 3 and the commission or tribunal may review the decision.
- (3) If the person had applied before the commencement, the commission or tribunal may start, continue and decide the review of the decision.
- (4) For the purpose of starting, continuing or deciding a review to which this section applies, this Act, as in force immediately before the commencement, has effect as if this Act had not been amended by the Amendment Act.
- (5) A decision of the commission or tribunal made after reviewing a decision under subsection (2) or (3) has effect despite the amendment of this Act by the Amendment Act.
- (6) A decision of the commission made after reviewing a decision under subsection (2) or (3) is taken to be a reviewable decision for part 7, division 3, subdivision 2 and a person affected by the decision may apply to the tribunal under section 87 for a review of the decision.

55 Existing disciplinary proceedings

- (1) This section applies if—
 - (a) the commission had applied to the tribunal under former section 88 to conduct a proceeding to decide whether proper grounds exist for taking disciplinary action against a person before the commencement; and
 - (b) the tribunal had not started or completed the disciplinary proceeding before the commencement.
- (2) The tribunal may start, continue and complete the disciplinary proceeding as if former part 7, division 4 had not been repealed by the Amendment Act.

56 Allocation of demerit points

- (1) This section applies if, before the commencement of this section, the commission—
 - (a) had an obligation to allocate demerit points to a person under former part 3E; but
 - (b) had not allocated the demerit points.
- (2) The commission must allocate the demerit points to the person, as required under former part 3E, despite—
 - (a) any amendment of this Act under the Amendment Act; or
 - (b) the repeal of the *Domestic Building Contracts Act 2000*.

57 Categorisation as excluded individual or permanently excluded individual continues

- (1) An individual who, immediately before the commencement, was an excluded individual for a relevant bankruptcy or company event under former section 56AC continues to be an excluded individual for the relevant bankruptcy or company event under former section 56AC as if that section had not been amended by the Amendment Act.

Note—

The individual would continue under former section 56AC to be an excluded individual until 5 years had elapsed from the day the relevant bankruptcy or company event happened.

- (2) An individual who, immediately before the commencement, was a permanently excluded individual under former section 58 continues to be a permanently excluded individual despite any amendment of parts 3A or 3B under the Amendment Act.
- (3) However, section 61 continues to apply to the person.

58 Becoming a permitted individual after the commencement

- (1) Subsection (2) applies if—
 - (a) the commission gave an individual a written notice under former section 56AF(2) before the commencement; and
 - (b) at the commencement, 28 days have not elapsed from the day the commission gave the person the notice mentioned in paragraph (a).
- (2) The person may apply to the commission, and the commission may consider and decide the application, under former section 56AD, as if that section had not been repealed under the Amendment Act.
- (3) Subsection (4) applies if, before the commencement, an individual applied to the commission under former section 56AD and the commission had not finally dealt with the application.
- (4) The commission may continue to consider and decide the application, under former section 56AD, as if that section had not been repealed under the Amendment Act.
- (5) To remove any doubt it is declared that the commission may categorise the person as a permitted individual despite the repeal of former section 56AD by the Amendment Act.

59 Categorisation as permitted individual continues

- (1) A permitted individual for a relevant event continues to be taken not to be an excluded individual for the relevant event.
- (2) The relevant event must not be counted in deciding, under section 61, whether the individual is or continues to be a permanently excluded individual.
- (3) In this section—

permitted individual means—

- (a) an individual categorised as a permitted individual for a relevant event under former section 56AD if—
 - (i) the person continued to be categorised as a permitted individual immediately before the commencement; or
 - (ii) the person is categorised as a permitted individual after the commencement because of schedule 1, section 58; or
- (b) an individual categorised as a permitted individual for a relevant event as result of the tribunal reversing the commission's decision not to categorise the individual as a permitted individual for the relevant event after a review of the decision by the tribunal.

Division 3 Rectification of building work

60 Outstanding applications for rectification of building work that is defective or incomplete

- (1) This section applies if, before the commencement—
 - (a) a consumer applied to the commission under former section 71A for a direction to rectify building work that was defective or incomplete; and
 - (b) the commission had not finally dealt with the application.

- (2) The commission may deal with the application under former section 71A despite the repeal of that section by the Amendment Act.
- (3) Former section 72 continues to apply for the purpose of subsection (2) as if that section had not been repealed by the Amendment Act.

61 Outstanding directions to rectify building work that is defective or incomplete

- (1) This section applies if, before the commencement—
 - (a) the commission directed a person to rectify building work that was defective or incomplete under former section 72; and
 - (b) the direction had not been complied with in full.
- (2) The direction continues to apply to the person, and former section 72 continues to apply for that purpose, as if the section had not been replaced by the Amendment Act.
- (3) The direction is taken, for section 73, to be a direction of the commission to rectify building work that is defective or incomplete, or to remedy consequential damage.

Division 4 Repeal of the Domestic Building Contracts Act 2000

62 Domestic building contracts entered into before repeal

- (1) Despite the repeal, the *Domestic Building Contracts Act 2000*, as in force immediately before the repeal, continues to apply—
 - (a) for a domestic building contract entered into before the repeal; and
 - (b) to the parties to a domestic building contract mentioned in paragraph (a).
- (2) In this part—

domestic building contract means a domestic building contract within meaning of the *Domestic Building Contracts Act 2000* as in force immediately before its repeal.

repeal means the repeal of the *Domestic Building Contracts Act 2000*.

63 Continued reference to conduct under the repealed *Domestic Building Contracts Act 2000*

- (1) The repeal of the *Domestic Building Contracts Act 2000* (the *repealed Act*) does not—
 - (a) cause or require—
 - (i) the licensee register kept under section 99 to be amended to remove notes relating to the repealed Act; or
 - (ii) the cancellation of any demerit points relating to the repealed Act; and
 - (b) prevent the consideration of—
 - (i) any past contravention of a requirement imposed under the repealed Act; or
 - (ii) any conviction of an offence against the repealed Act; or
 - (iii) a person having been served with an infringement notice relating to the repealed Act.
- (2) For the purpose of subsection (1)(b), a provision of this Act that includes a reference to a provision of schedule 1B is taken to include a reference to the equivalent provision of the repealed Act.

64 Past contraventions of repealed Act

- (1) This section applies if a person is alleged to have committed an offence against the repealed *Domestic Building Contracts Act 2000* (the *repealed Act*) before its repeal.

- (2) Proceedings for the offence may be started, continued or completed, and the Court may hear and decide the proceedings, as if the repealed Act had not been repealed.
- (3) This section applies despite the Criminal Code, section 11.

Division 5 Statutory insurance scheme

65 Continuation and finalisation of matters under former part 5

- (1) This section applies if, before the commencement, a right, privilege or liability was acquired, accrued or incurred by the commission or a person under former part 5 and—
 - (a) the right or privilege had not been exhausted; or
 - (b) the liability had not been released.
- (2) The right, privilege or liability may be exercised or enforced under former part 5 despite the replacement of that part by the Amendment Act.
- (3) To remove any doubt, it is declared that—
 - (a) a person continues to be liable for any contravention of a provision of former part 5 that happened before the commencement; or
 - (b) a person who, before the commencement, was liable to pay an insurance premium under former part 5 continues to be liable to pay the premium; or
 - (c) a liability of the commission to issue a certificate of insurance under former part 5 that had not been issued before the commencement must be issued in compliance with former section 69(1); or
 - (e) a proceeding to recover an amount under former section 71 may be started, continued or completed and any defence available to a person under that section may be relied upon.
- (4) In this section—

liability includes an obligation of the commission or a person to take particular action under former part 5.

66 Existing policies of insurance

- (1) A policy of insurance that came into force under former part 5 continues in force on the terms stated in the board's policies for that purpose.
- (2) Despite the replacement of part 5 by the Amendment Act, former part 5 continues to apply to a contract for residential construction work if the contract was entered into before the replacement day.
- (3) To remove any doubt, it is declared that subsection (2)—
 - (a) applies to a contract even if an insurance premium is paid in relation to the contract on or after the replacement day; and
 - (b) does not prevent the consumer for the contract from obtaining optional additional cover under section 67Z.
- (4) The board's policies that are relevant for this section continue for that purpose despite the replacement of part 5 by the Amendment Act or the repeal of the policies under schedule 1, section 67.
- (5) In this section—

board's policies means the policies of the board made for the purposes of section 19 and relating to the statutory insurance scheme.

replacement day means the day former part 5 was replaced under the Amendment Act.

67 Repeal of board's policies about statutory insurance scheme

On the commencement all policies of the board made, for the purposes of section 19, about the terms of cover under the statutory insurance scheme are repealed.

Part 12

Transitional provision for the Plumbing and Drainage and Other Legislation Amendment Act 2016

69 Internal review applications of relevant decisions

- (1) This section applies if, before the commencement—
 - (a) an internal review application for a relevant decision under the unamended Act had been made but not decided or otherwise finally dealt with; or
 - (b) the period under the unamended Act in which a person was entitled to apply to have a relevant decision reviewed had started but not ended.
- (2) An internal review may be completed, or started and completed, as if the unamended Act continued to apply.
- (3) Part 7, division 3, subdivision 2 applies to a person affected by a decision made under subsection (2) as if the decision under subsection (2) were a reviewable decision under section 87.
- (4) In this section—

internal review means a proceeding for review under part 7, division 3, subdivision 1.

relevant decision means a decision under the *Plumbing and Drainage Act 2002*, section 68.

unamended Act means this Act as in force immediately before the commencement.

Part 13 **Transitional provision for the Planning (Consequential) and Other Legislation Amendment Act 2016**

70 **Existing development applications and requests for compliance assessment**

- (1) Former section 68E continues to apply in relation to the following as if the amending Act had not been enacted—
 - (a) the giving of a development approval mentioned in former section 68E(1) for an existing development application;
 - (b) the giving of a compliance permit mentioned in former section 68E(1) for an existing request for compliance assessment.
- (2) In this section—

amending Act means the *Planning (Consequential) and Other Legislation Amendment Act 2016*.

existing development application means a development application made under the repealed Planning Act, to which the Planning Act, section 288 applies.

existing request for compliance assessment means a request for compliance assessment for development made under the repealed Planning Act, to which the Planning Act, section 288 applies.

former section 68E means section 68E as in force immediately before the commencement.

repealed Planning Act means the repealed *Sustainable Planning Act 2009*.

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.

Schedule 1A Exemptions from requirement to hold contractor's licence

section 42(2)

1 Employees

An unlicensed person who carries out, in the course of employment, building work (other than fire protection work) for which the person's employer holds a licence of the appropriate class under this Act does not contravene section 42(1).

2 Subcontractors

(1) An unlicensed person who, as a subcontractor, carries out, or undertakes to carry out, building work (other than fire protection work) for a licensed trade contractor, does not contravene section 42(1) if the work is within the scope of the building work allowed by the class of licence held by the contractor.

(2) In this section—

licensed trade contractor means a licensed contractor other than the following—

- (a) a licensed builder;
- (b) a licensed contractor who holds a contractor's licence authorising the licensee to carry out completed building inspections.

3 Partnerships

An unlicensed person who carries out, or undertakes to carry out, building work (other than fire protection work) in partnership with another person who is licensed to carry out building work of the relevant class does not contravene section 42(1).

Note—

Section 56 states that a licensed contractor may carry on business under the contractor's licence in partnership with an unlicensed person subject to the conditions stated in the section.

4 Owner-builders

An unlicensed person who holds an owner-builder permit does not contravene section 42(1) by carrying out building work permitted under the permit.

5 Design work by landscape architects

An unlicensed person who carries out, or undertakes to carry out, design work does not contravene section 42(1) if—

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

6 Consumers

A consumer who engages 1 or more licensed contractors to carry out building work for the consumer does not contravene section 42(1) if the consumer does not provide building work services for the work.

Examples of a consumer who does not provide building work services—

- a consumer who engages a licensed builder to build, and carry out all building work services for, a new residence
- a consumer who, as a principal, enters into construction management trade contracts for building work and engages a construction manager for building work services for the work

7 Other licences

A person who holds any of the following licences does not contravene section 42(1) only by doing something permitted under the licence—

- (a) a nominee supervisor's licence;
- (b) a site supervisor's licence;
- (c) a fire protection occupational licence.

8 Head contracts to carry out building work

- (1) An unlicensed person who enters into a contract to carry out building work does not contravene section 42(1) merely because the person entered into the contract if the building work—
 - (a) is not residential construction work or domestic building work; and
 - (b) is to be carried out by a person (an *appropriately licensed contractor*) who is licensed to carry out building work of the relevant class.
- (2) Also, the unlicensed person does not contravene section 42(1) merely because the person—
 - (a) directly or indirectly causes the building work to be carried out by an appropriately licensed contractor; or
 - (b) enters into another contract, with an appropriately licensed contractor, to carry out the work.
- (3) However, subsection (1) ceases to apply to the unlicensed person if the person causes or allows any of the building work to be carried out by a person who is not licensed to carry out building work of the relevant class.

9 Tenders and offers

An unlicensed person who submits a tender to carry out building work or makes an offer to carry out building work does not contravene section 42(1) merely because the person submits the tender or makes the offer if the building work—

- (a) is not residential construction work or domestic building work; and
- (b) is to be carried out by a person who is licensed to carry out building work of the relevant class.

10 Public-private partnerships

- (1) This section applies to a special purpose vehicle that undertakes to carry out building work under a public-private partnership.
- (2) The special purpose vehicle does not contravene section 42(1) merely because the vehicle undertakes to carry out the building work if the work is to be carried out by a person (an *appropriately licensed contractor*) who is licensed to carry out building work of the relevant class.
- (3) Also, the special purpose vehicle does not contravene section 42(1) merely because the special purpose vehicle—
 - (a) directly or indirectly causes the building work to be carried out by an appropriately licensed contractor; or
 - (b) enters into a contract, with an appropriately licensed contractor, to carry out the work.
- (4) However, this section ceases to apply to the special purpose vehicle if the special purpose vehicle causes or allows any of the building work to be carried out by a person who is not licensed to carry out building work of the relevant class.

11 Prescribed government projects

- (1) This section applies to an unlicensed person who, by doing any of the following, undertakes to carry out building work for a prescribed government project—
 - (a) enters into a contract with a government entity to carry out building work for the project;
 - (b) submits a tender to a government entity to carry out building work for the project;

- (c) makes an offer to a government entity to carry out building work for the project.
- (2) The unlicensed person does not contravene section 42(1) merely because the person undertakes to carry out the building work if the work—
- (a) is of a class prescribed, under a regulation, for the prescribed government project; and
 - (b) is to be carried out by a person (an ***appropriately licensed contractor***) who is licensed to carry out building work of the relevant class.
- (3) Also, the unlicensed person does not contravene section 42(1) merely because the person—
- (a) directly or indirectly causes the building work to be carried out by an appropriately licensed contractor; or
 - (b) enters into a contract, with an appropriately licensed contractor, to carry out the work.
- (4) However, this section ceases to apply to the unlicensed person if the person causes or allows any of the building work to be carried out by a person who is not licensed to carry out building work of the relevant class.
- (5) In this section—
- government entity*** means the State, the Commonwealth or a local government, or any of their authorities or agencies.
- prescribed government project*** means a project, prescribed under a regulation, involving building work to be carried out—
- (a) for, or on behalf of, a government entity; and
 - (b) by 1 or more private sector entities.

Schedule 1B Domestic building contracts

section 67AZN

Part 1 Interpretation

1 Definitions for sch 1B

In this schedule—

building includes—

- (a) a structure, including a temporary building and other temporary structure; and
- (b) a part of a structure.

building contractor means a person who—

- (a) carries out domestic building work; or
- (b) manages the carrying out of domestic building work; or
- (c) has carried out, or managed the carrying out of, domestic building work; or
- (d) intends to carry out, or to manage the carrying out of, domestic building work.

building owner means the person for whom domestic building work has been, is being, or is to be, carried out.

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

certificate of inspection, for a regulated contract, means a certificate that—

- (a) is issued under an Act following an inspection of the subject work or a part of the subject work; and
- (b) contains a certification to the effect that the subject work, or a stated stage of the subject work, has been satisfactorily completed.

contract price, for a domestic building contract, see schedule section 2.

consumer building guide means a statement prepared and published by the commission under schedule section 46(1).

contracted services, for a domestic building contract, means the thing done, being done or to be done by the building contractor under the contract in relation to domestic building work, being either—

- (a) the carrying out of the work; or
- (b) the managing of the carrying out of the work.

cost plus contract means a domestic building contract under which the amount the building contractor is to receive under the contract can not be accurately calculated when the contract is entered into, even if prime cost items and provisional sums are ignored.

defects document, for a domestic building contract, means a document that—

- (a) lists the minor defects and minor omissions in the subject work that the building contractor and building owner agree exist; and
- (b) states when the building contractor is to remedy the minor defects and minor omissions mentioned in paragraph (a); and
- (c) lists the minor defects and minor omissions that the building owner claims exist and the building contractor does not agree exist; and
- (d) is signed by the building contractor.

detached dwelling means—

- (a) a single detached dwelling; or
- (b) a duplex.

domestic building contract see schedule section 3.

domestic building work see schedule section 4.

draftsperson means a person who holds a contractor's licence authorising the person to prepare plans and specifications for domestic building work.

excluded building work means any of the following work—

- (a) work relating to any of the following buildings—
 - (i) a farm building, or proposed farm building, that is not a home;
 - (ii) a building intended to be used only for business purposes;
 - (iii) a building intended to be used only to accommodate animals;
- (b) design work carried out by an architect, engineer or draftsman;
- (c) the preparation of plans, specifications or bills of quantity for the carrying out of domestic building work;
- (d) work involved in obtaining foundations data about a building site;
- (e) transporting a building or kit home;
- (f) work declared under a regulation to be excluded building work if there are reasonable grounds for considering the work to be excluded building work.

farm building means a building that—

- (a) is constructed on land used entirely or mainly for agricultural or pastoral purposes; and
- (b) is used, or intended to be used, for agricultural or pastoral purposes.

foundations data see schedule section 8.

home see schedule section 9.

level 1 regulated contract see schedule section 6.

level 2 regulated contract see schedule section 7.

manage, the carrying out of domestic building work, includes the provision of supervisory, advisory or administrative services for carrying out the work.

mixed-purpose contract means a contract entered into between a building contractor and building owner that entitles the building contractor to be paid for both of the following—

- (a) carrying out, or managing the carrying out of, domestic building work;
- (b) additional services.

practical completion, for a domestic building contract, means the day when the subject work is completed—

- (a) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
- (b) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect occupation; and
- (c) if the building owner claims there are minor defects or minor omissions—the building contractor gives the building owner a defects document for the minor defects or minor omissions.

prime cost item, for a domestic building contract, means an item, including, for example, a fixture or fitting—

- (a) that has not been selected, or the price of which is not known, when the contract is entered into; and
- (b) for the cost of supply and delivery of which a reasonable allowance is, or is to be, made in the contract by the building contractor.

progress payment, for a regulated contract, means a payment of an amount that is a part of the contract price for the contract, but does not include a payment of an amount that is, or is in the nature of, a deposit under the contract.

provisional sum, for a domestic building contract, see schedule section 10.

regulated amount means \$3,300 or the higher amount, if any, prescribed by a regulation.

regulated contract see schedule section 5.

resident owner, under a domestic building contract, means a building owner who—

- (a) is an individual; and
- (b) intends to reside in the building—
 - (i) on completion of the domestic building work; or
 - (ii) within 6 months after the completion of the work.

schedule section, in relation to a reference, means the section of this schedule corresponding to the reference.

Example—

Schedule section 14 means section 14 of this schedule.

statutory warranties means the warranties that are part of a regulated contract because of schedule section 19.

subcontractor means a person who enters into a contract with a building contractor to carry out domestic building work to be carried out under a domestic building contract.

subject work, for a domestic building contract, means—

- (a) the domestic building work carried out, being carried out or to be carried out under the contract; or
- (b) the domestic building work the carrying out of which has been, is being or is to be managed under the contract.

written form, for a regulated contract, means—

- (a) in handwritten or typewritten form; or
- (b) in a combination of handwritten and typewritten forms.

2 Meaning of **contract price**

- (1) **Contract price**, for a domestic building contract, means the total amount payable under the contract to carry out domestic building work and includes—

- (a) an amount the building contractor is entitled to receive and keep under the contract; and
 - (b) an amount the building contractor is entitled to receive under the contract for payment to another person.
- (2) However, the ***contract price*** does not include an amount a person, other than the building contractor, is entitled to receive directly from the building owner for any of the following matters if the matter for which it is payable relates to the carrying out of the subject work—
- (a) conveying services to the building site;
 - (b) connecting or installing services for use at the building site;
- Examples of services—*
- gas, electricity, telephone, water and sewerage
 - (c) issuing a development approval or similar authorisation.

3 Meaning of *domestic building contract*

- (1) A ***domestic building contract*** is—
- (a) a contract to carry out domestic building work; or
 - (b) a construction management contract for the provision of building work services for domestic building work; or
 - (c) another contract to manage the carrying out of domestic building work.
- (2) However, a ***domestic building contract*** does not include—
- (a) a contract between a building contractor and subcontractor; or
 - (b) a contract between a building contractor and a building owner for the construction of 2 or more detached dwellings; or
 - (c) a contract between the holder of an owner-builder permit and a building contractor; or
 - (d) a contract under which the building owner is the State, an entity representing the State or a local government.

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- (3) Subsection (4) applies if—
- (a) a building contractor and building owner enter into 2 or more separate contracts, each for the construction of 1 detached dwelling; and
 - (b) the separate contracts could be the subject of a single contract for the construction of 2 or more detached dwellings.
- (4) The separate contracts are taken to be a contract between a building contractor and a building owner for the construction of 2 or more detached dwellings.

4 **Meaning of *domestic building work***

- (1) Each of the following is *domestic building work*—
- (a) the erection or construction of a detached dwelling;
 - (b) the renovation, alteration, extension, improvement or repair of a home;
 - (c) removal or resiting work for a detached dwelling;
 - (d) the installation of a kit home at a building site.
- (2) However—
- (a) removal work for a detached dwelling is *domestic building work* only if the dwelling is intended to be resited at another place and used, at the place, as a residence; and
 - (b) resiting work for a detached dwelling is *domestic building work* only if the dwelling is intended to be used at the place at which it is being resited as a residence.
- (3) *Domestic building work* includes—
- (a) work (*associated work*) associated with the erection, construction, removal or resiting of a detached dwelling; and
 - (b) work (*associated work*) associated with the renovation, alteration, extension, improvement or repair of a home.
- (4) Without limiting subsection (3), associated work includes—

- (a) landscaping; and
- (b) paving; and
- (c) the erection or construction of a building or fixture associated with the detached dwelling or home.

Examples of buildings and fixtures—

retaining structures, driveways, fencing, garages, carports, workshops, swimming pools and spas

- (5) For the erection or construction of a detached dwelling, **domestic building work** includes the provision of services or facilities to the dwelling or the property on which the dwelling is, or is to be, situated.
- (6) For the renovation, alteration, extension, improvement or repair of a home, **domestic building work** includes the provision of services or facilities to the home or the property on which the home is situated.

Examples of services and facilities for subsections (5) and (6)—

lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage

- (7) Also, **domestic building work** includes—
 - (a) site work relating to work mentioned in subsection (1), (3), (5) or (6); and
 - (b) work declared under a regulation to be domestic building work if there are reasonable grounds for considering the work to be domestic building work.
- (8) However, **domestic building work** does not include excluded building work.
- (9) In this section—
 - (a) a reference to a detached dwelling includes a reference to any part of a detached dwelling; and
 - (b) a reference to a home includes a reference to any part of a home; and
 - (c) a reference to site work includes a reference to work required to be carried out to gain access, or to remove impediments to access, to a site.

(10) In this section—

kit home means a set of building components offered for sale on the basis that the components are sufficient for the construction of 1 of the following if constructed in compliance with a plan or instruction provided by the seller—

- (a) a detached dwelling;
- (b) a garage;
- (c) a carport;
- (d) another structure prescribed by regulation.

removal work, for a detached dwelling, means work relating to the dwelling carried out at the place at which the dwelling is located for relocating the dwelling to another place.

resiting work, for a detached dwelling, means work relating to the dwelling carried out at a place for resiting the dwelling at the place following its removal from another place.

5 Meaning of ***regulated contract***

(1) Each of the following is a ***regulated contract***—

- (a) a domestic building contract for which the contract price is more than the regulated amount;
- (b) a cost plus contract under which the total amount payable for the contracted services is reasonably estimated to be more than the regulated amount;
- (c) a mixed-purpose contract under which the amount referable to the contracted services is more than the regulated amount.

(2) However, a contract mentioned in subsection (1)(c) is a ***regulated contract*** only to the extent to which the contract relates to the contracted services.

(3) In this section—

additional services means 1 or more of the following—

- (a) carrying out work that is not domestic building work;

- (b) managing the carrying out of work that is not domestic building work;
- (c) another matter.

amount referable to contracted services, for a mixed-purpose contract, means—

- (a) the amount the building contractor is entitled to receive under the contract for the contracted services; or
- (b) a reasonable estimate of the amount the building contractor is entitled to receive under the contract based on a fair and reasonable apportionment between the contracted services and the additional services.

6 Meaning of *level 1 regulated contract*

(1) A ***level 1 regulated contract*** is—

- (a) a domestic building contract for which the contract price is more than the regulated amount but less than the level 2 amount; or
- (b) a cost plus contract for which the total amount payable for the contracted services is reasonably estimated to be more than the regulated amount but less than the level 2 amount; or
- (c) a mixed-purpose contract for which the amount referable to the contracted services is more than the regulated amount but less than the level 2 amount.

(2) In this section—

level 2 amount means the amount prescribed under schedule section 7(2).

7 Meaning of *level 2 regulated contract*

(1) A ***level 2 regulated contract*** is—

- (a) a domestic building contract for which the contract price is equal to or more than the level 2 amount; or

- (b) a cost plus contract for which the total amount payable for the contracted services is reasonably estimated to be equal to or more than the level 2 amount; or
 - (c) a mixed-purpose contract for which the amount referable to the contracted services is equal to or more than the level 2 amount.
- (2) In this section—
level 2 amount means the amount prescribed by regulation.

8 Meaning of *foundations data*

- (1) *Foundations data* is the information about a building site a building contractor exercising reasonable care and skill would need to have to prepare—
- (a) an appropriate footings design for the site and, if appropriate, an appropriate concrete slab design for the site; and
 - (b) an adequate estimate of the cost of constructing the footings and, if appropriate, concrete slab.
- (2) The information mentioned in subsection (1) includes—
- (a) relevant information contained in, or obtainable from, reports, surveys, test results, plans, specifications or calculations prescribed under a regulation; and
 - (b) other information prescribed under a regulation.

9 Meaning of *home*

- (1) A *home* is a building or portion of a building that is designed, constructed or adapted for use as a residence.

Examples—

a detached or semi-detached dwelling, transportable house, terrace or townhouse, duplex, villa home, strata or community title home unit or residential unit

- (2) However, a *home* does not include a building or a part of a building declared under a regulation not to be a home.

10 Meaning of *provisional sum*

- (1) A *provisional sum*, for a domestic building contract, is an amount that is an estimate of the cost of providing particular contracted services.
- (2) However, subsection (1) applies only to contracted services for which the building contractor, after making all reasonable enquiries, can not state a definite amount when the contract is entered into.
- (3) The reference in subsection (1) to the cost of providing the contracted services includes a reference to the cost of supplying materials needed for the subject work.

11 Multiple contracts for the same domestic building work

- (1) This section applies if a building contractor and building owner enter into 2 or more separate contracts that—
 - (a) could be the subject of a single contract for carrying out domestic building work; and
 - (b) if they were the subject of a single contract, would be a contract for carrying out domestic building work.
- (2) The separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.

Example for this section—

A building contractor that manufactures and installs kitchens enters into one contract with a building owner for the manufacture of a kitchen and a second contract for its installation.

12 References to particular terms

In this schedule—

- (a) a reference to a building contractor in association with a reference to a domestic building contract is a reference to the building contractor under the contract; and

- (b) a reference to a building owner in association with a reference to a domestic building contract is a reference to the building owner under the contract; and
- (c) a reference to contracted services in association with a reference to a domestic building contract is a reference to the contracted services for the contract; and
- (d) a reference to subject work in association with a reference to a domestic building contract is a reference to the subject work for the contract; and
- (e) a reference to a building site in association with a reference to a domestic building contract is a reference to the building site for the contract.

Part 2 Contracts and related documents

Division 1 The contract

13 Requirements for contract—level 1 regulated contract

- (1) This section applies to a level 1 regulated contract.
- (2) The contract must be in a written form, dated and signed by or on behalf of each of the parties to it.
- (3) The contract must contain all of the following—
 - (a) the names of the parties to it, including the name of the building contractor as it appears on the contractor's licence;
 - (b) the building contractor's licence number as it appears on the building contractor's licence;
 - (c) a description of the subject work;
 - (d) any plans and specifications for the subject work;
 - (e) the contract price or the method for calculating it, including the building contractor's reasonable estimate;

- (f) a provision that states the date for practical completion or how the date is to be determined;
 - (g) a conspicuous notice advising the building owner of the right the owner may have to withdraw from the contract under schedule section 35.
- (4) The contract must also comply with all other requirements prescribed by regulation.
 - (5) The contract has effect only if it complies with subsection (2).

14 Requirements for contract—level 2 regulated contract

- (1) This section applies to a level 2 regulated contract.
- (2) The contract must be in a written form, dated and signed by or on behalf of each of the parties to it.
- (3) The contract must contain all of the following—
 - (a) the names of the parties to it, including the name of the building contractor as it appears on the contractor's licence;
 - (b) the building contractor's licence number as it appears on the building contractor's licence;
 - (c) a description of the subject work;
 - (d) any plans and specifications for the subject work, including all plans and specifications required for carrying out the work in compliance with any development approvals or similar authorisations that are required by law for carrying out the work;
 - (e) the contract price or the method for calculating it, including the building contractor's reasonable estimate;
 - (f) a provision that states the date for the start of the subject work at the building site, or how the date is to be determined;
 - (g) a provision that states the date for practical completion or how the date is to be determined;

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- (h) a statement of each of the statutory warranties that apply to the subject work;
 - (i) a conspicuous notice advising the building owner of the right the owner may have to withdraw from the contract under schedule section 35.
- (4) If the contract price is fixed, it must be stated in a prominent position on the first page of the contract schedule.
 - (5) If the contract price is not fixed, the method for calculating it, including any allowances, must be stated in the contract schedule.
 - (6) If the contract price may be changed under a provision of the contract, the contract must also contain—
 - (a) a warning to that effect; and
 - (b) a brief explanation of the effect of the provision allowing change to the contract price.
 - (7) The warning and explanation mentioned in subsection (6) must be in a prominent position on the first page of the contract schedule.
 - (8) The contract must not state the name of any person—
 - (a) as the building contractor; or
 - (b) so it may reasonably be mistaken to be the building contractor;unless the person is the building contractor under the contract.

Example—

 - a domestic building contract stating a company name as the building contractor if an individual is actually the building contractor under the contract
 - (9) The contract must also comply with all other requirements prescribed by regulation.
 - (10) The contract has effect only if it complies with subsection (2).

Division 2 **Copies of documents**

Note—

The Australian Consumer Law (Queensland) also contains provisions regulating unfair terms of standard form contracts as defined under that law.

15 **Copy of contract for building owner**

Within 5 business days after entering into a regulated contract, the building contractor must give the building owner a readily legible signed copy of the contract, including any plans and specifications for the subject work.

Maximum penalty—60 penalty units.

16 **Copy of commencement notice**

- (1) This section applies to a level 2 regulated contract.
- (2) Within 10 business days of starting the subject work at the building site, the building contractor must give the building owner a commencement notice signed by the contractor and stating—
 - (a) the date the subject work started at the building site; and
 - (b) the date for practical completion.

Maximum penalty—40 penalty units.

17 **Copies of certificate of inspection**

- (1) This section applies if the building contractor under a regulated contract is responsible for engaging a building certifier for the subject work under regulated contract (whether personally or as agent for the building owner).
- (2) The building contractor must give the building owner a copy of each certificate of inspection issued by the building certifier for the subject work as soon as practicable after receiving the certificate.

Maximum penalty—20 penalty units.

- (3) In a proceeding for a contravention of subsection (2) in relation to a certificate of inspection, it is a defence for the building contractor to prove that the contractor did not comply with the subsection because the contractor reasonably believed the building owner already had a copy of the certificate of inspection.

18 Copy of consumer building guide

- (1) This section applies to a level 2 regulated contract.
- (2) The building contractor must give the building owner a copy of the consumer building guide before the owner signs the contract.

Maximum penalty—20 penalty units.

- (3) The consumer building guide may be given to the building owner separate from, or attached to, the contract.

Part 3 Warranties

Division 1 Incorporation of warranties

19 Implied warranties

- (1) The warranties mentioned in division 2 are part of every regulated contract.
- (2) A warranty mentioned in a section of division 3 is part of each regulated contract that is a contract of the type to which the section applies.

Note—

The Australian Consumer Law (Queensland) also provides particular statutory consumer guarantees if a person supplies, in trade or commerce, goods or services to a consumer as defined under that law.

Division 2 Implied warranties for all contracts

20 Suitability of materials

- (1) The building contractor warrants that all materials to be supplied for use in the subject work—
 - (a) will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and
 - (b) unless otherwise stated in the contract, will be new.
- (2) Subsection (1) applies to the building contractor for materials only if the materials are supplied by the responsible person for the contract.
- (3) Despite subsection (2), if the contract is being administered by an architect engaged by the building owner, subsection (1) does not apply to the building owner for materials if the responsible person is subject to the direction of the architect for supplying the materials.
- (4) Also, despite subsection (2), subsection (1) does not apply to the building contractor for materials if—
 - (a) the building owner is responsible for nominating the materials for use in the subject work; and
 - (b) either—
 - (i) there are no reasonable grounds for not using the materials; or
 - (ii) if there are reasonable grounds for not using the materials—the building owner insists on the materials being used despite written advice to the contrary given to the building owner by the building contractor.
- (5) A building owner is responsible for nominating materials for use in the subject work only if—
 - (a) the building owner nominates the materials specifically; and

- (b) the nomination is made without any recommendation, representation, suggestion or other approach being made to the building owner by the building contractor—
 - (i) supporting, or approving, the use of the materials; or
 - (ii) criticising, or disapproving the use of, other materials that could be considered to be appropriate for use for the purpose for which the materials nominated by the building owner are to be used.
- (6) In this section—
- relevant criteria**, for materials, means—
- (a) generally accepted practices or standards applied in the building industry for the materials; or
 - (b) specifications, instructions or recommendations of manufacturers or suppliers of the materials.
- responsible person**, for a regulated contract, means—
- (a) if the contract is a contract for carrying out the subject work—the building contractor; or
 - (b) if the contract is a contract for managing the carrying out of the subject work—the person responsible for carrying out the work.

21 Compliance with legal requirements

The building contractor warrants the subject work will be carried out in accordance with all relevant laws and legal requirements, including, for example, the *Building Act 1975*.

22 Standard of work and exercise of care and skill

The building contractor warrants the subject work will be carried out—

- (a) in an appropriate and skilful way; and
- (b) with reasonable care and skill.

Division 3 Implied warranties for particular contracts

23 Adherence to plans and specifications

- (1) This section applies to a regulated contract if plans and specifications form part of the contract.
- (2) The building contractor warrants the subject work will be carried out in accordance with the plans and specifications.

24 Suitability of premises for occupation

- (1) This section applies to a regulated contract if the subject work—
 - (a) consists of the erection or construction of a detached dwelling to a stage suitable for occupation; or
 - (b) is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation.
- (2) The building contractor warrants the detached dwelling or home will be suitable for occupation when the work is finished.

25 Carrying out work with reasonable diligence

The building contractor warrants the subject work will be carried out with reasonable diligence.

26 Calculation of provisional sums and prime cost items

- (1) This section applies to a regulated contract providing for a provisional sum or prime cost item.
- (2) The building contractor warrants the provisional sum or prime cost item has been calculated with reasonable care and skill, having regard to all the information reasonably available when the contract is entered into (including information about the nature and location of the building site).

Division 4 General

27 Warranties run with building

- (1) An associated person for a regulated contract has the same rights for a breach of a warranty mentioned in division 2 or schedule section 23 or 24 as if the person were the building owner.
- (2) However, subsection (1) applies to the associated person—
 - (a) only if, at the relevant time, the person did not know, and could not reasonably have known, of the existence of the breach; and
 - (b) only to the extent the rights are rights that, immediately before the person became an associated person for the contract, were held by—
 - (i) the building owner; or
 - (ii) another associated person for the contract.
- (3) In this section—

associated person, for a regulated contract, means a person, other than the building owner, who is the owner for the time being of the building in relation to which, or land on which, the subject work was carried out.

relevant time, for an associated person, for a regulated contract, means the time the person entered into the agreement under which the person became an associated person for the contract.

28 Protection of rights given by warranties

A provision of an agreement or other document that purports to restrict or take away the rights of a person for a breach of a warranty mentioned in this part is void.

29 Proceedings for breach of warranties

- (1) Proceedings for a breach of a statutory warranty must be started before the end of the warranty period for the breach.
- (2) However, if the breach of statutory warranty becomes apparent within the last 6 months of the warranty period, proceedings may be started within a further 6 months after the end of the warranty period.
- (3) The *warranty period* for a regulated contract—
 - (a) is 6 years for a breach that results in a structural defect, as prescribed by regulation, or 1 year in any other case; and
 - (b) starts—
 - (i) if the subject work is completed—on completion of the work; or
 - (ii) if the subject work is not completed—
 - (A) if the contract is terminated—the date the contract is terminated; or
 - (B) if the contract is not terminated—the date on which work under the contract ceased; or
 - (C) if the contract is not terminated and work under the contract was not started—the date the contract was entered into.
- (4) A breach of a statutory warranty becomes apparent when any person entitled to the benefit of the warranty first becomes aware, or ought reasonably to have become aware, of the breach.
- (5) The fact that a person entitled to the benefit of a statutory warranty has enforced the warranty in relation to a particular deficiency in domestic building work does not prevent the person from enforcing the same warranty for a deficiency of a different kind in the work (the *other deficiency*) if—
 - (a) the other deficiency was in existence when the work to which the warranty relates was completed; and

- (b) the person did not know, and could not reasonably have been expected to know, of the existence of the other deficiency when the warranty was previously enforced; and
 - (c) the proceedings to enforce the warranty in relation to the other deficiency are brought within the period mentioned in subsection (1).
- (6) In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that—
- (a) the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the written advice of the defendant or the person who did the work; or
 - (b) the defendant was not reasonably given access to rectify the deficiencies of which the plaintiff complains.

Part 4 Restrictions relating to contracts

Division 1 Entering into contracts

30 Contracted services must not start before regulated contract complies with requirements

The building contractor for a regulated contract must not start to provide the contracted services before the contract complies with the requirements of—

- (a) for a level 1 regulated contract—schedule section 13; or
- (b) for a level 2 regulated contract—schedule section 14.

Maximum penalty—100 penalty units.

31 Foundations data

- (1) This section applies if the subject work proposed for a regulated contract—

- (a) requires the construction or alteration of footings, or a concrete slab, for a building; or
 - (b) may adversely affect the footings of a building or a concrete slab forming part of a building.
- (2) Before entering into the contract, the building contractor must obtain the foundations data that is appropriate for the building site, having regard to the following—
- (a) the Building Code of Australia;
 - (b) the need for a drainage plan;
 - (c) the need for engineer's drawings and computations;
 - (d) the need for information on the fall of the land at the building site.

Maximum penalty—100 penalty units.

- (3) However, subsection (2) does not apply if—
- (a) the building contractor is not lawfully entitled to enter the land at the building site to obtain the foundations data before entering into the contract; and
 - (b) the contract guarantees that there will be no increase in the contract price because of the foundations data.
- (4) Nothing in subsection (2) requires a building contractor to commission the preparation of foundations data to the extent the data already exists and it is reasonable for the building contractor to rely on the data.
- (5) The building contractor must give a copy of any foundations data obtained by the building contractor for this section to the building owner on payment by the building owner of the costs incurred by the building contractor in obtaining the data.

Maximum penalty—10 penalty units.

- (6) Subsection (5) does not apply to a building contractor for foundations data if the data is given to the building contractor by the building owner.
- (7) In a proceeding for a contravention of subsection (5) in relation to a copy of any foundations data, it is a defence for the building contractor to prove that the building contractor

reasonably believes the building owner already has a copy of the data.

- (8) The building contractor under a regulated contract can not seek from the building owner an amount not already provided for in the contract if—
 - (a) the building contractor entered into the contract before obtaining the foundations data under subsection (2); and
 - (b) the need for the additional amount could reasonably have been established, and the amount calculated, had the building contractor complied with the subsection.
- (9) For subsection (8), an amount is not taken to be provided for in a regulated contract only because the contract contains a provision allowing for an increase to be made of the contract price.
- (10) Nothing in this section prevents the building contractor from claiming an amount not provided for in the contract if—
 - (a) the building contractor has complied with subsection (2); and
 - (b) the need for the additional amount can not be established from the foundations data obtained by the building contractor.

32 Arbitration clauses

- (1) A provision of a regulated contract, or other agreement, requiring that a dispute under the contract be referred to arbitration is void.
- (2) Subsection (1) does not apply to a provision of an agreement, other than a regulated contract, if the agreement is entered into after a dispute under the contract arises.

Division 2 Payments relating to contracts

33 Deposits

- (1) The building contractor under a regulated contract must not, before starting to provide the contracted services at the building site, demand or receive a deposit under the contract of more than—
 - (a) for a level 1 regulated contract (other than a contract mentioned in paragraph (c))—10% of the contract price; or
 - (b) for a level 2 regulated contract (other than a contract mentioned in paragraph (c))—5% of the contract price; or
 - (c) for a level 1 or 2 regulated contract under which the value of the off-site work is more than 50% of the contract price—20% of the contract price.

Maximum penalty—100 penalty units.

- (2) In this section, a reference to the contract price for a contract includes, for a cost plus contract, a reference to the estimated amount for the contract.
- (3) In this section—

deposit, for a regulated contract, includes any payment for domestic building work demanded or received by the building contractor prior to the contracted services commencing at the building site, including, for example, any insurance premium paid under part 5.

off-site work, for a regulated contract, means contracted services performed at a place that is not the place at which the domestic building work is to be finally installed or constructed under the contract.

34 Progress payments for regulated contracts

- (1) The building contractor under a regulated contract must not claim an amount under the contract, other than a deposit, unless the amount—
 - (a) is directly related to the progress of carrying out the subject work at the building site; and
 - (b) is proportionate to the value of the subject work that relates to the claim, or less than that value.

Example for paragraph (b)—

The claimed amount is for half of the contract price for a regulated contract, less a 5% deposit, and is demanded after the completion of half of the subject work.

Maximum penalty—50 penalty units.

- (2) A regulation may prescribe when an amount is proportionate to the value of subject work under a regulated contract.
- (3) For subsection (1), a building contractor is taken to claim an amount if the contractor demands or receives the amount.
- (4) In this section—

building site, for a regulated contract, does not include a place where the subject work has been, is being, or is to be, carried out if the work is required to later be installed or constructed at another place under the contract.

deposit, for a regulated contract, means the deposit permitted for the contract under schedule section 33(1).

Part 5 Cooling-off period and withdrawing from regulated contracts

35 Right of building owner to withdraw from contract in cooling-off period

- (1) The building owner under a regulated contract may withdraw from the contract within 5 business days after the day on

which the owner receives a copy of the signed contract from the building contractor.

- (2) Also, if the building owner under a level 2 regulated contract does not receive the consumer building guide before receiving a copy of the signed contract, the owner may withdraw from the contract within 5 business days after the day on which the owner receives the consumer building guide.
- (3) If 5 business days have elapsed from the day the contract was entered into and the owner has not received from the building contractor a copy of the signed contract and, for a level 2 regulated contract, the consumer building guide, the owner may withdraw from the contract.
- (4) Nothing in subsection (3) affects the right of the building owner to withdraw from the contract under subsection (1) or (2) if the owner subsequently receives from the building contractor a copy of the signed contract and, for a level 2 regulated contract, the consumer building guide.

36 Restrictions affecting right of withdrawal in cooling-off period

- (1) This section applies despite schedule section 35.
- (2) A building owner may not withdraw from a regulated contract (the *current contract*) under schedule section 35 if—
 - (a) the building owner and building contractor previously entered into a regulated contract (the *previous contract*); and
 - (b) the terms of the previous contract and current contract are substantially the same; and
 - (c) the contracted services for the previous contract and current contract—
 - (i) are substantially the same; and
 - (ii) relate to the same detached dwelling, home or land.
- (3) Also, a building owner may not withdraw from a regulated contract under schedule section 35 if—

- (a) before entering into the contract, the building owner received formal legal advice about the contract; or
- (b) when, or after, the contract is entered into, the building owner tells the building contractor that the building owner received formal legal advice about the contract before entering into the contract.

(4) In this section—

formal legal advice means independent advice—

- (a) given by a practising legal practitioner; and
- (b) for the giving of which an amount is paid, or is payable, to the legal practitioner by the person to whom the advice is given.

practising legal practitioner means a lawyer authorised under a law of the State to practise as a lawyer for purposes including the giving, for reward, of advice, including, for example, advice about domestic building contracts.

37 Withdrawal procedure

(1) To withdraw from a regulated contract under schedule section 35, the building owner must, within the time allowed under the section for the withdrawal—

- (a) give a withdrawal notice to the building contractor; or
- (b) leave a withdrawal notice at the address shown as the building contractor's address in the contract; or
- (c) serve a withdrawal notice on the building contractor in accordance with any provision in the contract providing for service of notices on the building contractor by the building owner.

(2) In this section—

withdrawal notice means a written notice signed by the building owner under a regulated contract stating—

- (a) that the building owner withdraws from the contract; and

- (b) the section of this schedule under which the withdrawal is made.

38 Rights and obligations of parties following withdrawal in cooling-off period

- (1) This section applies if a building owner withdraws from a regulated contract under schedule section 35.
- (2) If there is a prepaid amount for the contract that is not less than the retainable amount, the building contractor—
 - (a) may keep an amount equal to the retainable amount out of the prepaid amount; and
 - (b) must refund any balance of the prepaid amount to the building owner.
- (3) If there is a prepaid amount for the contract that is less than the retainable amount, the building owner must pay the building contractor an amount equal to the difference between the retainable amount and the prepaid amount.
- (4) If there is no prepaid amount for the contract, the building owner must pay the building contractor an amount equal to the retainable amount.
- (5) If an amount is not paid by a person as required under this section, the person to whom it is payable may recover the amount from the other person as a debt.
- (6) Except as provided under subsection (3) or (4), the building owner is not liable to the building contractor in any way for withdrawing from the contract.
- (7) In this section, a reference to the prepaid amount for the contract is a reference to the amount paid to the building contractor under the contract by the building owner before the building owner withdrew from the contract.
- (8) Also, in this section, a reference to the retainable amount for the contract is a reference to the sum of—
 - (a) an amount equal to any out-of-pocket expenses reasonably incurred by the building contractor before the building owner withdrew from the contract; and

- (b) if the building owner withdraws from the contract under schedule section 35(1)—\$100.

39 Waiving right of withdrawal

- (1) The building owner under a repair contract may waive the building owner's right to withdraw from the contract.
- (2) To waive the right, the building owner must—
 - (a) give a waiver notice to the building contractor; or
 - (b) leave a waiver notice at the address shown as the building contractor's address in the contract; or
 - (c) serve a waiver notice on the building contractor in accordance with any provision in the contract providing for service of notices on the building contractor by the building owner.
- (3) This section has effect despite section 108D.
- (4) In this section—

repair includes an alteration, improvement or replacement that it is necessary or reasonable to carry out instead of effecting a repair.

repair contract means a regulated contract under which the subject work is composed of any 1 or more of the following—

- (a) the repair of a home;
- (b) work associated with the repair of a home;
- (c) the provision, for the repair of a home, of services or facilities to the home or the property on which the home is situated;
- (d) site work relating to work mentioned in paragraph (a), (b) or (c).

waiver notice means a written notice signed by the building owner under a repair contract stating that the building owner waives the building owner's right to withdraw from the contract.

Part 6 Variations of contracts

40 Variations must be in writing

- (1) This section applies if there is to be a variation of a regulated contract.
- (2) The building contractor must give the building owner a copy of the variation in writing before the first of the following happens—
 - (a) 5 business days elapse from the day the building contractor and the building owner agree to the variation;
 - (b) any domestic building work the subject of the variation starts.

Maximum penalty—20 penalty units.

- (3) The building contractor may give the building owner the variation under subsection (2)—
 - (a) personally; or
 - (b) by sending it by post, facsimile or email; or
 - (c) in accordance with any provision in the contract providing for service of notices on the building owner by the building contractor.
- (4) In a proceeding for a contravention of subsection (2), it is a defence for the building contractor to prove that—
 - (a) the variation is for domestic building work that is required to be carried out urgently; and
 - (b) it is not reasonably practicable, in the particular circumstances, to produce a copy of the variation in writing before carrying out the work.
- (5) The building contractor must not start to carry out any domestic building work the subject of the variation before the building owner agrees to the variation in writing.

Maximum penalty—20 penalty units.

41 General contents of document evidencing a variation

- (1) The building contractor under a regulated contract must ensure a document evidencing a variation of the contract complies with the formal requirements for a variation.

Maximum penalty—20 penalty units.

- (2) The document evidencing the variation complies with the formal requirements if it—
- (a) is readily legible; and
 - (b) describes the variation; and
 - (c) states the date of the request for the variation; and
 - (d) if the variation will result in a delay affecting the subject work—states the building contractor's reasonable estimate for the period of delay; and
 - (e) states the change to the contract price because of the variation, or the method for calculating the change to the contract price because of the variation; and
 - (f) if the variation results in an increase in the contract price—states when the increase is to be paid; and
 - (g) if the variation results in a decrease in the contract price—states when the decrease is to be accounted for.
- (3) Any increase in the contract price as a result of the variation can not be required to be paid before work the subject of the variation is started.

42 Extension of time

- (1) The building contractor under a regulated contract may only claim for an extension of time under the contract if—
- (a) the delay causing the need for the extension of time was—
 - (i) not reasonably foreseeable and beyond the reasonable control of the contractor; or
 - (ii) caused by the building owner; or

- (iii) caused by a variation of the contract complying with schedule section 40; and
 - (b) the claim is made to the building owner in writing; and
 - (c) the claim is given to the building owner within 10 business days of the building contractor becoming aware of the cause and extent of the delay or when the building contractor reasonably ought to have become aware of the cause and extent of the delay; and
 - (d) the owner approves the claim in writing.
- (2) A building contractor under a regulated contract must not seek to rely on an extension of time under the contract unless the contractor claimed for the extension of time in compliance with subsection (1).
Maximum penalty—20 penalty units.
- (3) A building contractor under a regulated contract must give the building owner a signed copy of a claim for an extension of time within 5 business days of the owner approving the claim.
Maximum penalty—20 penalty units.
- (4) A regulation may prescribe when a series of similar delays may be taken to be a single delay for the purpose of subsection (1)(c).

Part 7 Building sites

43 Building contractor does not acquire interest in land of resident owner

- (1) A domestic building contract does not give the building contractor an interest in land of a resident owner for the *Land Title Act 1994*, section 122.
- (2) A building contractor who lodges a caveat claiming an interest in land of a building owner under a domestic building contract knowing the owner to be a resident owner commits an offence.

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

Part 8 Other matters relating to contracts

44 Effect of failure by building contractor to comply with requirement

Unless the contrary intention appears in this Act, a failure by a building contractor to comply with a requirement under this Act in relation to a domestic building contract does not make the contract illegal, void or unenforceable.

Part 9 Miscellaneous

45 Relationship with other Acts

- (1) The *Commercial Arbitration Act 2013* does not apply to domestic building work unless the relevant arbitration agreement under that Act—
 - (a) is an agreement other than a domestic building contract; and
 - (b) is entered into after the dispute to which it relates arises.
- (2) The *Subcontractors' Charges Act 1974* does not apply to domestic building work relating to a detached dwelling if the work—
 - (a) is carried out by a building contractor for an individual; and
 - (b) is not for a business carried on by the individual, either alone or as a member of a partnership.

46 Consumer building guide

- (1) The commission must prepare and publish a consumer building guide in a form prescribed by regulation.
- (2) The consumer building guide may, for informational purposes, contain information about the following—

- (a) warnings about cost plus contracts;
 - (b) information about the cooling-off period;
 - (c) commencement notice requirements;
 - (d) deposit and progress payment requirements;
 - (e) variation procedures;
 - (f) statutory warranties;
 - (g) dispute resolution procedures.
- (3) Subsection (2) does not limit the type of information the commission may include in the consumer building guide.

Schedule 2 Dictionary

section 4

accumulate, for part 3E, see section 67AQ.

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

administration services, for building work or tribunal work, includes the following—

- (a) preparing tender documentation and calling and selecting tenders;
- (b) arranging and conducting on-site meetings and inspections;
- (c) arranging payment of subcontractors;
- (d) arranging for certificates, including certificates from a local government, to be issued;
- (e) administration for the work usually carried out by—
 - (i) a construction manager; or
 - (ii) a project manager under a project management agreement;
- (f) other administration for the work usually carried out by a licensed contractor in the course of the contractor's business.

advisory services, for building work or tribunal work, includes the provision of advice or a report about building work other than—

- (a) the carrying out of a completed building inspection; or
- (b) the inspection or investigation of a building, and the provision of advice or a report, for the following—
 - (i) termite management systems for the building;
 - (ii) termite infestation in the building.

alternative solution see *Building Act 1975*, schedule 2.

apprentice see the *Further Education and Training Act 2014*, schedule 1.

appropriate insurance premium, for part 5, see section 67WA.

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

architect means a person registered as an architect under the *Architects Act 2002*.

assessment manager see the Planning Act, section 48(1).

assistance, for part 5, see section 67WA.

associated insurable work, for part 5, see section 67WD.

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

banned individual see section 67AC.

board means the Queensland Building and Construction Board established under section 10.

board's policies means the policies of the board made for the purposes of section 19.

building—

(a) generally, includes any fixed structure; or

Examples of a fixed structure—

- a fence other than a temporary fence
- a water tank connected to the stormwater system for a building
- an in-ground swimming pool or an above-ground pool fixed to the ground

(b) for part 6AA, see section 74AA; or

(c) for schedule 1B, see schedule 1B, section 1.

Building Code of Australia see the *Building Act 1975*, section 12.

building contract—

(a) for part 3E—see section 67AAA; and

(b) for part 4A—see section 67AAA; and

- (c) for schedule 1, part 2—see schedule 1, section 8; and
- (d) otherwise—means a contract or other arrangement for carrying out building work in Queensland.

building contractor—

- (a) generally, means a person who carries on a business that consists of or includes carrying out building work, and includes a subcontractor who carries out building work for a building contractor; but
- (b) for schedule 1B, see schedule 1B, section 1.

building dispute means—

- (a) a domestic building dispute; or
- (b) a minor commercial building dispute; or
- (c) a major commercial building dispute if the parties to the dispute consent to the dispute being heard by the tribunal under section 79.

building owner—

- (a) generally, means a person for whom tribunal work is to be, is being or has been carried out, but does not include a building contractor for whom tribunal work is carried out by a subcontractor; but
- (b) for schedule 1B, see schedule 1B, section 1.

building product see section 74AB(1).

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

building site—

- (a) generally, means a place where building work has been, is being, or is to be, carried out; but
- (b) for schedule 1B, see schedule 1B, section 1.

building work means—

- (a) the erection or construction of a building; or
- (b) the renovation, alteration, extension, improvement or repair of a building; or

Schedule 2

- (c) the provision of lighting, heating, ventilation, airconditioning, water supply, sewerage or drainage in connection with a building; or
- (e) any site work (including the construction of retaining structures) related to work of a kind referred to above; or
- (f) the preparation of plans or specifications for the performance of building work; or
- (fa) contract administration carried out by a person in relation to the construction of a building designed by the person; or
- (g) fire protection work; or
- (h) carrying out site testing and classification in preparation for the erection or construction of a building on the site; or
- (i) carrying out a completed building inspection; or
- (j) the inspection or investigation of a building, and the provision of advice or a report, for the following—
 - (i) termite management systems for the building;
 - (ii) termite infestation in the building;

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

building work services means 1 or more of the following for building work—

- (a) administration services;
- (b) advisory services;
- (c) management services;
- (d) supervisory services.

calling includes a craft, manufacture, occupation, trade, undertaking or vocation.

carry out, for building work (other than for part 4A) means any of the following—

- (a) carry out the work personally;

(b) directly or indirectly cause the work to be carried out;

(c) provide building work services for the work.

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

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

certificate of inspection, for schedule 1B, see schedule 1B, section 1.

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

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

commercial building dispute means—

(a) a claim or dispute arising between a building owner and a building contractor relating to the performance of reviewable commercial work or a contract for the performance of reviewable commercial work; or

(b) a claim or dispute arising between 2 or more building contractors relating to the performance of reviewable commercial work or a contract for the performance of reviewable commercial work; or

(c) a claim or dispute in negligence, nuisance or trespass related to the performance of reviewable commercial work other than a claim for personal injuries; or

(d) a claim or dispute arising between a building owner or a building contractor and any 1 or more of the following relating to the performance of reviewable commercial work or a contract for the performance of reviewable commercial work—

(i) an architect;

(ii) an engineer;

(iii) a surveyor;

(iv) a quantity surveyor;

(v) an electrician or an electrical contractor;

(vi) a supplier or manufacturer of materials used in the tribunal work.

commission means the Queensland Building and Construction Commission established under section 5.

commissioner means the commissioner of the commission.

company means any body corporate.

completed building inspection means the inspection or investigation of, and the provision of advice or a report about, the following class 1a or 10 buildings under the Building Code of Australia—

- (a) a building for which there is no current contract between a building contractor and a consumer because the contract has been completed;

Example—

an existing detached house that has previously been occupied or that has recently been built

- (b) a building on which work is not being carried out because the contract under which it was being carried out has been terminated;

Example—

a detached house on which a building contractor has stopped building work in breach of the terms of a contract with a consumer and the consumer has terminated the contract

- (c) a building on which work is being, or was, carried out but not under a contract between a building contractor and a consumer.

Example—

a detached house being built by, or that was built by, a building contractor but not under a contract with a particular consumer. This is known in the building industry as “a specky”.

Editor’s note—

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

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

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

condition includes a limitation or restriction.

consequential damage see section 71H.

construction management contract means a contract under which a principal engages a construction manager to provide building work services for building work carried out for the principal under construction management trade contracts.

construction management trade contract see section 67A.

construction manager means a person who provides building work services for the carrying out of building work for a principal under a construction management contract.

consumer—

- (a) generally, means a person for whom building work is carried out, but does not include a building contractor for whom building work is carried out by a subcontractor; but
- (b) for part 5, see section 67WA.

consumer building guide, for schedule 1B, see schedule 1B, section 1.

contract, for part 7, means a contract for carrying out tribunal work.

contract administration, in relation to building work designed by a person, includes the following—

- (a) preparing tender documentation and calling and selecting tenders;
- (b) preparing, or helping the person's clients with the preparation of, contracts;
- (c) preparing additional documentation for the person's clients or building contractors;
- (d) arranging and conducting on-site meetings and inspections;
- (e) arranging progress payments;
- (f) arranging for certificates, including certificates from a local government, to be issued;
- (g) providing advice and help to the person's clients including during the maintenance period allowed under a contract.

contracted party, for part 4A, see section 67A.

contracted services, for schedule 1B, see schedule 1B, section 1.

contracting party see section 67A.

contractor's licence see section 30(1).

contract price—

(a) for part 4A, see section 67A.

(b) for part 4A, see section 67A.

convicted company officer means a person who has been convicted of an offence under the *Corporations Act 2001* (Cwlth), section 596(1)(b) or (c).

conviction, for part 3E, see section 67AQ.

cost plus contract, for schedule 1B, see schedule 1B, section 1.

decision includes an order or direction.

default certificate see section 67AQ.

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

defects document, for schedule 1B, see schedule 1B, section 1.

demerit matter see section 67AQ.

demerit offence, for part 3E, see section 67AR.

demerit points see section 67AQ.

design work means—

(a) the preparation of plans or specifications for building work; or

(b) professional advice in relation to building work.

detached dwelling, for schedule 1B, see schedule 1B, section 1.

developer register, for part 8, see section 98.

development approval means a development approval under the Planning Act.

direction to rectify or remedy see section 71G.

disqualified individual see section 67AU.

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

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

domestic building contract, for schedule 1B, see schedule 1B, section 3.

domestic building dispute means—

- (a) a claim or dispute arising between a building owner and a building contractor relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work; or
- (b) a claim or dispute arising between 2 or more building contractors relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work; or
- (c) a claim or dispute in negligence, nuisance or trespass related to the performance of reviewable domestic work other than a claim for personal injuries; or
- (d) a claim or dispute arising between a building owner or a building contractor and any 1 or more of the following relating to the performance of reviewable domestic work or a contract for the performance of reviewable domestic work—
 - (i) an architect;
 - (ii) an engineer;
 - (iii) a surveyor;
 - (iv) a quantity surveyor;
 - (v) an electrician or an electrical contractor;

(vi) a supplier or manufacturer of materials used in the tribunal work.

domestic building work, for schedule 1B, see schedule 1B, section 4.

draftsperson, for schedule 1B, see schedule 1B, section 1.

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

employee of the employing office see section 29F(2).

employing office means the Queensland Building and Construction Employing Office established under section 29A.

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

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

engineer means a person who is a registered professional engineer under the *Professional Engineers Act 2002*.

examine, for part 9, see section 103G.

excluded building work, for schedule 1B, see schedule 1B, section 1.

excluded company see section 56AC(6).

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

executive officer, for part 2A, means the executive officer of the employing office appointed under section 29D.

executive officer, of a company, means a person who is—

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

farm building, for schedule 1B, see schedule 1B, section 1.

field work means—

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

fire protection occupational licence see section 30C(1) and (2).

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

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

fire protection work means any of the following for a building or part of a building—

- (a) the installation, restoration, repair or maintenance of a fire protection system;
- (b) the preparation of any certificate, statement or record—
 - (i) relating to the installation, restoration, repair or maintenance of a fire protection system; or
 - (ii) stating whether a fire protection system meets a standard, requirement or specification;
- (c) the design of a fire protection system;

- (d) the development, approval or certification of emergency evacuation procedures for a controlled evacuation during a fire emergency;
- (e) the formulation or provision of alternative solutions relating to fire safety;
- (f) the inspection or investigation of, and the provision of advice or a report about, compliance with the *Building Act 1975* or the Building Code of Australia relating to fire safety.

foundations data, for schedule 1B, see schedule 1B, section 8.

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

government entity see the *Public Service Act 2008*, section 24.

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

home, for schedule 1B, see schedule 1B, section 9.

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

incomplete, for part 5, see section 67WA.

industrial instrument see the *Industrial Relations Act 2016*, schedule 5.

influential person, for a company, means an individual, other than a director or secretary of the company, who is in a position to control or substantially influence the conduct of the company's affairs, including, for example, a shareholder with a significant shareholding, a financier or a senior employee.

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

infringement notice see section 67AQ.

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

insolvent under administration has the meaning given by the Corporations Act, section 9.

insurable value, for part 5, see section 67WA.

insurance notification form means a form approved by the commission on which information about building work is submitted to the commission for covering the work under the statutory insurance scheme.

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

internal review application, for part 7, division 3, subdivision 1, see section 85A.

internal review decision, for part 7, division 3, subdivision 1, see section 86C(1).

internal reviewer, for part 7, division 3, subdivision 1, see section 85A.

judgment debt see section 67AS.

level 1 regulated contract, for schedule 1B, see schedule 1B, section 6.

level 2 regulated contract, for schedule 1B, see schedule 1B, section 7.

licence means a licence under this Act.

licence card means a licence card issued under section 34.

licence certificate means a licence certificate issued under section 34.

licensed builder means a person who is a licensed builder under the regulations.

licensed contractor means a person who holds a contractor's licence.

licensed supervisor, for building work, means a person who holds a licence under this Act authorising supervision of building work of the relevant class.

licensee means a person who holds a licence.

licensee register, for part 8, see section 98.

major commercial building dispute means a commercial building dispute where either the claim or the counterclaim exceeds \$50,000.

manage, for schedule 1B, see schedule 1B, section 1.

management services, for building work or tribunal work, includes—

- (a) coordinating the scheduling of the work by building contractors including as agent for another person; and
- (b) management for the work usually carried out by—
 - (i) a construction manager; or
 - (ii) a project manager under a project management agreement; and
- (c) other management for the work usually carried out by a licensed contractor in the course of the contractor's business.

member means member of the board.

minor commercial building dispute means a commercial building dispute where neither the claim nor the counterclaim exceeds \$50,000.

minor domestic building dispute means a domestic building dispute where neither the claim nor the counterclaim exceeds \$10,000.

mixed-purpose contract, for schedule 1B, see schedule 1B, section 1.

nominee, in relation to a company, means an officer or employee of the company nominated by the company to have the general supervision of building work to be carried out under a licence.

nominee supervisor means a person who holds a nominee supervisor's licence.

nominee supervisor's licence see section 30A(1).

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

occupational licence means a licence or registration for an occupation that is—

- (a) issued to a person by an entity other than the commission; and
- (b) required by the person to carry out the occupation.

occupier, for part 9, see section 103G.

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

optional additional cover, for part 5, see section 67Z(4).

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.

owner-builder course, for part 3, division 8, see section 43D.

owner-builder permit see section 43E.

owner-builder register, for part 8, see section 98.

owner-builder work see section 43D.

payment claim, for part 4A, see section 67A.

period of 3 years, for part 3E, see section 67AQ.

permanently excluded individual see section 58.

permittee means the holder of an owner-builder permit under this Act.

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

personally supervise, in relation to building work, means personally exercise control over the work by overseeing and directing the work to ensure it is—

- (a) in accordance with the plans and specifications set out in the contract for the work; and
- (b) of a standard expected of a competent holder of a contractor's licence of the relevant class.

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

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

PIN see section 34A.

place, for part 9, see section 103G.

Planning Act means the *Planning Act 2016*.

practical completion, for schedule 1B, see schedule 1B, section 1.

premises, for part 9, see section 103G.

primary insurable work, for part 5, see section 67WC.

prime cost item, for schedule 1B, see schedule 1B, section 1.

principal see section 67A.

private sector entity means an entity that is not owned, either wholly or partly, by the State, the Commonwealth or a local government, or any of their authorities or agencies.

progress payment—

- (a) for part 4A, see section 67A; and
- (b) for schedule 1B, see schedule 1B, section 1.

project management agreement means a contract under which a principal engages a project manager to provide building work services for building work carried out for the principal other than under construction management trade contracts.

project manager means a person who provides building work services for the carrying out of building work for a principal under a project management agreement.

provisional sum, for schedule 1B, see schedule 1B, section 10.

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

public-private partnership means an arrangement between the following entities with the purpose of financing, designing, constructing, maintaining or operating public infrastructure—

- (a) the State, the Commonwealth or a local government, or any of their authorities or agencies;
- (b) 1 or more private sector entities.

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).

recorded conviction, for an indictable offence, does not include a finding of guilt, or the acceptance of a plea of guilty, by a court, in relation to the offence, without recording a conviction for the offence.

rectify building work means to remedy defective building work or to complete incomplete building work.

registrar—

- (a) for part 3E—see section 67AQ; or
- (b) otherwise—means the principal registrar under the Tribunal Act.

registrar of titles, for land that is not under the *Land Title Act 1994*, means the officer responsible for keeping a register for the land.

regulated amount, for schedule 1B, see schedule 1B, section 1.

regulated contract, for schedule 1B, see schedule 1B, section 5.

related roofed building, for part 5, see section 67WF.

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

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

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

relevant entity, for part 9A, see section 108AA(1).

relevant event means a relevant bankruptcy event or a relevant company event.

relevant officer, of the commission, means—

- (a) an employee of the employing office or of another government entity performing work for the commission under a work performance arrangement; or
- (b) an officer or employee of the commission.

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

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

renewal day, for a licence, means the day the licence is due to be renewed.

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

residence, for part 5, see section 67WE.

residential construction work, for part 5, see section 67WA.

residential unit means a part of a building designed for separate occupation as a residence.

resident owner, for schedule 1B, see schedule 1B, section 1.

retention amount, for part 4A, see section 67A.

review means review by the tribunal.

reviewable commercial work means tribunal work other than reviewable domestic work.

reviewable decision—

- (a) for part 7, division 3, subdivision 1, see section 86; or

(b) for part 7, division 3, subdivision 2, see section 86E.

reviewable domestic work means domestic building work under schedule 1B, section 4, except that for applying schedule 1B, section 4(8), the definition *excluded building work* under the schedule is taken not to mean anything mentioned in paragraph (b), (c) or (d) of that definition.

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

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

schedule section, for schedule 1B, see schedule 1B, section 1.

security, for part 4A, see section 67A.

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
 - (v) the separation of his or her skin from an underlying tissue (for example, degloving or scalping); or
 - (vi) a spinal injury; or
 - (vii) the loss of a bodily function; or
 - (viii) serious lacerations; or
- (c) medical treatment within 48 hours of exposure to a substance.

Service Trades Council means the Service Trades Council established under the *Plumbing and Drainage Act 2002*, section 5.

site classification means the classification of a site, or the reclassification of a site, under a standard directed to ensuring the appropriate selection or design of footings.

site supervisor means a person who holds a site supervisor's licence.

site supervisor's licence see section 30B(1) and (2).

site testing means—

- (a) field work for soil testing or site classification; or
- (b) laboratory testing of soil.

special purpose vehicle means an entity—

- (a) established for the purpose of carrying out a public-private partnership; and
- (b) declared by the Treasurer by gazette notice to be a special purpose vehicle for this Act.

speculative residential construction work, for part 5, see section 67WA.

spent conviction means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

SPER, for part 3E, see section 67AQ.

statutory insurance scheme means the insurance scheme established under part 5.

statutory warranties, for schedule 1B, see schedule 1B, section 1.

subcontract, for part 4A, see section 67A.

subcontractor—

- (a) for part 7—means—
 - (i) a building contractor who carries out tribunal work for another building contractor; or

(ii) a building contractor who carries out tribunal work for another person under a construction management trade contract under section 67B; and

(b) for schedule 1B, see schedule 1B, section 1.

subject work, for schedule 1B, see schedule 1B, section 1.

supervisory services, for building work or tribunal work, includes—

- (a) the development, implementation and management of a system for the supervision of the work; and
- (b) the coordination or management of persons undertaking the supervision of the work; and
- (c) the personal supervision of the work; and
- (d) any other supervision of building work under this Act.

term of ban see section 67AO.

term of disqualification, for part 3E, see section 67AZM.

tier 1 defective work see section 67AB(1).

trainee see the *Further Education and Training Act 2014*, schedule 1.

tribunal means QCAT.

tribunal work see sections 75 and 76.

undertake to carry out, for building work, means any of the following—

- (a) enter into a contract to carry out the work;
- (b) submit a tender to carry out the work;
- (c) make an offer to carry out the building work.

unsatisfied, in relation to a judgment debt, see section 67AT.

valuable instrument, for part 4A, see section 67A.

value of building work means an amount representing the reasonable cost to a consumer of having the work carried out by a licensed contractor on the basis that all building materials

are to be supplied by the contractor (whether or not the work is in fact carried out by a licensed contractor on that basis).

variation, for part 4A, see section 67A.

warning statement, for part 6AA, see section 74AZC(1).

work performance arrangement means an arrangement under which an employee of a government entity performs work for another government entity.

written form, for schedule 1B, see schedule 1B, section 1.

1 Index to endnotes

- 2 Key
- 3 Table of reprints
- 4 List of legislation
- 5 List of annotations

2 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amd	= amendment	prov	= provision
t			
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renu	= renumbered
		m	
ins	= inserted	rep	= repealed
lap	= lapsed	(retro	= retrospectively
)	
notf	= notified	rv	= revised version
d			
num	= numbered	s	= section

Key	Explanation	Key	Explanation
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2012
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
		m	
prev	= previous		

3 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the **Reprints Act 1992** used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3003 9601 or email legislation.queries@oqpc.qld.gov.au.

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments to	Effective	Reprint date
1	1992 Act No. 68	7 December 1992	9 December 1992
2	1993 Act No. 76	14 December 1993	10 January 1994

Reprint No.	Amendments to	Effective	Reprint date
3	1994 Act No. 20	5 August 1994	24 August 1994
3A	1995 Act No. 58	28 November 1995	20 August 1996
3B	1996 Act No. 58	5 December 1996	9 December 1996
4	1996 Act No. 58	1 June 1997	20 October 1997
4A	1997 Act No. 70	1 December 1997	9 February 1998
5	1998 Act No. 13	30 April 1998	1 May 1998
6	1999 Act No. 43	1 October 1999	6 November 1999
7	2000 Act No. 24	1 July 2000	7 July 2000
7A	2000 Act No. 24	28 February 2002	1 March 2002

Reprint No.	Amendments included	Effective	Notes
7B	2002 Act No. 51	6 December 2002	
7C	2002 Act No. 53 2002 Act No. 54	1 January 2003	
7D	2003 Act No. 1	4 March 2003	
7E	2003 Act No. 1	5 May 2003	
7F	2003 Act No. 1 2003 Act No. 30	1 July 2003	
7G	2003 Act No. 36	4 July 2003	
8	2003 Act No. 1	1 September 2003	
8A	2004 Act No. 6	1 October 2004	
8B	2004 Act No. 53	29 November 2004	
8C	2004 Act No. 6 (amd 2005 Act No. 33)	30 September 2005	

Endnotes

Reprint No.	Amendments included	Effective	Notes
8D	1975 Act No. 11 (amd 2006 Act No. 36) 2006 Act No. 36	1 September 2006	
8E	2007 Act No. 20	23 April 2007	
8F	2007 Act No. 47	21 December 2007	
9	2007 Act No. 47	1 January 2009	
9A	2009 Act No. 9	1 July 2009	
9B	2009 Act No. 25	2 November 2009	
10 rv	2009 Act No. 24 2009 Act No. 48	1 December 2009	Revision notice issued for R10
10A	2009 Act No. 36	18 December 2009	
10B	2010 Act No. 54	1 January 2011	

Current as at	Amendments included	Notes
1 November 2013	2013 Act No. 51	
1 December 2013	2013 Act No. 38 2013 Act No. 58	
1 July 2014	2014 Act No. 25	RA s 44A
27 October 2014	2014 Act No. 57	
10 November 2014	2014 Act No. 56	RA s 44
15 December 2014	2014 Act No. 57	
1 January 2015	2014 Act No. 57	
1 July 2015	2014 Act No. 57	
16 December 2015	—	prov exp 15 December 2015

Current as at	Amendments included	Notes
24 March 2016	2016 Act No. 11	
28 October 2016	2014 Act No. 57 RA s 44 (amd 2016 Act No. 11)	
1 March 2017	2016 Act No. 63	
3 July 2017	2016 Act No. 27	RA s 35
1 November 2017	2017 Act No. 29	RA ss 27, 30, 35

4 List of legislation

Queensland Building and Construction Commission Act 1991 No. 98 (prev Queensland Building Services Authority Act 1991)

date of assent 17 December 1991

ss 1–2 commenced on date of assent

pt 1 (other than ss 1–2), pt 2, pt 7, div 1 and s 115 commenced 1 January 1992 (see s 2(1))

pt 7, divs 2–6 commenced 1 June 1992 (1992 SL No. 108)

remaining provisions commenced 1 July 1992 (1992 SL No. 108)

amending legislation—

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 1

date of assent 2 July 1992

amds 3–14 commenced 1 July 1992 (see s 2 sch 1)

remaining provisions commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1

date of assent 7 December 1992

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1

date of assent 14 December 1993

amds 4–9 commenced 1 July 1992 (see s 3 sch 1)

remaining provisions commenced on date of assent

Land Title Act 1994 No. 11 ss 1–2, 194 sch 2

date of assent 7 March 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 24 April 1994 (1994 SL No. 132)

Queensland Building Services Authority Amendment Act 1994 No. 20

date of assent 10 May 1994

ss 1–2 commenced on date of assent
ss 4(1), (2) (ins of def *licensed builder*), 7–8, 13, 19–21, 23–24, 34, 3 sch amdts 3,
15 (ins of new cl 4) commenced 5 August 1994 (1994 SL No. 286)
remaining provisions commenced 20 May 1994 (1994 SL No. 156)

Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 ss 1–3 sch 1

date of assent 1 December 1994
commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Queensland Building Services Authority Amendment Act 1996 No. 58

date of assent 5 December 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 5 September 1996 (see s 2)

Queensland Building Services Authority Amendment Act 1997 No. 70

date of assent 1 December 1997
commenced on date of assent

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 8

date of assent 23 March 1998
ss 1–2 commenced on date of assent
ss 185, 188 commenced 30 March 1998 (1998 SL No. 55)
remaining provisions commenced 30 April 1998 (1998 SL No. 55)

Queensland Building Services Authority Amendment Act 1999 No. 43

date of assent 2 September 1999
ss 1–2 commenced on date of assent
ss 3, 4(2), 5 (other than to the extent it ins the new s 4C), 6–37, 38(1)–(3)
commenced 1 October 1999 (1999 SL No. 226)
remaining provisions commenced 1 July 2000 (2000 SL No. 7)

Domestic Building Contracts Act 2000 No. 9 ss 1–2, 104 sch 1

date of assent 20 April 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (2000 SL No. 156)

Queensland Building Tribunal Act 2000 No. 10 ss 1–2, 183 sch 1

date of assent 20 April 2000
ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 157)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27)

GST and Related Matters Act 2000 No. 20 ss 1, 2(2), (4), 29 sch 3

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(2), (4) and 2000 SL No. 7)

Equity and Fair Trading (Miscellaneous Provisions) Act 2000 No. 24 pts 1, 11

date of assent 27 June 2000

commenced on date of assent

Tribunals Provisions Amendment Act 2002 No. 51 ss 1–2, 101 sch

date of assent 24 September 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 6 December 2002 (2002 SL No. 325)

Architects Act 2002 No. 53 ss 1, 2(2), 166 sch 1

date of assent 1 November 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2003 (see s 2(2))

Professional Engineers Act 2002 No. 54 ss 1, 2(2), 166 sch 1

date of assent 1 November 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2003 (see s 2(2))

Queensland Building Services Authority and Other Legislation Amendment Act 2003 No. 1 pts 1–2

date of assent 4 March 2003

ss 1–3, 41 and 43 commenced on date of assent (see s 2)

s 6 commenced 5 May 2003 (2003 SL No. 78)

ss 16, 23, 35 commenced 1 September 2003 (2003 SL No. 184)

remaining provisions commenced 1 July 2003 (2003 SL No. 78)

Commercial and Consumer Tribunal Act 2003 No. 30 ss 1–2, 169 sch 1

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (see s 2)

Residential Tenancies and Other Legislation Amendment Act 2003 No. 36 pts 1, 4

date of assent 2 June 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 4 July 2003 (2003 SL No. 157)

Building and Construction Industry Payments Act 2004 No. 6 ss 1–2, 113 sch 1 (this Act is amended, see amending legislation below)

date of assent 20 May 2004

ss 1–2 commenced on date of assent

Endnotes

s 113 commenced 1 July 2004 (2004 SL No. 91)
sch 1 amdts 1, 3 (to the extent it om def *building contract*), 4 (to the extent it ins def *building contract*), 5 commenced 30 September 2005 (2005 SL No. 238)
remaining provisions commenced 1 October 2004 (see s 2)
amending legislation—

Housing and Other Acts Amendment Act 2005 No. 33 s 1, pt 3 (amends 2004 No. 6 above)

date of assent 18 August 2005
commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 2004 No. 53

date of assent 29 November 2004
commenced on date of assent

Building Act 1975 No. 11 s 283(3)(e) (prev s 69(3)(e)) (this Act is amended, see amending legislation below)

date of assent 15 May 1975
pts 5–6 and 8 and sch commenced 1 April 1976 (proc pubd gaz 6 March 1976 p 886)
remaining provisions commenced 31 May 1975 (proc pubd gaz 31 May 1975 p 748)
amending legislation—

Building and Other Legislation Amendment Act 2006 No. 36 ss 1–2, 69 (amends 1975 No. 11 above)

date of assent 10 August 2006
ss 1–2 commenced on date of assent
remaining provision commenced 1 September 2006 (2006 SL No. 226)

Building and Other Legislation Amendment Act 2006 No. 36 pt 1, s 101 sch

date of assent 10 August 2006
ss 1–2 commenced on date of assent
remaining provisions commenced 1 September 2006 (2006 SL No. 226)

Statutory Bodies Legislation Amendment Act 2007 No. 20 pts 1, 6

date of assent 23 April 2007
commenced on date of assent

Queensland Building Services Authority and Other Legislation Amendment Act 2007 No. 47 pts 1–2

date of assent 25 October 2007
ss 1–2 commenced on date of assent
ss 6 (to the extent it ins s 30C), 8 (to the extent it ins s 32AB), 14(2)–(4), 14(5) (to the extent it ins s 42(8B)(c)), 15 (to the extent it ins ss 42C–42D), 16 (to the extent it ins s 43(1)(b)(iii), (2)(b)(iii), s 43B(2)(b)(iii), (3)(b)(iii)), 31 (to the extent it ins s 56AB(b)), 33 (to the extent it ins s 57(b)), 34 (to the extent it ins s 62(b)), 37 (to the extent it ins s 67AV(b)), 81 (to the extent it ins sch 1 pt 8 ss 33–34), 82(2) (to the extent it ins def *fire protection occupational licence*), 82(2) (to the extent it ins paras (c)–(f) of def *fire protection work*), 82(10) commenced 1 January 2009 (automatic commencement under AIA s 15DA(2)) (2008 SL No. 346 s 2))
remaining provisions commenced 21 December 2007 (2007 SL No. 330)

Financial Accountability Act 2009 No. 9 ss 1, 2(2), 136 sch 1

date of assent 28 May 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2009 (2009 SL No. 80)

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009 No. 24 ss 1–2, ch 12 pt 5

date of assent 26 June 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 (2009 SL No. 252)

Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009 No. 25 pt 1, s 83 sch

date of assent 11 August 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 2 November 2009 (2009 SL No. 241)

Sustainable Planning Act 2009 No. 36 ss 1–2, 872 sch 2

date of assent 22 September 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 18 December 2009 (2009 SL No. 281)

State Penalties Enforcement and Other Legislation Amendment Act 2009 No. 48 ss 1, 2(5), ch 4 pt 19

date of assent 19 November 2009

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2009 immediately after the commencement of the Queensland Civil and Administrative Tribunal Act 2009 No. 23 ch 7 (see s 2(5) and 2009 SL No. 251)

Fair Trading (Australian Consumer Law) Amendment Act 2010 No. 54 ss 1–2, 67 sch

date of assent 1 December 2010

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2011 (2010 SL No. 359)

Queensland Building Services Authority Amendment Act 2013 No. 38 pts 1–2, s 14 sch 1

date of assent 29 August 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2013 (2013 SL No. 240)

Directors' Liability Reform Amendment Act 2013 No. 51 ss 1–2(1), pt 56, s 229 sch 1

date of assent 29 October 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 2013 (see s 2(1))

Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013 No. 58 ss 1–2, pt 3

date of assent 7 November 2013

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2013 (2013 SL No. 241)

Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013 No. 64 ss 1, 2(1), pt 14 (this Act is amended, see amending legislation below)

date of assent 27 November 2013

ss 1–2 commenced on date of assent

remaining provisions commence 1 July 2017 (see s 2(3) (as amended by 2015 No. 4 and 2016 No. 31))

amending legislation—

Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015 No. 4 s 1, pt 2 (amends 2013 No. 64 above)

date of assent 11 June 2015

commenced on date of assent

Further Education and Training Act 2014 No. 25 ss 1–2, 223 sch 1 pt 2

date of assent 21 May 2014

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2014 (2014 SL No. 102)

Professional Engineers and Other Legislation Amendment Act 2014 No. 56 chs 1, 3 pt 3

date of assent 27 October 2014

ss 1–2 commenced on date of assent

remaining provisions commenced 10 November 2014 (2014 SL No. 254)

Queensland Building and Construction Commission and Other Legislation Amendment Act 2014 No. 57 ss 1–2(a), pt 2, s 80 sch 1 (this Act is amended, see amending legislation below)

date of assent 27 October 2014

ss 1–2 commenced on date of assent

ss 3, 5–10, 13, 14(1), (3), 15, 17, 25, 26(2), 29, 37–41, 42(1)–(2), 43–46, 47(1)–(3), (6), 48–53, 55–58, 59 (to the extent it ins sch 1 pt 11 divs 1, 2 (other than ss 57–59), 3, 6), 61(1) (to the extent it om def *disciplinary proceeding*), (2) (to the extent it ins defs *consequential damage* and *direction to rectify or remedy*), (3) commenced 15 December 2014 (2014 SL No. 308)

ss 4, 14(2), 16, 18–24, 26(1), 27, 28, 30–33, 42(3), 47(4), (5), 54, 59 (to the extent it ins new ss 57–59, sch 1 pt 11 div 4), 60, 61(1) (other than to the extent it om defs *consumer*, *residential construction work* and *speculative residential construction work*), (2) (other than to the extent it ins defs *appropriate insurance premium*, *assistance*, *associated insurable work*, *consumer*, *incomplete*, *insurable value*, *optional additional cover*, *primary insurable work*, *related roofed building*, *residence*, *residential construction work* and *speculative residential construction work*), 80 sch 1 commenced 1 July 2015 (2015 SL No. 28)

ss 11–12 commenced 1 January 2015 (2014 SL No. 308)

ss 34–35 commenced on date of assent (see s 2(a))

remaining provisions commenced 28 October 2016 (2015 SL No. 139 s 2)

amending legislation—

Plumbing and Drainage and Other Legislation Amendment Act 2016 No. 11 s 1, pt 4A (amends 2014 No. 57 above)

date of assent 24 March 2016
commenced on date of assent

Plumbing and Drainage and Other Legislation Amendment Act 2016 No. 11 s 1, pt 4, s 36 sch 1

date of assent 24 March 2016
commenced on date of assent

Planning (Consequential) and Other Legislation Amendment Act 2016 No. 27 pts 1, 48

date of assent 25 May 2016
ss 1–2 commenced on date of assent
pt 48 commenced 3 July 2017 (automatic commencement under AIA s 15DA(2))
Note—The Planning Act 2016 was renumbered in the first reprint—see 2016 Act No. 26 s 320A. Cross-references to the Planning Act 2016 have been updated to reflect this renumbering.

Industrial Relations Act 2016 No. 63 ss 1, 2(2), 1157 sch 6

date of assent 9 December 2016
ss 1–2 commenced on date of assent
s 1157 sch 6 commenced 1 March 2017 (2017 SL No. 24)

State Penalties Enforcement Amendment Act 2017 No. 13

date of assent 19 May 2017
ss 1–2 commenced on date of assent
s 90 sch 1 not yet proclaimed into force (see s 2)

Building and Construction Legislation (Non-conforming Building Products—Chain of Responsibility and Other Matters) Amendment Act 2017 No. 29

date of assent 31 August 2017
ss 1–2 commenced on date of assent
pt 2, s 34 sch 1 commenced 1 November 2017 (2017 SL No. 219)

5 List of annotations

Short title

s 1 amd 2013 No. 38 s 4

Commencement

s 2 om 1998 No. 13 s 186

Objects of Act

s 3 amd 2000 No. 10 s 183 sch 1; 2014 No. 57 s 4; 2017 No. 29 s 4

Definitions

s 4 amd 1999 No. 43 s 4(1)

Note—s 4 contained definitions for this Act. Definitions are now located in sch 2—Dictionary.

Note in text

s 4AA ins 2003 No. 1 s 4

om 2007 No. 47 s 4

Value of building work carried out in stages

s 4A amd 1994 No. 20 s 3 sch
(prev s 4(2)) renum 1994 No. 20 s 3 sch

Act binds all persons

s 4B ins 1999 No. 43 s 5

Certain building contractors not bound

s 4C ins 1999 No. 43 s 5
sub 2003 No. 1 s 5

PART 2—QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION

pt hdg sub 2013 No. 38 s 14 sch 1

Division 1—Establishment, functions and powers

div hdg sub 2013 No. 38 s 5

Establishment and status

s 5 sub 2013 No. 38 s 5

Constitution

s 6 amd 1994 No. 20 s 5
sub 2013 No. 38 s 5
amd 2016 No. 11 s 14

Functions

s 7 sub 2013 No. 38 s 5

Powers

s 8 sub 2013 No. 38 s 5

Ministerial direction

s 9 amd 1993 No. 76 s 3 sch 1
sub 1994 No. 20 s 6
amd 1999 No. 43 s 6
sub 2013 No. 38 s 5

Board's policies

s 9A ins 1994 No. 20 s 6
sub 2003 No. 1 s 6
om 2013 No. 38 s 5

Division 2—Queensland Building and Construction Board

div hdg sub 2013 No. 38 s 5

Subdivision 1—Establishment and functions

sdiv hdg ins 2013 No. 38 s 5

Establishment

s 10 amd 1994 No. 20 s 7
sub 1999 No. 43 s 7; 2013 No. 38 s 5

Appointment of members

s 10A ins 1999 No. 43 s 7
amd 2007 No. 20 s 50
om 2013 No. 38 s 5

Functions

s 11 amd 1994 No. 20 s 3 sch
sub 2013 No. 38 s 5
amd 2016 No. 11 s 15

Subdivision 2—Membership

sdiv hdg ins 2013 No. 38 s 5

Appointment

s 12 amd 1994 No. 20 s 8; 1999 No. 43 s 8
sub 2013 No. 38 s 5

Disqualification as member

s 13 sub 2013 No. 38 s 5

Conditions of appointment

s 14 sub 2013 No. 38 s 5

Term of appointment

s 15 sub 1999 No. 43 s 9; 2013 No. 38 s 5

Chairperson

s 16 amd 1994 No. 20 s 3 sch
sub 2013 No. 38 s 5

Deputy chairperson

s 17 amd 1994 No. 20 s 3 sch
sub 2013 No. 38 s 5
amd 2016 No. 11 s 36 sch

Resignation

s 18 amd 1994 No. 20 ss 9, 3 sch; 1998 No. 13 s 188; 1999 No. 43 s 10; 2003 No. 36
s 38
sub 2013 No. 38 s 5

Subdivision 3—Board's policies

sdiv hdg ins 2013 No. 38 s 5

Board's policy

s 19 sub 1994 No. 20 s 10; 2013 No. 38 s 5
amd 2014 No. 57 s 5

Subdivision 4—Business

sdiv hdg ins 2013 No. 38 s 5

Conduct of business

s 20 amd 1994 No. 20 s 3 sch; 2007 No. 20 s 51
sub 2013 No. 38 s 5

Meetings

s 20A ins 2013 No. 38 s 5

Committees

s 20B ins 2013 No. 38 s 5
sub 2017 No. 29 s 5

Disclosure of interests

s 20C ins 2013 No. 38 s 5

Division 3—Commissioner

div hdg sub 2013 No. 38 s 5

Appointment

s 20D ins 2013 No. 38 s 5

Disqualification as commissioner

s 20E ins 2013 No. 38 s 5

Conditions of appointment

s 20F ins 2013 No. 38 s 5

Term of appointment

s 20G ins 2013 No. 38 s 5

Resignation

s 20H ins 2013 No. 38 s 5

Appointment of acting commissioner

s 20I ins 2013 No. 38 s 5

Role of the commissioner

s 20J ins 2013 No. 38 s 5
amd 2017 No. 29 s 6

Relationship between commissioner and board

s 20K ins 2013 No. 38 s 5
amd 2017 No. 29 s 7

Commissioner not to engage in other paid employment

s 20L ins 2013 No. 38 s 5

Conflicts of interest

s 20M ins 2013 No. 38 s 5

Division 4—The general manager

div hdg sub 1994 No. 20 s 3 sch
om 2013 No. 38 s 5

Division 5—The insurance manager

div hdg prev div 5 hdg om 1994 No. 20 s 11
pres div 5 hdg ins 1999 No. 43 s 11

Appointment of insurance manager

s 21 prev s 21 om 1994 No. 20 s 11
pres s 21 ins 1999 No. 43 s 11
amd 2007 No. 20 s 52; 2013 No. 38 s 14 sch 1

Role of insurance manager

s 22 prev s 22 om 1994 No. 20 s 11
pres s 22 ins 1999 No. 43 s 11

Director of the Advisor Service

s 23 om 1994 No. 20 s 11

Funding of Advisor Service

s 24 om 1994 No. 20 s 11

General Statutory Fund

s 25 amd 1996 No. 54 s 9 sch; 1999 No. 43 s 12; 2000 No. 10 s 183 sch 1; 2002 No. 51 s 101 sch; 2003 No. 1 s 7; 2013 No. 38 s 14 sch 1

Insurance Fund

s 26 amd 1994 No. 20 s 3 sch; 1996 No. 54 s 9 sch; 1999 No. 43 s 13; 2003 No. 1 s 8; 2003 No. 36 s 39; 2013 No. 38 s 14 sch 1

Management of statutory insurance scheme

s 26A ins 2003 No. 36 s 40
amd 2013 No. 38 s 14 sch 1

Application of financial Acts

s 27 prev s 27 om 1992 No. 36 s 2 sch 1
pres s 27 ins 1996 No. 54 s 9 sch
sub 2013 No. 38 s 6

Commission's obligation to report suspected offence

s 28 amd 2013 No. 38 s 14 sch 1

Division 7—Other provisions

div hdg prev div 7 hdg om 1994 No. 20 s 12
pres div 7 hdg ins 2007 No. 20 s 53

Commission must give particular information to health and safety regulator

s 28A ins 2017 No. 29 s 8

Exchange of information between commission and relevant agencies

s 28B ins 2017 No. 29 s 8

Commission may enter into work performance arrangements

s 29 prev s 29 sub 1992 No. 36 s 2 sch 1
om 1994 No. 20 s 12
pres s 29 ins 2007 No. 20 s 53
amd 2013 No. 38 s 14 sch 1

PART 2A—QUEENSLAND BUILDING AND CONSTRUCTION EMPLOYING OFFICE

pt hdg ins 2007 No. 20 s 54
amd 2013 No. 38 s 14 sch 1

Division 1—Establishment and functions of employing office

div hdg ins 2007 No. 20 s 54

Establishment of employing office

s **29A** ins 2007 No. 20 s 54
amd 2013 No. 38 s 14 sch 1

Employing office represents the State

s **29B** ins 2007 No. 20 s 54

Functions of employing office

s **29C** ins 2007 No. 20 s 54
amd 2013 No. 38 s 14 sch 1

Division 2—Executive officer

div **hdg** ins 2007 No. 20 s 54

Appointment of executive officer

s **29D** ins 2007 No. 20 s 54
amd 2009 No. 25 s 83 sch

Executive officer acting for employing office

s **29E** ins 2007 No. 20 s 54

Division 3—Staff of employing office

div **hdg** ins 2007 No. 20 s 54

Employing office may employ staff

s **29F** ins 2007 No. 20 s 54
amd 2009 No. 25 s 83 sch

Employing office may enter into work performance arrangements

s **29G** ins 2007 No. 20 s 54
amd 2013 No. 38 s 14 sch 1

Division 4—Other provisions

div **hdg** ins 2007 No. 20 s 54

Employing office is statutory body

s **29H** ins 2007 No. 20 s 54
amd 2009 No. 9 s 136 sch 1

PART 3—LICENSING

Classes of contractors' licences

s **30** amd 2003 No. 1 s 9; 2007 No. 47 s 5

Nominee supervisor's licence

s **30A** ins 2007 No. 47 s 6

Site supervisor's licence

s **30B** ins 2007 No. 47 s 6

Fire protection occupational licence

s **30C** ins 2007 No. 47 s 6

Entitlement to contractor's licence

s **31** amd 1999 No. 43 s 14; 2003 No. 1 s 10; 2007 No. 47 s 7; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 80 sch 1

No entitlement to contractor's licence if particular partners

s 31A ins 2003 No. 1 s 11

Entitlement to a nominee supervisor's licence

s 32 sub 2007 No. 47 s 8

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 80 sch 1

Entitlement to a site supervisor's licence

s 32AA ins 2007 No. 47 s 8

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 80 sch 1

Entitlement to a fire protection occupational licence

s 32AB ins 2007 No. 47 s 8

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 80 sch 1

Exception for s 30(4) licences

s 32A ins 2003 No. 1 s 12

Application for licence

s 33 amd 1999 No. 43 s 15; 2007 No. 47 s 9; 2013 No. 38 s 14 sch 1

Grant of licence

s 34 amd 1992 No. 36 s 2 sch 1; 1994 No. 20 s 13; 1999 No. 43 s 16; 2000 No. 20 s 29 sch 3; 2007 No. 47 s 10; 2013 No. 38 s 14 sch 1

Division 3A—Issue of PINs to licensees

div hdg ins 2000 No. 20 s 29 sch 3

PINs

s 34A ins 2000 No. 20 s 29 sch 3

amd 2013 No. 38 s 14 sch 1

Imposition of conditions etc. on grant of licence

s 35 amd 1999 No. 43 s 17; 2003 No. 1 s 13; 2013 No. 38 s 14 sch 1

Subsequent imposition of conditions etc.

s 36 amd 1999 No. 43 s 18; 2003 No. 1 s 14; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 80 sch 1

Division 5—Renewal of licences

div hdg sub 2007 No. 47 s 11

Period of renewal

s 37 amd 1992 No. 36 s 2 sch 1

sub 2007 No. 47 s 11; 2014 No. 57 s 6

Commission to advise licensee before licence due for renewal

s 37A ins 2007 No. 47 s 11

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 7

Applications for renewal of licence

s 37B ins 2007 No. 47 s 11

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 8

Renewal fee increased if directions given

Endnotes

s 37C ins 2007 No. 47 s 11
amd 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 9

Suspension for non-payment of fee

s 38 amd 2007 No. 47 s 12; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 10

Receipt of fee does not revive licence

s 38A ins 1999 No. 43 s 19
amd 2013 No. 38 s 14 sch 1

Division 6—Restoration of licences

div hdg prev div 6 hdg om 2007 No. 47 s 13
pres div 6 hdg ins 2014 No. 57 s 11

Restoration of licence

s 39 prev s 39 amd 1992 No. 36 s 3 sch 1; 1999 No. 43 s 20; 2000 No. 10 s 183 sch 1; 2003 No. 1 s 15; 2003 No. 30 s 169 sch 1
om 2007 No. 47 s 13
pres s 39 ins 2014 No. 57 s 11

List of licensees

s 40 om 1994 No. 20 s 14

Certificates

s 41 om 2007 No. 47 s 13

Unlawful carrying out of building work

s 42 amd 1994 No. 20 s 3 sch; 1999 No. 43 s 21; 2000 No. 10 s 183 sch 1; 2003 No. 1 s 16; 2007 No. 47 s 14; 2013 No. 51 s 229 sch 1
sub 2013 No. 58 s 25

Exemption from s 42 for up to 6 months

s 42A ins 2000 No. 24 s 42

Carrying out building work without a nominee

s 42B ins 2007 No. 47 s 15

Unlawful carrying out of fire protection work

s 42C ins 2007 No. 47 s 15
amd 2014 No. 57 s 12

Licensed contractor must not engage or direct unauthorised person for fire protection work

s 42D ins 2007 No. 47 s 15
amd 2013 No. 51 s 229 sch 1

Licensed contractor must ensure building work is personally supervised

s 43 amd 1994 No. 20 ss 15, 3 sch; 2003 No. 1 s 17
sub 2007 No. 47 s 16

Licensed contractor must ensure building work is adequately supervised

s 43A ins 2007 No. 47 s 16

Construction manager must ensure building work is personally supervised

s 43B ins 2007 No. 47 s 16

Construction manager must ensure building work is adequately supervised

s 43C ins 2007 No. 47 s 16

Definitions for div 8

s 43D ins 2007 No. 47 s 17

When owner-builder permit is required

s 43E ins 2007 No. 47 s 17

Application for owner-builder permit

s 44 amd 1993 No. 76 s 2 sch; 2003 No. 1 s 18
sub 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1

Consideration of application for permit

s 44A ins 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1

Criteria for granting application for permit

s 44B ins 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 80 sch 1

When permit becomes effective

s 44C ins 2007 No. 47 s 18

Term of permit

s 44D ins 2007 No. 47 s 18

Conditions of permit

s 44E ins 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1

Form of permit

s 44F ins 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1

Cancellation or suspension of permit

s 44G ins 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1

Procedure for cancellation or suspension

s 44H ins 2007 No. 47 s 18
amd 2009 No. 24 s 1670; 2013 No. 38 s 14 sch 1

Permit issued to more than 1 person

s 44I ins 2007 No. 47 s 18

Surrender of permit

s 44J ins 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1

Replacement of permits

s 45 prev s 45 om 1994 No. 20 s 16

pres s 45 ins 2007 No. 47 s 18
amd 2013 No. 38 s 14 sch 1

Notification on certificate of title

s 46 amd 1994 No. 11 s 194 sch 2; 1999 No. 43 s 22; 2007 No. 47 s 19; 2013 No. 38 s 14 sch 1

Warnings

s 47 amd 1994 No. 20 s 3 sch

Cancellation or suspension of licence

s 48 amd 1994 No. 20 s 17; 1999 No. 43 s 23; 2000 No. 16 s 590 sch 1 pt 2; 2003 No. 1 s 19; 2007 No. 47 s 20; 2013 No. 38 s 14 sch 1; 2017 No. 29 s 9

Procedure for cancellation or suspension

s 49 amd 2009 No. 24 s 1671; 2013 No. 38 s 14 sch 1

Immediate suspension of licence

s 49A ins 1994 No. 20 s 18
sub 1999 No. 43 s 24
amd 2009 No. 24 s 1672; 2013 No. 38 s 14 sch 1; 2017 No. 29 s 34 sch 1

Suspension or cancellation for failure to comply with tribunal's orders and directions

s 49B ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 21; 2014 No. 57 s 13

Surrender of licence

s 50 amd 2013 No. 38 s 14 sch 1

Division 9A—Monitoring continued satisfaction of financial requirements and compliance with parts 4 and 5, and schedule 1B

div hdg ins 1999 No. 43 s 25
sub 2003 No. 1 s 20
amd 2014 No. 57 s 80 sch 1

Approved audit program

s 50A ins 1999 No. 43 s 25
amd 2003 No. 1 s 21; 2007 No. 47 s 22; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 14

Notice of proposed audit program

s 50B ins 1999 No. 43 s 25
amd 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 15

Supply of financial records and other documents under approved audit program or for other reason

s 50C ins 1999 No. 43 s 25
amd 2003 No. 1 s 22; 2007 No. 47 s 23; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 16; 2017 No. 29 s 34 sch 1

Person must not pretend to be a licensee

s 50D ins 2007 No. 47 s 24

Improper use of licence card, certificate, number or PIN

s 51 sub 1999 No. 43 s 26
amd 2000 No. 20 s 29 sch 3
sub 2007 No. 47 s 24

Other offences relating to unlawful carrying out of building work

s 51A ins 1999 No. 43 s 26
amd 2000 No. 20 s 29 sch 3; 2007 No. 47 s 25

Licensed contractor must not contract with unlicensed person

s 51B ins 2003 No. 1 s 23
amd 2007 No. 47 s 26; 2014 No. 57 s 17

Return of licence

s 53 amd 2013 No. 38 s 14 sch 1

Satisfying financial requirements at renewal

s 53A ins 1999 No. 43 s 27
amd 2013 No. 38 s 14 sch 1

False or misleading documents about financial requirements

s 53B ins 1999 No. 43 s 27
amd 2007 No. 47 s 27; 2013 No. 38 s 14 sch 1

Advertising by unlicensed person

s 53C ins 2007 No. 47 s 28

Notification of particular safety matters

s 54A ins 2017 No. 29 s 10

Notification of company's nominee

s 55 amd 2003 No. 1 s 24; 2013 No. 38 s 14 sch 1

Partnerships

s 56 amd 1992 No. 36 s 2 sch 1; 2003 No. 1 s 25; 2007 No. 47 s 29

Commission may request photographs for licence

s 56A prev s 56A ins 1994 No. 20 s 19
om 2000 No. 9 s 104 sch 1
pres s 56A ins 2007 No. 47 s 30
amd 2013 No. 38 s 14 sch 1

PART 3A—EXCLUDED INDIVIDUALS AND EXCLUDED COMPANIES

pt hdg ins 1999 No. 43 s 28
amd 2014 No. 57 s 18

Division 1—Preliminary

div hdg ins 1999 No. 43 s 28

Definitions for pt 3A

s 56AA ins 1999 No. 43 s 28
om 2003 No. 1 s 26

Operation of pt 3A

s 56AB ins 1999 No. 43 s 28
amd 2007 No. 47 s 31

Excluded individuals and excluded companies

s 56AC ins 1999 No. 43 s 28
amd 2014 No. 56 s 60; 2014 No. 57 s 19

Division 2—Categorisation as permitted individual

div hdg ins 1999 No. 43 s 28
om 2014 No. 57 s 20

Becoming a permitted individual

s 56AD ins 1999 No. 43 s 28
amd 2003 No. 1 s 27; 2003 No. 30 s 169 sch 1; 2007 No. 47 s 32; 2013 No. 38 s 14
sch 1; 2014 No. 56 s 61
om 2014 No. 57 s 20

Division 3—Licence exclusion and cancellation

div hdg ins 1999 No. 43 s 28

Exclusion from licence

s 56AE ins 1999 No. 43 s 28
amd 2003 No. 1 s 28; 2013 No. 38 s 14 sch 1

Procedure if licensee is excluded individual

s 56AF ins 1999 No. 43 s 28
amd 2003 No. 1 s 29; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 21

Procedure if licensee is excluded company

s 56AG ins 1999 No. 43 s 28
amd 2003 No. 1 s 30; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 22

Review by tribunal of commission's opinion

s 56AH ins 1999 No. 43 s 28
amd 2000 No. 10 s 183 sch 1; 2013 No. 38 s 14 sch 1

PART 3B—PERMANENTLY EXCLUDED INDIVIDUALS

pt hdg ins 2003 No. 1 s 31

Division 1—Preliminary

div hdg ins 2003 No. 1 s 31

Operation of pt 3B

s 57 prev s 57 om 2000 No. 9 s 104 sch 1
pres s 57 ins 2003 No. 1 s 31
amd 2007 No. 47 s 33

Meaning of permanently excluded individual

s 58 prev s 58 amd 1992 No. 36 s 2 sch 1
sub 1994 No. 20 s 20
om 2000 No. 9 s 104 sch 1
pres s 58 ins 2003 No. 1 s 31
amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 23

Division 2—Licence exclusion

div hdg ins 2003 No. 1 s 31

Exclusion from licence

s 59 prev s 59 amd 1994 No. 20 s 21
om 2000 No. 9 s 104 sch 1
pres s 59 ins 2003 No. 1 s 31
amd 2013 No. 38 s 14 sch 1

Permanently excluded individual not fit and proper

s 60 prev s 60 om 2000 No. 9 s 104 sch 1
pres s 60 ins 2003 No. 1 s 31

When individual no longer permanently excluded individual

s 61 prev s 61 om 2000 No. 9 s 104 sch 1
pres s 61 ins 2003 No. 1 s 31
amd 2003 No. 30 s 169 sch 1; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 24

PART 3C—CONVICITED COMPANY OFFICERS

pt hdg ins 2003 No. 1 s 32

Division 1—Preliminary

div hdg ins 2003 No. 1 s 32

Operation of pt 3C

s 62 prev s 62 om 2000 No. 9 s 104 sch 1
pres s 62 ins 2003 No. 1 s 32
amd 2007 No. 47 s 34

Division 2—Licence exclusion and cancellation

div hdg ins 2003 No. 1 s 32

Exclusion from licence

s 63 prev s 63 om 2000 No. 9 s 104 sch 1
pres s 63 ins 2003 No. 1 s 32
amd 2013 No. 38 s 14 sch 1

Procedure if commission considers individual a convicted company officer

s 64 prev s 64 om 2000 No. 9 s 104 sch 1
pres s 64 ins 2003 No. 1 s 32
amd 2013 No. 38 s 14 sch 1

Ending procedure without further action

s 65 prev s 65 om 2000 No. 9 s 104 sch 1
pres s 65 ins 2003 No. 1 s 32
amd 2013 No. 38 s 14 sch 1

Notice of cancellation and that not a fit and proper person to individual who is a licensee

s 66 prev s 66 amd 1992 No. 36 s 2 sch 1
om 2000 No. 9 s 104 sch 1
pres s 66 ins 2003 No. 1 s 32
amd 2013 No. 38 s 14 sch 1

Notice that not a fit and proper person to individual who is not a licensee

s 67 prev s 67 om 2000 No. 9 s 104 sch 1

pres s 67 ins 2003 No. 1 s 32
amd 2009 No. 24 s 1673; 2013 No. 38 s 14 sch 1

Notice by commission to company for which a convicted company officer is a director, secretary, influential person or nominee

s 67AA ins 2003 No. 1 s 32
amd 2013 No. 38 s 14 sch 1

PART 3D—BANNED INDIVIDUALS

pt hdg ins 2003 No. 1 s 33

Division 1—Preliminary

div 1 (ss 67AB–67AD) ins 2003 No. 1 s 33

Division 2—Licence exclusion and cancellation

div hdg ins 2003 No. 1 s 33

Exclusion from licence

s 67AE ins 2003 No. 1 s 33
amd 2013 No. 38 s 14 sch 1

Procedure if commission considers individual has carried out tier 1 defective work

s 67AF ins 2003 No. 1 s 33
amd 2013 No. 38 s 14 sch 1

Ending procedure without further action

s 67AG ins 2003 No. 1 s 33
amd 2013 No. 38 s 14 sch 1

Notice of cancellation and that not a fit and proper person to individual who is a licensee

s 67AH ins 2003 No. 1 s 33
amd 2009 No. 24 s 1674; 2013 No. 38 s 14 sch 1

Notice that not a fit and proper person to individual who is not a licensee

s 67AI ins 2003 No. 1 s 33
amd 2009 No. 24 s 1675; 2013 No. 38 s 14 sch 1

Notice by commission to director, secretary, influential person or nominee about tier 1 defective work

s 67AJ ins 2003 No. 1 s 33
amd 2013 No. 38 s 14 sch 1

Ending procedure without further action

s 67AK ins 2003 No. 1 s 33
amd 2013 No. 38 s 14 sch 1

Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee

s 67AL ins 2003 No. 1 s 33
amd 2009 No. 24 s 1676; 2013 No. 38 s 14 sch 1

Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee

s 67AM ins 2003 No. 1 s 33
amd 2009 No. 24 s 1677; 2013 No. 38 s 14 sch 1

Notice by commission to company for which a banned individual is a director, secretary, influential person or nominee

s 67AN ins 2003 No. 1 s 33
amd 2013 No. 38 s 14 sch 1

Terms of bans

s 67AO ins 2003 No. 1 s 33
amd 2013 No. 38 s 14 sch 1

Relationship of this part with pt 7, div 4

s 67AP ins 2003 No. 1 s 33
amd 2003 No. 30 s 169 sch 1; 2009 No. 24 s 1678; 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 25

PART 3E—DISQUALIFIED INDIVIDUALS

pt hdg ins 2003 No. 1 s 34

Division 1—Preliminary

div hdg ins 2003 No. 1 s 34

Definitions for pt 3E

s 67AQ ins 2003 No. 1 s 34
def *building contract* ins 2004 No. 6 s 113 sch 1
def *conviction* amd 2007 No. 47 s 35; 2009 No. 24 s 1679; 2014 No. 57 s 26
def *demerit points* amd 2013 No. 38 s 14 sch 1

Meaning of demerit offence

s 67AR ins 2003 No. 1 s 34
amd 2004 No. 6 s 113 sch 1; 2007 No. 47 s 36
sub 2014 No. 57 s 27

Meaning of judgment debt

s 67AS ins 2003 No. 1 s 34
amd 2013 No. 38 s 14 sch 1

Meaning of unsatisfied judgment debt

s 67AT ins 2003 No. 1 s 34

Disqualified individual

s 67AU ins 2003 No. 1 s 34

Operation of pt 3E

s 67AV ins 2003 No. 1 s 34
amd 2007 No. 47 s 37

Division 2—Calculation of demerit points and notification of unsatisfied judgment debts

div hdg ins 2003 No. 1 s 34

Demerit points for demerit matters

s 67AW ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 28

When demerit points allocated for demerit offences

s 67AX ins 2003 No. 1 s 34

amd 2007 No. 47 s 38; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 29

When demerit points allocated for unsatisfied judgment debts

s 67AY ins 2003 No.1 s 34

amd 2013 No. 38 s 14 sch 1

Judgment debtor must notify unsatisfied judgment debt

s 67AZ ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Commission must notify person about demerit points

s 67AZA ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Limit on demerit points from single audit

s 67AZB ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 30

Division 3—Licence exclusion and cancellation

div hdg ins 2003 No. 1 s 34

Exclusion from licence

s 67AZC ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Procedure if commission considers individual has accumulated 30 demerit points

s 67AZD ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Ending procedure without further action

s 67AZE ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Notice of cancellation and that not a fit and proper person to individual who is a licensee

s 67AZF ins 2003 No. 1 s 34

amd 2009 No. 24 s 1680; 2013 No. 38 s 14 sch 1

Notice that not a fit and proper person to individual who is not a licensee

s 67AZG ins 2003 No. 1 s 34

amd 2009 No. 24 s 1681; 2013 No. 38 s 14 sch 1

om 2014 No. 57 s 31

Notice by commission to director, secretary, influential person or nominee about demerit points

s 67AZH ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Ending procedure without further action

s 67AZI ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Notice of cancellation and that not a fit and proper person to director, secretary, influential person or nominee who is a licensee

s 67AZJ ins 2003 No. 1 s 34

amd 2009 No. 24 s 1682; 2013 No. 38 s 14 sch 1

Notice that not a fit and proper person to director, secretary, influential person or nominee who is not a licensee

s 67AZK ins 2003 No. 1 s 34

amd 2009 No. 24 s 1683; 2013 No. 38 s 14 sch 1

Notice by commission to company for which a disqualified individual is a director, secretary, influential person or nominee

s 67AZL ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1

Terms of disqualifications

s 67AZM ins 2003 No. 1 s 34

amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 32

PART 4—DOMESTIC BUILDING CONTRACTS

pt hdg prev pt 4 hdg om 2000 No. 9 s 104 sch 1

pres pt 4 hdg ins 2014 No. 57 s 33

Domestic building contracts

s 67AZN ins 2014 No. 57 s 33

PART 4A—BUILDING CONTRACTS OTHER THAN DOMESTIC BUILDING CONTRACTS

pt hdg ins 1999 No. 43 s 29

Division 1—Preliminary

div hdg ins 1999 No. 43 s 29

Definitions for pt 4A

s 67A ins 1999 No. 43 s 29

def *approved security provider* amd 2009 No. 9 s 136 sch 1

def *building contract* sub 2004 No. 6 s 113 sch 1

def *payment claim* ins 2004 No. 6 s 113 sch 1

def *progress payment* sub 2004 No. 6 s 113 sch 1

def *written form* om 2004 No. 6 s 113 sch 1

Meaning of building contract

s 67AAA ins 2004 No. 6 s 113 sch 1 (amd 2005 No. 33 s 13)

Meaning of construction management trade contract

s 67B ins 1999 No. 43 s 29

sub 2007 No. 47 s 39

Meaning of retention amount in pt 4A

s 67C ins 1999 No. 43 s 29

Meaning of subcontract in pt 4A

s **67D** ins 1999 No. 43 s 29

Operation of pt 4A

s **67E** ins 1999 No. 43 s 29

Division 2—All building contracts

div hdg ins 1999 No. 43 s 29

Suggested forms of contract

s **67F** ins 1999 No. 43 s 29

amd 2013 No. 38 s 14 sch 1

Building contracts to be in writing

s **67G** ins 1999 No. 43 s 29

amd 2004 No. 6 s 113 sch 1; 2007 No. 47 s 40

Agreed contract variations

s **67H** ins 1999 No. 43 s 29

om 2004 No. 6 s 113 sch 1

Directions given under building contracts

s **67I** ins 1999 No. 43 s 29

amd 2004 No. 6 s 113 sch 1; 2007 No. 47 s 41

Set-offs under building contracts

s **67J** ins 1999 No. 43 s 29

sub 2004 No. 6 s 113 sch 1

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

s **67K** ins 1999 No. 43 s 29

amd 2004 No. 6 s 113 sch 1; 2013 No. 58 s 26

Limits for retention amounts and securities for subcontracts

s **67L** ins 1999 No. 43 s 29

amd 2013 No. 58 s 27

Limits on deductions for retention amounts

s **67M** ins 1999 No. 43 s 29

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

s **67N** ins 1999 No. 43 s 29

Suspension of works

s **67O** ins 1999 No. 43 s 29

Late progress payments

s **67P** ins 1999 No. 43 s 29

amd 2000 No. 10 s 183 sch 1

Pay if or when paid clauses void

s **67Q** ins 1999 No. 43 s 29

om 2004 No. 6 s 113 sch 1

Division 3—Construction management trade contracts and subcontracts**div hdg** ins 1999 No. 43 s 29**Application of div 3****s 67R** ins 1999 No. 43 s 29**Lodgement of security instead of retention amount or security in money form****s 67S** ins 1999 No. 43 s 29**Lodgement of security to replace retention amount or security in money form****s 67T** ins 1999 No. 43 s 29**Void payment provision in construction management trade contract or subcontract****s 67U** ins 1999 No. 43 s 29

sub 2004 No. 6 s 113 sch 1

Division 4—Warning for construction management trade contracts**div hdg** ins 1999 No. 43 s 29**Offence of not warning that contract is construction management trade contract****s 67V** ins 1999 No. 43 s 29

amd 2003 No. 1 s 35; 2007 No. 47 s 42

Division 5—Commercial building contracts**div hdg** ins 1999 No. 43 s 29**Void payment provision in commercial building contract****s 67W** ins 1999 No. 43 s 29

sub 2004 No. 6 s 113 sch 1

PART 5—THE STATUTORY INSURANCE SCHEME**pt hdg** sub 2014 No. 57 s 36**Division 1—Preliminary****div hdg** ins 2014 No. 57 s 36**Definitions for pt 5****s 67WA** ins 2014 No. 57 s 36def *consumer* ins 2014 No. 57 s 36 (amd 2016 No. 11 s 23B(1))**Work not covered under the statutory insurance scheme****s 67WB** ins 2014 No. 57 s 36**Meaning of primary insurable work****s 67WC** ins 2014 No. 57 s 36**Meaning of associated insurable work****s 67WD** ins 2014 No. 57 s 36**Meaning of residence****s 67WE** ins 2014 No. 57 s 36**Meaning of related roofed building****s 67WF** ins 2014 No. 57 s 36**Division 2—Statutory insurance scheme**

div hdg ins 2014 No. 57 s 36

Statutory insurance scheme

s **67X** ins 2007 No. 47 s 43
sub 2014 No. 57 s 36

Division 3—Assistance

div hdg ins 2014 No. 57 s 36

Assistance available under statutory insurance scheme

s **67Y** ins 2007 No. 47 s 43
amd 2013 No. 38 s 14 sch 1
sub 2014 No. 57 s 36

Optional additional cover

s **67Z** ins 2014 No. 57 s 36

Persons not entitled to assistance under statutory insurance scheme

s **68** amd 1994 No. 20 s 22; 1998 No. 13 s 189; 1999 No. 43 s 30; 2000 No. 20 s 29
sch 3; 2007 No. 47 s 44; 2009 No. 36 s 872 sch 2; 2013 No. 38 s 14 sch 1
sub 2014 No. 57 s 36

Division 4—Insurance premiums

div hdg ins 2014 No. 57 s 36

Licensed contractor pays insurance premium on behalf of consumer

s **68A** ins 2007 No. 47 s 45
sub 2014 No. 57 s 36

When insurance premium is payable by licensed contractor

s **68B** ins 2007 No. 47 s 45
sub 2014 No. 57 s 36

When insurance premium is payable by construction manager

s **68C** ins 2007 No. 47 s 45
sub 2014 No. 57 s 36

Setting of insurance premiums

s **68D** ins 2007 No. 47 s 45
amd 2013 No. 38 s 14 sch 1
sub 2014 No. 57 s 36

Obligation of assessment manager or compliance assessor in relation to insurance premium

s **68E** ins 2014 No. 57 s 36
amd 2016 No. 27 s 372

Division 5—Notice and commencement of cover

div hdg ins 2014 No. 57 s 36

Notice of cover

s **68F** ins 2014 No. 57 s 36

Refund of insurance premium if notice of cover is revoked

s **68G** ins 2014 No. 57 s 36

Cover of residential construction work

s 68H ins 2014 No. 57 s 36 (amd 2016 No. 11 s 23B(2)–(4))

Commencement of cover

s 68I ins 2014 No. 57 s 36

Division 6—Cancellation of cover

div hdg ins 2014 No. 57 s 36

Cancellation of cover and return of premium

s 69 amd 1994 No. 20 s 23; 1999 No. 43 s 31; 2000 No. 20 s 29 sch 3; 2003 No. 1 s 36; 2007 No. 47 s 46; 2013 No. 38 s 14 sch 1
sub 2014 No. 57 s 36

Commencement of insurance cover

s 69A ins 2007 No. 47 s 47
om 2014 No. 57 s 36

Division 7—Variations

div hdg ins 2014 No. 57 s 36

Residential construction work carried out under a contract with a consumer

s 70 amd 2007 No. 47 s 48; 2013 No. 38 s 14 sch 1
sub 2014 No. 57 s 36

Speculative residential construction work

s 70A ins 2007 No. 47 s 49
sub 2014 No. 57 s 36

Optional additional cover

s 70B ins 2014 No. 57 s 36

Partial refunds of insurance premiums

s 70C ins 2014 No. 57 s 36

Division 8—Recovery from licensed contractor

div hdg ins 2014 No. 57 s 36

Recovery from licensed contractor etc.

s 71 amd 1994 No. 20 s 24; 2000 No. 20 s 29 sch 3; 2013 No. 38 s 14 sch 1
sub 2014 No. 57 s 36

Cancellation of policy of insurance

s 71AA ins 2007 No. 47 s 50
amd 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 36

Statutory insurance scheme not to affect licensing decisions

s 71AB ins 2013 No. 38 s 7
om 2014 No. 57 s 36

Tenders for rectification work

s 71AC ins 2014 No. 57 s 34
om 2014 No. 57 s 36

Division 9—Rectification work

div hdg ins 2014 No. 57 s 36

Tenders for rectification work

s 71A prev s 71A ins 2003 No. 1 s 37
amd 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 37
pres s 71A ins 2014 No. 57 s 36

Division 10—Other

div hdg ins 2014 No. 57 s 36

Statutory insurance scheme not to affect licensing decisions

s 71B ins 2014 No. 57 s 36

Notice of entitlement to assistance under the statutory insurance scheme

s 71C ins 2014 No. 57 s 36

Multiple contracts for the same residential construction work

s 71D ins 2014 No. 57 s 36

Protection of expressions associated with statutory insurance scheme

s 71E ins 2014 No. 57 s 36

When work is taken to have started

s 71F ins 2014 No. 57 s 36

**PART 6—RECTIFICATION OF BUILDING WORK AND REMEDIATION OF
CONSEQUENTIAL DAMAGE**

pt hdg sub 2014 No. 57 s 37

Division 1—Preliminary

div 1 (ss 71G–71I) ins 2014 No. 57 s 37

Division 2—Direction to rectify or remedy

div hdg ins 2014 No. 57 s 37

Requests for rectification of building work or remediation of consequential damage

s 71J ins 2014 No. 57 s 37

**Power to require rectification of building work and remediation of consequential
damage**

s 72 amd 1994 No. 20 s 25; 1999 No. 43 s 32; 2000 No. 9 s 104 sch 1; 2000 No. 10
s 183 sch 1; 2000 No. 20 s 29 sch 3; 2007 No. 47 s 51; 2013 No. 38 s 14 sch 1
sub 2014 No. 57 s 37

Powers and limitations of directions to rectify or remedy

s 72A ins 2014 No. 57 s 37

Division 3—Offences and defences

div hdg ins 2014 No. 57 s 37

Offence to fail to comply with direction to rectify or remedy

s 73 prev s 73 amd 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 35

pres s 73 ins 2014 No. 57 s 37

Defences for failure to comply with direction to rectify or remedy

s 74 prev s 74 amd 1999 No. 43 s 33; 2013 No. 38 s 14 sch 1

om 2014 No. 57 s 35

pres s 74 ins 2014 No. 57 s 37

PART 6AA—BUILDING PRODUCTS

pt hdg ins 2017 No. 29 s 11

Division 1—Preliminary

div hdg ins 2017 No. 29 s 11

Definitions for part

s 74AA ins 2017 No. 29 s 11

What is a building product and a non-conforming building product

s 74AB ins 2017 No. 29 s 11

Extraterritorial application of part

s 74ABA ins 2017 No. 29 s 11

Division 2—Duties relating to building products

div hdg ins 2017 No. 29 s 11

Subdivision 1—General provisions about duties

sdiv hdg ins 2017 No. 29 s 11

Relationship with safety laws

s 74AC ins 2017 No. 29 s 11

Principles applying to duties

s 74AD ins 2017 No. 29 s 11

Code of practice about discharging duties

s 74ADA ins 2017 No. 29 s 11

Use of code of practice in proceedings

s 74ADB ins 2017 No. 29 s 11

Subdivision 2—Duties

sdiv hdg ins 2017 No. 29 s 11

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

s 74AE ins 2017 No. 29 s 11

Primary duty of person in the chain of responsibility

s 74AF ins 2017 No. 29 s 11

Additional duty relating to accompanying information

s 74AG ins 2017 No. 29 s 11

Additional duties relating to recalls

s 74AH ins 2017 No. 29 s 11

Duty of executive officer of company

s 74AI ins 2017 No. 29 s 11

Subdivision 3—Offences relating to duties

sdiv hdg ins 2017 No. 29 s 11

Failing to comply with duty

s 74AJ ins 2017 No. 29 s 11

Duty about representations about building products

s 74AK ins 2017 No. 29 s 11

Duty to notify non-conforming building product

s 74AL ins 2017 No. 29 s 11

Duty to notify notifiable incident

s 74AM ins 2017 No. 29 s 11

Commission may require remedial action

s 74AN ins 2017 No. 29 s 11

Division 3—Enforceable undertakings relating to building products

div hdg ins 2017 No. 29 s 11

Commission may accept building product undertaking

s 74AO ins 2017 No. 29 s 11

Notice of decision and reasons for decision

s 74AP ins 2017 No. 29 s 11

When building product undertaking is enforceable

s 74AQ ins 2017 No. 29 s 11

Compliance with building product undertaking

s 74AR ins 2017 No. 29 s 11

Contravention of building product undertaking

s 74AS ins 2017 No. 29 s 11

Withdrawal or variation of building product undertaking

s 74AT ins 2017 No. 29 s 11

Proceeding for contravention

s 74AU ins 2017 No. 29 s 11

Division 4—Ministerial recall orders

div hdg ins 2017 No. 29 s 11

Application of division

s 74AV ins 2017 No. 29 s 11

Minister may make recall order

s 74AW ins 2017 No. 29 s 11

Notice required before making recall order

s 74AX ins 2017 No. 29 s 11

Service of recall order

s 74AY ins 2017 No. 29 s 11

Nature of recall order

s 74AZ ins 2017 No. 29 s 11

Supplier or installer must help responsible person

s 74AZA ins 2017 No. 29 s 11

Division 5—Warning statements

div hdg ins 2017 No. 29 s 11

Application of division

s 74AZB ins 2017 No. 29 s 11

Minister may publish warning statement

s 74AZC ins 2017 No. 29 s 11

Notice required before publishing warning statement

s 74AZD ins 2017 No. 29 s 11

PART 6A—DISCIPLINARY PROCEEDINGS

pt hdg ins 2014 No. 57 s 38

Commission may investigate grounds for taking disciplinary action

s 74A ins 2014 No. 57s 38

amd 2017 No. 29 s 12

Proper grounds for taking disciplinary action against a licensee and former licensees

s 74B ins 2014 No. 57s 38

amd 2017 No. 29 s 13

Proper grounds for taking disciplinary action against person not a licensee

s 74C ins 2014 No. 57s 38

amd 2017 No. 29 s 14

Types of disciplinary action that may be taken

s 74D ins 2014 No. 57s 38

Notice of proposed disciplinary action

s 74E ins 2014 No. 57s 38

Taking disciplinary action

s 74F ins 2014 No. 57s 38

When disciplinary action takes effect

s 74G ins 2014 No. 57s 38

Filing of certificate as judgment debt

s 74H ins 2014 No. 57s 38

PART 7—JURISDICTION OF TRIBUNAL

pt hdg prev pt 7 hdg om 2000 No. 10 s 183 sch 1

pres pt 7 hdg ins 2003 No. 30 s 169 sch 1

Division 1—Meaning of central terms

div hdg prev div 1 hdg om 2000 No. 10 s 183 sch 1

pres div 1 hdg ins 2003 No. 30 s 169 sch 1

Tribunal work defined

s 75 prev s 75 om 2000 No. 10 s 183 sch 1
pres s 75 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 52

What is not tribunal work

s 76 prev s 76 amd 1996 No. 37 s 147 sch 2
om 2000 No. 10 s 183 sch 1
pres s 76 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 53

Division 2—Building disputes

div hdg prev div 2 hdg om 2000 No. 10 s 183 sch 1
pres div 2 hdg ins 2003 No. 30 s 169 sch 1

Tribunal may decide building dispute

s 77 prev s 77 om 2000 No. 10 s 183 sch 1
pres s 77 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 54; 2009 No. 24 s 1684; 2014 No. 57 s 39

When major commercial building dispute may be heard by tribunal

s 78 prev s 78 amd 1996 No. 37 s 147 sch 2
om 2000 No. 10 s 183 sch 1
pres s 78 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 55

Procedure to decide whether all parties consent

s 79 prev s 79 om 2000 No. 10 s 183 sch 1
pres s 79 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 56

Procedure if another party discovered

s 80 prev s 80 om 2000 No. 10 s 183 sch 1
pres s 80 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 57

Consent may not be withdrawn

s 81 prev s 81 om 2000 No. 10 s 183 sch 1
pres s 81 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 58

Tribunal may make interim order

s 82 prev s 82 om 2000 No. 10 s 183 sch 1
pres s 82 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 59

Proceeding in tribunal does not affect action by commission

s 83 prev s 83 om 2000 No. 10 s 183 sch 1
pres s 83 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 60; 2013 No. 38 s 14 sch 1; 2013 No. 58 s 28
sub 2014 No. 57 s 40

Action by commission while proceeding in tribunal

s **84** prev s 84 om 2000 No. 10 s 183 sch 1
pres s 84 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 61; 2009 No. 24 s 1685; 2013 No. 38 s 14 sch 1; 2013 No. 58 s
29
om 2014 No. 57 s 41

Tribunal may hear dispute while contract still in operation

s **85** prev s 85 om 2000 No. 10 s 183 sch 1
pres s 85 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 62

Division 3—Proceedings for review

div hdg prev div 3 hdg om 2000 No. 10 s 183 sch 1
pres div 3 hdg ins 2003 No. 30 s 169 sch 1

Subdivision 1—Internal review

sdiv 1 hdg ins 2014 No. 56 s 62

Definitions for sdiv 1

s **85A** ins 2014 No. 56 s 62
def *internal reviewer* ins 2016 No. 11 s 16

Reviewable decisions

s **86** prev s 86 om 2000 No. 10 s 183 sch 1
pres s 86 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 63; 2013 No. 38 s 14 sch 1; 2014 No. 56 s 63; 2014 No. 57 s 42;
2017 No. 29 s 15

Who may apply for internal review

s **86A** ins 2014 No. 56 s 64
amd 2016 No. 11 s 17

Requirements for making application

s **86B** ins 2014 No. 56 s 64
amd 2016 No. 11 s 18

Internal review decision

s **86C** ins 2014 No. 56 s 64
amd 2016 No. 11 s 19

Notice of internal review decision

s **86D** ins 2014 No. 56 s 64
amd 2016 No. 11 s 20

Subdivision 2—External review

sdiv hdg ins 2014 No. 56 s 62

Definition for sdiv 2

s **86E** ins 2014 No. 56 s 62

Decisions that are not reviewable decisions

s **86F** ins 2014 No. 56 s 62
amd 2014 No. 57 s 43; 2017 No. 29 s 16

Application for review

s 87 prev s 87 om 2000 No. 10 s 183 sch 1
pres s 87 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 64; 2009 No. 24 s 1686; 2013 No. 38 s 14 sch 1

No stay by QCAT of particular decisions

s 87A ins 2014 No. 57 s 44
amd 2017 No. 29 s 17

Decision of tribunal on review of particular reviewable decisions

s 87AA ins 2014 No. 56 s 65

Division 4—Disciplinary proceedings

div hdg prev div 4 hdg om 2000 No. 10 s 183 sch 1
pres div 4 hdg ins 2003 No. 30 s 169 sch 1
om 2014 No. 57 s 45

Tribunal has jurisdiction to conduct disciplinary proceeding

s 88 prev s 88 om 2000 No. 10 s 183 sch 1
pres s 88 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 65; 2009 No. 24 s 1687; 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 45

Proper grounds for disciplinary action against a licensee

s 89 prev s 89 amd 1994 No. 20 s 26
om 2000 No. 10 s 183 sch 1
pres s 89 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 66; 2010 No. 54 s 67 sch; 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 45

Proper grounds for disciplinary action against person not a licensee

s 90 prev s 90 om 2000 No. 10 s 183 sch 1
pres s 90 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 67; 2010 No. 54 s 67 sch; 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 45

Orders for disciplinary action

s 91 prev s 91 sub 1992 No. 68 s 3 sch 1
om 2000 No. 10 s 183 sch 1
pres s 91 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 68
sub 2009 No. 24 s 1688
amd 2013 No. 38 s 14 sch 1
om 2014 No. 57 s 45

Division 5—Public examinations

div hdg prev div 5 hdg om 2000 No. 10 s 183 sch 1
pres div 5 hdg ins 2003 No. 30 s 169 sch 1

Tribunal may conduct public examination

s 92 prev s 92 amd 1994 No. 20 s 27
om 2000 No. 10 s 183 sch 1

pres s 92 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 69; 2013 No. 38 s 14 sch 1; 2017 No. 29 s 18

Procedure before public examination starts

s 92A ins 2009 No. 24 s 1689
amd 2013 No. 38 s 14 sch 1

Division 6—Decisions about debts arising from statutory insurance scheme

div hdg prev div 6 hdg om 2000 No. 10 s 183 sch 1
pres div 6 hdg ins 2003 No. 30 s 169 sch 1

Decisions about debts arising from statutory insurance scheme

s 93 prev s 93 om 2000 No. 10 s 183 sch 1
pres s 93 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 70; 2013 No. 38 s 14 sch 1

Division 7—Tribunal proceedings

div hdg ins 2003 No. 30 s 169 sch 1
sub 2009 No. 24 s 1690

Representation of parties

s 93A ins 2009 No. 24 s 1690

Transfer of proceedings between tribunal and the courts

s 94 prev s 94 om 2000 No. 10 s 183 sch 1
pres s 94 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 71
sub 2009 No. 24 s 1690

Expedited hearings of domestic building disputes or reviews

s 95 prev s 95 om 2000 No. 10 s 183 sch 1
pres s 95 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 72; 2009 No. 24 s 1692; 2009 No. 48 s 178; 2013 No. 38 s 14 sch 1; 2017 No. 29 s 19

Certain minor commercial building disputes may be expedited

s 96 prev s 96 amd 1994 No. 20 s 28
om 2000 No. 10 s 183 sch 1
pres s 96 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 73

Division 8—Other powers of the tribunal

div hdg prev div 8 hdg ins 2003 No. 30 s 169 sch 1
om 2009 No. 24 s 1691
pres div 8 hdg ins 2009 No. 24 s 1694

Entry and inspection of property by member of tribunal

s 97 orig s 97 amd 1996 No. 58 s 4
om 2000 No. 10 s 183 sch 1
prev s 97 ins 2003 No. 30 s 169 sch 1
amd 2007 No. 47 s 74
om 2009 No. 24 s 1693
pres s 97 ins 2009 No. 24 s 1694

Procedure before entry

s 97A ins 2009 No. 24 s 1694

Stop orders

s 97B ins 2009 No. 24 s 1694
amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 46
om 2017 No. 29 s 20

Suspension orders

s 97C ins 2009 No. 24 s 1694
amd 2013 No. 38 s 14 sch 1

PART 8—REGISTERS

pt hdg prev pt 8 hdg om 2000 No. 10 s 183 sch 1
pres pt 8 hdg ins 2007 No. 47 s 75

Division 1—Domestic building disputes

div hdg om 2000 No. 10 s 183 sch 1

Division 2—Proceedings for review

div hdg om 2000 No. 10 s 183 sch 1

Definitions for pt 8

s 98 prev s 98 om 2000 No. 10 s 183 sch 1
pres s 98 ins 2007 No. 47 s 75

Licensee register

s 99 prev s 99 amd 1994 No. 20 s 29
om 2000 No. 10 s 183 sch 1
pres s 99 ins 2007 No. 47 s 75
amd 2009 No. 24 s 1695; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 47

Tribunal may settle matters of dispute during review of application

s 99A ins 1994 No. 20 s 30
om 2000 No. 10 s 183 sch 1

When information may be included in the licensee register

s 100 prev s 100 om 2000 No. 10 s 183 sch 1
pres s 100 ins 2007 No. 47 s 75

Division 3—Disciplinary proceedings

div hdg om 2000 No. 10 s 183 sch 1

Licensees must advise change of circumstances

s 101 prev s 101 amd 1992 No. 68 s 3 sch 1; 1995 No. 58 s 4 sch 1; 1999 No. 43 s 34
om 2000 No. 10 s 183 sch 1
pres s 101 ins 2007 No. 47 s 75
amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 48

Division 4—Stop orders and suspension orders

div hdg sub 1994 No. 20 s 31
om 2000 No. 10 s 183 sch 1

When notes must be removed from the licensee register

s **102** prev s 102 om 2000 No. 10 s 183 sch 1
pres s 102 ins 2007 No. 47 s 75
amd 2013 No. 38 s 14 sch 1

Suspension orders

s **102A** ins 1994 No. 20 s 32
om 2000 No. 10 s 183 sch 1

Division 5—Determinations about debts

div **hdg** sub 1994 No. 20 s 33
om 2000 No. 10 s 183 sch 1

Register of holders of owner-builder permits

s **103** prev s 103 sub 1994 No. 20 s 33
om 2000 No. 10 s 183 sch 1
pres s 103 ins 2007 No. 47 s 75
amd 2013 No. 38 s 14 sch 1

When particulars must be removed from owner-builder register

s **103A** ins 2007 No. 47 s 75

Developer register

s **103B** ins 2007 No. 47 s 75
amd 2013 No. 38 s 14 sch 1

When notes must be removed from developer register

s **103C** ins 2007 No. 47 s 75

Inspection of registers

s **103D** ins 2007 No. 47 s 75
amd 2013 No. 38 s 14 sch 1

Publication of registers

s **103E** ins 2007 No. 47 s 75
amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 49

Certificates

s **103F** ins 2007 No. 47 s 75
amd 2013 No. 38 s 14 sch 1

PART 9—INSPECTORS

Division 1—Preliminary

div **hdg** ins 2017 No. 29 s 21

Definitions for part

s **103G** ins 2017 No. 29 s 21

References to exercise of powers

s **103H** ins 2017 No. 29 s 21

Reference to document includes reference to reproductions from electronic document

s **103I** ins 2017 No. 29 s 21

Division 2—Appointment of inspectors

div hdg ins 2017 No. 29 s 21

Appointment of inspectors

s 104 amd 2007 No. 20 s 55; 2013 No. 38 s 14 sch 1

Division 3—Entry of places by inspectors

div hdg ins 2017 No. 29 s 22

Subdivision 1—Power to enter

sdiv hdg ins 2017 No. 29 s 22

General power to enter places

s 105 sub 2007 No. 47 s 76
amd 2014 No. 57 s 50
sub 2017 No. 29 s 22

Subdivision 2—Entry by consent

sdiv hdg ins 2017 No. 29 s 22

Application of subdivision

s 105A ins 2017 No. 29 s 22

Incidental entry to ask for access

s 105B ins 2017 No. 29 s 22

Matters inspector must tell occupier

s 105C ins 2017 No. 29 s 22

Consent acknowledgement

s 105D ins 2017 No. 29 s 22

Subdivision 3—Entry under warrant

sdiv hdg ins 2017 No. 29 s 22

Application for warrant

s 105E ins 2017 No. 29 s 22

Issue of warrant

s 105F ins 2017 No. 29 s 22

Electronic application

s 105G ins 2017 No. 29 s 22

Additional procedure if electronic application

s 105H ins 2017 No. 29 s 22

Defect in relation to a warrant

s 105I ins 2017 No. 29 s 22

Entry procedure

s 105J ins 2017 No. 29 s 22

Division 4—General powers of inspectors after entering places

div hdg ins 2017 No. 29 s 22

Application of division

s 105K ins 2017 No. 29 s 22

General powers

s 105L ins 2017 No. 29 s 22

Power to require reasonable help

s 105M ins 2017 No. 29 s 22

Offence to contravene help requirement

s 105N ins 2017 No. 29 s 22

Division 5—Other information-obtaining powers of inspectors

div hdg ins 2017 No. 29 s 22

Power to require name and address

s 105O ins 2017 No. 29 s 22

Offence to contravene personal details requirement

s 105P ins 2017 No. 29 s 22

Power to require production of document

s 105Q ins 2017 No. 29 s 22

Offence to contravene document production requirement

s 105R ins 2017 No. 29 s 22

Offence to contravene document certification requirement

s 105S ins 2017 No. 29 s 22

Power to require information or attendance

s 105T ins 2017 No. 29 s 22

Offence to contravene information or attendance requirement

s 105U ins 2017 No. 29 s 22

Division 6—Seizure by inspectors and forfeiture

div hdg ins 2017 No. 29 s 22

Subdivision 1—Power to seize

sdiv hdg ins 2017 No. 29 s 22

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

s 106 amd 2014 No. 57 s 51

sub 2017 No. 29 s 22

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

s 106A ins 2003 No. 1 s 38

amd 2014 No. 57 s 52

sub 2017 No. 29 s 22

Power to seize non-conforming building products

s 106B ins 2003 No. 1 s 38

sub 2017 No. 29 s 22

Power to seize dangerous places, structures and things

s **106C** ins 2003 No. 1 s 38
sub 2017 No. 29 s 22

Seizure of property subject to security

s **106D** ins 2017 No. 29 s 22

Subdivision 2—Powers to support seizure

sdiv hdg ins 2017 No. 29 s 22

Power to secure seized thing

s **106E** ins 2017 No. 29 s 22

Offence to contravene seizure requirement

s **106F** ins 2017 No. 29 s 22

Offence to intervene

s **106G** ins 2017 No. 29 s 22

Subdivision 3—Safeguards for seized things

sdiv hdg ins 2017 No. 29 s 22

Receipt and information notice for seized things

s **106H** ins 2017 No. 29 s 22

Access to seized things

s **106I** ins 2017 No. 29 s 22

Return of seized things

s **106J** ins 2017 No. 29 s 22

Subdivision 4—Forfeiture

sdiv hdg ins 2017 No. 29 s 22

Forfeiture by commissioner decision

s **106K** ins 2017 No. 29 s 22

Information notice about forfeiture decision

s **106L** ins 2017 No. 29 s 22

Subdivision 5—Dealing with property forfeited or transferred to State

sdiv hdg ins 2017 No. 29 s 22

When place, structure or thing becomes property of the State

s **106M** ins 2017 No. 29 s 22

How property may be dealt with

s **106N** ins 2017 No. 29 s 22

Division 7—Additional powers for building products

div hdg ins 2017 No. 29 s 22

Power to have building products or samples examined

s **106O** ins 2017 No. 29 s 22

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

s **106P** ins 2017 No. 29 s 22

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

s **106Q** ins 2017 No. 29 s 22

Power to take remedial action

s **106R** ins 2017 No. 29 s 22

Division 8—Other provisions

div **hdg** ins 2017 No. 29 s 22

Evidential immunity for individuals complying with particular requirements

s **107** amd 2003 No. 1 s 39; 2009 No. 24 s 1696

sub 2017 No. 29 s 22

Obstructing inspectors

s **107A** ins 2007 No. 47 s 77

amd 2017 No. 29 s 23

Obligation of assessment manager

s **108** amd 1998 No. 13 s 190; 2003 No. 1 s 40; 2007 No. 20 s 56; 2007 No. 47 s 78;

2009 No. 36 s 872 sch 2; 2013 No. 38 s 14 sch 1; 2016 No. 27 s 373

PART 9A—TRANSFER OF PARTICULAR ASSETS, LIABILITIES AND EMPLOYEES

pt **hdg** ins 2014 No. 56s 66

Relevant entity

s **108AA** ins 2014 No. 56 s 66

Transfer of assets, liabilities etc. to relevant entity

s **108AB** ins 2014 No. 56s 66

amd 2016 No. 63 s 1157 sch 6

Rights of transferred employees etc.

s **108AC** ins 2014 No. 56 s 66

PART 9B—INJUNCTIONS AND STOP WORK NOTICES

pt **hdg** ins 2014 No. 57 s 53

sub 2017 No. 29 s 24

Division 1—Injunctions

div **hdg** ins 2017 No. 29 s 24

Grounds for injunction

s **108AD** ins 2014 No. 57s 53

Commissioner may apply for injunction

s **108AE** ins 2014 No. 57s 53

When injunction may be granted

s **108AF** ins 2014 No. 57s 53

Court's powers for injunctions

s **108AG** ins 2014 No. 57s 53

Terms of injunction

s 108AH ins 2014 No. 57s 53

Division 2—Stop work notices

div hdg ins 2017 No. 29 s 25

Commissioner may issue stop work notice

s 108AI ins 2017 No. 29 s 25

PART 10—MISCELLANEOUS

Documents that must be kept for 7 years

s 108A ins 2007 No. 47 s 79

False or misleading statement

s 108B ins 2007 No. 47 s 79
amd 2013 No. 38 s 14 sch 1; 2017 No. 29 s 26

False or misleading document

s 108C ins 2007 No. 47 s 79
amd 2013 No. 38 s 14 sch 1; 2017 No. 29 s 27

Contracting out prohibited

s 108D ins 2007 No. 47 s 79
amd 2014 No. 57 s 54

Service of documents

s 109A ins 1999 No. 43 s 35
amd 2013 No. 38 s 14 sch 1; 2014 No. 57 s 55

Confidentiality of information

s 110 prev s 110 sub 1994 No. 20 s 3 sch; 1996 No. 58 s 5
om 2000 No. 9 s 104 sch 1
pres s 110 ins 2017 No. 29 s 28

Prosecutions for offences

s 111 amd 1994 No. 20 s 3 sch; 2013 No. 38 s 14 sch 1; 2014 No. 57 s 56

Responsibility for acts or omissions of representatives

s 111A ins 1999 No. 43 s 36
amd 2000 No. 10 s 183 sch 1; 2003 No. 30 s 169 sch 1

Liability of executive officer—particular offences committed by company

s 111B ins 1999 No. 43 s 36
sub 2013 No. 51 s 175

Liability of directors for amounts

s 111C ins 1999 No. 43 s 36
amd 2000 No. 10 s 183 sch 1; 2003 No. 30 s 169 sch 1; 2013 No. 38 s 14 sch 1; 2014
No. 57 s 57

Appropriation of penalty

s 112 amd 2013 No. 38 s 14 sch 1

Double jeopardy

s 113 amd 1994 No. 20 s 34

Protection

s 114 sub 1999 No. 43 s 37
amd 2003 No. 1 s 41; 2007 No. 20 s 57; 2013 No. 38 s 8; 2016 No. 11 s 21; 2017
No. 29 s 29

Commission may provide services to a professional board

s 115 prev s 115 ins 1992 No. 68 s 3 sch 1
om 2000 No. 10 s 183 sch 1
pres s 115 ins 2007 No. 47 s 79A
amd 2013 No. 38 s 14 sch 1

Delegations

s 115A ins 2013 No. 38 s 9

Regulations

s 116 (prev s 115) renum 1992 No. 68 s 3 sch 1
sub 1994 No. 20 s 3 sch
amd 2003 No. 1 s 42; 2007 No. 47 s 80; 2014 No. 57 s 58

SCHEDULE 1—TRANSITIONAL AND VALIDATING PROVISIONS

sch hdg amd R2 (see RA s 39); 1994 No. 20 s 3 sch; 1997 No. 70 s 3(1); 1999 No.
43 s 38(4)

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

pt hdg ins 1997 No. 70 s 3(1)
amd 1999 No. 43 s 38(1)

Definitions

s 1A ins 1993 No. 76 s 3 sch 1
amd 1997 No. 70 s 3(2)
def *authority* ins 2013 No. 38 s 14 sch 1
def *former board* ins 1993 No. 76 s 3 sch 1
def *repealed Act* ins 1993 No. 76 s 3 sch 1

Transitional provisions

s 2 amd 1992 No. 36 s 2 sch 1; 1993 No. 76 s 3 sch 1; R1 (see RA s 38); 1994 No. 20
s 3 sch; 1997 No. 70 s 3(3)

Existing policies for supervision of building work

s 3 ins 1994 No. 20 s 3 sch
exp 20 November 1994 (see s 3(4))

References to repealed Acts

s 4 prev s 4 ins 1994 No. 20 s 3 sch
exp 5 August 1994 (see s 4(4))
pres s 4 ins 1994 No. 87 s 3 sch 1

References to registrar/general manager and Home Building Advisory Service

s 5 ins 1994 No. 20 s 3 sch

Director of the Advisory Service

Endnotes

s 6 ins 1994 No. 20 s 3 sch
exp 20 May 1994 (see s 6(3))

Disciplinary action

s 7 ins 1994 No. 20 s 3 sch
amd 1997 No. 70 s 3(2), (4)
exp 1 October 1998 (see s 7(2))

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

pt hdg ins 1997 No. 70 s 3(5)
amd 1999 No. 43 s 38(2)

Definitions

s 8 ins 1997 No. 70 s 3(5)
def *authority* ins 2013 No. 38 s 14 sch 1

Validation of affected licences

s 9 ins 1997 No. 70 s 3(5)

Period of effect of transitional licences—compliance period ended

s 10 ins 1997 No. 70 s 3(5)

Period of effect of transitional licences—compliance period current

s 11 ins 1997 No. 70 s 3(5)

Condition of transitional licences

s 12 ins 1997 No. 70 s 3(5)

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

pt hdg ins 1999 No. 43 s 38(3)

Existing board goes out of office

s 13 ins 1999 No. 43 s 38(3)

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

pt 4 (ss 14–16) ins 2000 No. 20 s 29 sch 3

PART 5—VALIDATING AND TRANSITIONAL PROVISIONS FOR QUEENSLAND BUILDING SERVICES AUTHORITY AND OTHER LEGISLATION AMENDMENT ACT 2003

pt hdg ins 2003 No. 1 s 43

Division 1—Interpretation

div hdg ins 2003 No. 1 s 43

Definitions for pt 5

s 17 ins 2003 No. 1 s 43
def *authority* ins 2013 No. 38 s 14 sch 1
def *board* ins 2013 No. 38 s 14 sch 1

Division 2—Provision about financial requirements

div 2 (s 18) ins 2003 No. 1 s 43

Division 3—Terms of insurance policies

div 3 (ss 19–20) ins 2003 No. 1 s 43

Division 4—Licence classes and qualifications and experience

div 4 (ss 21–22) ins 2003 No. 1 s 43

Division 5—Non-trading licences

div 5 (ss 23–24) ins 2003 No. 1 s 43

Division 6—Courses of instruction for owner-builders

div 6 (s 25) ins 2003 No. 1 s 43

Division 7—Board’s policies

div 6 (s 26) ins 2003 No. 1 s 43

PART 6—TRANSITIONAL PROVISIONS FOR THE BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT 2004

pt 6 (ss 27–28) ins 2004 No. 6 s 113 sch 1

PART 7—TRANSITIONAL PROVISIONS FOR STATUTORY BODIES LEGISLATION AMENDMENT ACT 2007

pt hdg ins 2007 No. 20 s 58

Rights and entitlements of particular employees

s 29 ins 2007 No. 20 s 58

amd 2013 No. 38 s 14 sch 1

Application of industrial instruments

s 30 ins 2007 No. 20 s 58

PART 8—TRANSITIONAL PROVISIONS FOR QUEENSLAND BUILDING SERVICES AUTHORITY AND OTHER LEGISLATION AMENDMENT ACT 2007

pt 8 (ss 31–36) ins 2007 No. 47 s 81

PART 9—TRANSITIONAL PROVISIONS FOR QUEENSLAND BUILDING SERVICES AUTHORITY AMENDMENT ACT 2013

pt hdg ins 2013 No. 38 s 10

Division 1—Preliminary

div 1 (s 37) ins 2013 No. 38 s 10

Division 2—Dissolutions

div 2 (ss 38–39) ins 2013 No. 38 s 10

Division 3—Migration of matters to the commission

div 3 (ss 40–47) ins 2013 No. 38 s 10

Division 4—Other matters

div 4 (ss 48–51) ins 2013 No. 38 s 10

PART 10—TRANSITIONAL PROVISION FOR RESIDENTIAL TENANCIES AND ROOMING ACCOMMODATION AND OTHER LEGISLATION AMENDMENT ACT 2013

pt 10 (s 52) ins 2013 No. 58 s 30

PART 11—TRANSITIONAL PROVISIONS FOR THE QUEENSLAND BUILDING AND CONSTRUCTION COMMISSION AND OTHER LEGISLATION AMENDMENT ACT 2014

pt hdg ins 2014 No. 57 s 59

Division 1—Preliminary

div 1 (s 53) ins 2014 No. 57 s 59

Division 2—General

div hdg ins 2014 No. 57 s 59

Continuation of particular reviews

s 54 ins 2014 No. 57 s 59

Existing disciplinary proceedings

s 55 ins 2014 No. 57 s 59

Allocation of demerit points

s 56 ins 2014 No. 57 s 59

Categorisation as excluded individual or permanently excluded individual continues

s 57 ins 2014 No. 57 s 59

Becoming a permitted individual after the commencement

s 58 ins 2014 No. 57 s 59

Categorisation as permitted individual continues

s 59 ins 2014 No. 57 s 59

Division 3—Rectification of building work

div 3 (ss 60–61) ins 2014 No. 57 s 59

Division 4—Repeal of the Domestic Building Contracts Act 2000

div 4 (ss 62–64) ins 2014 No. 57 s 59

Division 5—Statutory insurance scheme

div hdg ins 2014 No. 57 s 59

Continuation and finalisation of matters under former part 5

s 65 ins 2014 No. 57 s 59

Existing policies of insurance

s 66 ins 2014 No. 57 s 59

Repeal of board's policies about statutory insurance scheme

s 67 ins 2014 No. 57 s 59

Division 6—Transitional regulation

div 6 (s 68) ins 2014 No. 57 s 59

exp 15 December 2015 (see s 68(4))

PART 12—TRANSITIONAL PROVISION FOR THE PLUMBING AND DRAINAGE AND OTHER LEGISLATION AMENDMENT ACT 2016

pt hdg ins 2016 No. 11 s 22

Internal review applications of relevant decisions

s 69 ins 2016 No. 11 s 22

**PART 13—TRANSITIONAL PROVISION FOR PLANNING (CONSEQUENTIAL)
AND OTHER LEGISLATION AMENDMENT ACT 2016**

pt hdg ins 2016 No. 27 s 374

Existing development applications and requests for compliance assessment

s 70 ins 2016 No. 27 s 374

**PART 14—TRANSITIONAL PROVISIONS FOR BUILDING AND
CONSTRUCTION LEGISLATION (NON-CONFORMING BUILDING
PRODUCTS—CHAIN OF RESPONSIBILITY AND OTHER MATTERS)
AMENDMENT ACT 2017**

pt hdg ins 2017 No. 29 s 30

Information-sharing

s 71 ins 2017 No. 29 s 30

Grounds for suspending or cancelling licence or disciplinary action

s 72 ins 2017 No. 29 s 30

Recall orders and warning statements

s 73 ins 2017 No. 29 s 30

Current investigations

s 74 ins 2017 No. 29 s 30

Stop orders

s 75 ins 2017 No. 29 s 30

**SCHEDULE 1A—EXEMPTIONS FROM REQUIREMENT TO HOLD
CONTRACTOR'S LICENCE**

sch hdg ins 2013 No. 58 s 31

Employees

s 1 ins 2013 No. 58 s 31

Subcontractors

s 2 ins 2013 No. 58 s 31

Partnerships

s 3 ins 2013 No. 58 s 31

Owner-builders

s 4 ins 2013 No. 58 s 31

Design work by landscape architects

s 5 ins 2013 No. 58 s 31

Consumers

s 6 ins 2013 No. 58 s 31

Other licences

s 7 ins 2013 No. 58 s 31

Head contracts to carry out building work

s 8 ins 2013 No. 58 s 31

Tenders and offers

s 9 ins 2013 No. 58 s 31

Public-private partnerships

s 10 ins 2013 No. 58 s 31

Prescribed government projects

s 11 ins 2013 No. 58 s 31

SCHEDULE 1B—DOMESTIC BUILDING CONTRACTS

sch hdg ins 2014 No. 57 s 60

PART 1—INTERPRETATION

pt hdg ins 2014 No. 57 s 60

Definitions for sch 1B

s 1 ins 2014 No. 57 s 60

def *development approval* om 2016 No. 27 s 375

def *reasonably believes* om 2017 No. 29 s 34 sch 1

Meaning of *contract price*

s 2 ins 2014 No. 57 s 60

Meaning of *domestic building contract*

s 3 ins 2014 No. 57 s 60

Meaning of *domestic building work*

s 4 ins 2014 No. 57 s 60

Meaning of *regulated contract*

s 5 ins 2014 No. 57 s 60

Meaning of *level 1 regulated contract*

s 6 ins 2014 No. 57 s 60

Meaning of *level 2 regulated contract*

s 7 ins 2014 No. 57 s 60

Meaning of *foundations data*

s 8 ins 2014 No. 57 s 60

Meaning of *home*

s 9 ins 2014 No. 57 s 60

Meaning of *provisional sum*

s 10 ins 2014 No. 57 s 60

Multiple contracts for the same domestic building work

s 11 ins 2014 No. 57 s 60

References to particular terms

s 12 ins 2014 No. 57 s 60

PART 2—CONTRACTS AND RELATED DOCUMENTS

pt hdg ins 2014 No. 57 s 60

Division 1—The contract

div 1 (ss 13–14) ins 2014 No. 57 s 60

Division 2—Copies of documents

div 2 (ss 15–18) ins 2014 No. 57 s 60

PART 3—WARRANTIES

pt hdg ins 2014 No. 57 s 60

Division 1—Incorporation of warranties

div 1 (s 19) ins 2014 No. 57 s 60

Division 2—Implied warranties for all contracts

div 2 (ss 20–22) ins 2014 No. 57 s 60

Division 3—Implied warranties for particular contracts

div 3 (ss 23–26) ins 2014 No. 57 s 60

Division 4—General

div 4 (ss 27–29) ins 2014 No. 57 s 60

PART 4—RESTRICTIONS RELATING TO CONTRACTS

pt hdg ins 2014 No. 57 s 60

Division 1—Entering into contracts

div 1 (ss 30–32) ins 2014 No. 57 s 60

Division 2—Payments relating to contracts

div 2 (ss 33–34) ins 2014 No. 57 s 60

PART 5—COOLING-OFF PERIOD AND WITHDRAWING FROM REGULATED CONTRACTS

pt 5 (ss 35–39) ins 2014 No. 57 s 60

PART 6—VARIATIONS OF CONTRACTS

pt 6 (ss 40–42) ins 2014 No. 57 s 60

PART 7—BUILDING SITES

pt 7 (s 43) ins 2014 No. 57 s 60

PART 8—OTHER MATTERS RELATING TO CONTRACTS

pt 8 (s 44) ins 2014 No. 57 s 60

PART 9—MISCELLANEOUS

pt 9 (ss 45–46) ins 2014 No. 57 s 60

SCHEDULE 2—DICTIONARY

sch 2 ins 1999 No. 43 s 39

Note—definitions for this Act were originally located in s 4.

def *accumulate* ins 2003 No. 1 s 44(2)

def *administering authority* ins 2003 No. 1 s 44(2)

def *administration services* ins 2007 No. 47 s 82(2)

def *Advisory Service* om from prev s 4 1994 No. 20 s 4(1)

Endnotes

def *advisory services* ins 2007 No. 47 s 82(2)
def *alternative solution* ins 2007 No. 47 s 82(2)
def *apprentice* ins 2007 No. 47 s 82(2)
sub 2014 No. 25 s 223 sch 1 pt 2
def *appropriate insurance premium* ins 2014 No. 57 s 61(2)
def *approved security provider* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *architect* reloc 1999 No. 43 s 4(4)
amd 2002 No. 53 s 166 sch 1
def *assessment manager* ins 1998 No. 13 s 187
reloc 1999 No. 43 s 4(4)
sub 2009 No. 36 s 872 sch 2
amd 2016 No. 27 s 376(3)
def *assistance* ins 2014 No. 57 s 61(2)
def *associated insurable work* ins 2014 No. 57 s 61(2)
def *associated with* ins 2017 No. 29 s 31(2)
def *authority* reloc 1999 No. 43 s 4(4)
om 2013 No. 38 s 11(1)
def *banned individual* ins 2003 No. 1 s 44(2)
def *board* reloc 1999 No. 43 s 4(4)
sub 2013 No. 38 s 11(1)–(2)
def *board's policies* ins 1994 No. 20 s 4(2)
reloc 1999 No. 43 s 4(4)
amd 2013 No. 38 s 11(3)
def *building* reloc 1999 No. 43 s 4(4)
amd 2007 No. 47 s 82(3)
sub 2014 No. 57 s 61(1)–(2)
amd 2017 No. 29 s 31(3)–(4)
def *Building Code of Australia* ins 2003 No. 1 s 44(2); 2006 No. 36 s 101 sch; 1975
No. 11 s 283(3)(e) (amd 2006 No. 36 s 69)
def *building contract* ins 2007 No. 47 s 82(2)
sub 2013 No. 58 s 32
def *building contract*, for part 4A, ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
om 2013 No. 58 s 32(1)
def *building contractor* reloc 1999 No. 43 s 4(4)
amd 2007 No. 47 s 82(4)
sub 2014 No. 57 s 61(1)–(2)
def *building dispute* ins 2003 No. 30 s 169 sch 1
def *building owner* ins 2003 No. 30 s 169 sch 1
sub 2014 No. 57 s 61(1)–(2)
def *building product* ins 2017 No. 29 s 31(2)
def *building product undertaking* ins 2017 No. 29 s 31(2)
def *building site* reloc 1999 No. 43 s 4(4)
sub 2014 No. 57 s 61(1)–(2)
amd 2017 No. 29 s 31(5)
def *building work* amd 1999 No. 43 s 4(3)
reloc 1999 No. 43 s 4(4)

amd 2000 No. 9 s 104 sch 1; 2003 No. 1 s 44(3); 2007 No. 47 s 82(5)
def *building work services* ins 2007 No. 47 s 82(2)
def *calling* ins 2007 No. 47 s 82(2)
def *carry out* ins 2007 No. 47 s 82(2)
def *carry out building work* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *carry out tier 1 defective work* ins 2003 No. 1 s 44(2)
def *certificate of inspection* ins 2014 No. 57 s 61(2)
def *code of practice* ins 2017 No. 29 s 31(2)
def *commercial building contract* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *commercial building dispute* ins 2003 No. 30 s 169 sch 1
def *commission* ins 2013 No. 38 s 11(2)
def *commissioner* ins 2013 No. 38 s 11(2)
def *company* reloc 1999 No. 43 s 4(4)
def *completed building inspection* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
def *compliance purpose* ins 2017 No. 29 s 31(2)
def *condition* reloc 1999 No. 43 s 4(4)
def *consequential damage* ins 2014 No. 57 s 61(2)
def *construction management contract* ins 2007 No. 47 s 82(2)
def *construction management trade contract* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
amd 2007 No. 47 s 82(6)
def *construction manager* ins 2007 No. 47 s 82(2)
def *consumer* reloc 1999 No. 43 s 4(4)
sub 2014 No. 57 s 61(1)–(2)
def *consumer building guide* ins 2014 No. 57 s 61(2)
def *contract* ins 2003 No. 30 s 169 sch 1
amd 2004 No. 53 s 2 sch
def *contract administration* ins 2003 No. 1 s 44(2)
def *contracted party* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *contracted services* ins 2014 No. 57 s 61(2)
def *contracting party* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
amd 2007 No. 47 s 82(7)
def *contractor's licence* reloc 1999 No. 43 s 4(4)
sub 2007 No. 47 s 82(1)–(2)
def *contract price* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2014 No. 57 s 61(1)–(2)
def *convicted company officer* ins 2003 No. 1 s 44(2)
amd 2004 No. 53 s 2 sch
def *conviction* ins 2003 No. 1 s 44(2)
def *cost escalation clause* reloc 1999 No. 43 s 4(4)
om 2000 No. 9 s 104 sch 1

Endnotes

def *cost plus contract* ins 2014 No. 57 s 61(2)
def *decision* ins 2003 No. 30 s 169 sch 1
def *default certificate* ins 2003 No. 1 s 44(2)
amd 2007 No. 47 s 82(8)
def *defective* reloc 1999 No. 43 s 4(4)
def *defects document* ins 2014 No. 57 s 61(2)
def *demerit matter* ins 2003 No. 1 s 44(2)
def *demerit offence* ins 2003 No. 1 s 44(2)
def *demerit points* ins 2003 No. 1 s 44(2)
def *design work* reloc 1999 No. 43 s 4(4)
def *detached dwelling* ins 2014 No. 57 s 61(2)
def *determination* reloc 1999 No. 43 s 4(4)
om 2000 No. 10 s 183 sch 1
def *developer register* ins 2007 No. 47 s 82(2)
def *development approval* ins 2014 No. 57 s 61(2)
sub 2016 No. 27 s 376(1)–(2)
def *direction to rectify or remedy* ins 2014 No. 57 s 61(2)
def *disciplinary proceeding* ins 2003 No. 30 s 169 sch 1
om 2014 No. 57 s 61(1)
def *display home* reloc 1999 No. 43 s 4(4)
om 2000 No. 9 s 104 sch 1
def *disqualified individual* ins 2003 No. 1 s 44(2)
def *document certification requirement* ins 2003 No. 1 s 44(2)
sub 2017 No. 29 s 31(1)–(2)
def *document production requirement* ins 2003 No. 1 s 44(2)
sub 2017 No. 29 s 31(1)–(2)
def *domestic building contract* reloc 1999 No. 43 s 4(4)
sub 2000 No. 9 s 104 sch 1; 2014 No. 57 s 60(1)–(2)
def *domestic building dispute* reloc 1999 No. 43 s 4(4)
om 2000 No. 10 s 183 sch 1
ins 2003 No. 30 s 169 sch 1
def *domestic building work* reloc 1999 No. 43 s 4(4)
om 2000 No. 9 s 104 sch 1
ins 2003 No. 1 s 44(2)
sub 2014 No. 57 s 61(1)–(2)
def *draftsperson* ins 2014 No. 57 s 61(2)
def *electronic document* ins 2017 No. 29 s 31(2)
def *employee of the employing office* ins 2007 No. 20 s 59
def *employing office* ins 2007 No. 20 s 59
amd 2013 No. 38 s 11(4)
def *enforcement debtor* ins 2007 No. 47 s 82(2)
def *enforcement order* ins 2007 No. 47 s 82(2)
def *engineer* sub 1992 No. 68 s 3 sch 1
reloc 1999 No. 43 s 4(4)
amd 2002 No. 54 s 166 sch 1
def *examine* ins 2017 No. 29 s 31(2)
def *excluded building work* ins 2014 No. 57 s 61(2)
def *excluded company* ins 1999 No. 43 s 4(2)

reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
amd 2014 No. 56 s 67(2)
def *excluded individual* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
def *executive officer*, for part 2A, ins 2007 No. 20 s 59
def *executive officer*, of a company, ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *exempt building work* om from prev s 4 1994 No. 20 s 4(1)
def *farm building* prev def reloc 1999 No. 43 s 4(4)
om 2007 No. 47 s 82(1)
pres def ins 2014 No. 57 s 61(2)
def *field work* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *fire protection occupational licence* ins 2007 No. 47 s 82(2)
def *fire protection system* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
amd 2007 No. 47 s 82(9)–(10)
def *fire protection work* ins 2007 No. 47 s 82(2)
def *foundations data* ins 2014 No. 57 s 61(2)
def *general power* ins 2017 No. 29 s 31(2)
def *government entity* ins 2007 No. 20 s 59
amd 2009 No. 25 s 83 sch
def *help requirement* ins 2017 No. 29 s 31(2)
def *home* prev def reloc 1999 No. 43 s 4(4)
om 2000 No. 9 s 104 sch 1
pres def ins 2014 No. 57 s 61(2)
def *home-building contract* reloc 1999 No. 43 s 4(4)
om 2000 No. 9 s 104 sch
def *identity card* ins 2017 No. 29 s 31(2)
def *incomplete* ins 2014 No. 57 s 61(2)
def *industrial instrument* ins 2007 No. 20 s 59
amd 2016 No. 63 s 1157 sch 6
def *influential person* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
def *information notice* ins 2017 No. 29 s 31(2)
def *infringement notice* ins 2003 No. 1 s 44(2)
amd 2007 No. 47 s 82(11)
def *infringement notice offence* ins 2007 No. 47 s 82(2)
def *insolvent under administration* ins 2013 No. 38 s 11(2)
def *insurable value* ins 2014 No. 57 s 61(2)
def *insurance notification form* ins 2000 No. 20 s 29 sch 3
amd 2013 No. 38 s 11(5); 2014 No. 57 s 61(3)
def *intended use* ins 2017 No. 29 s 31(2)
def *internal review application* ins 2014 No. 56 s 67(1)
def *internal review decision* ins 2014 No. 56 s 67(1)

Endnotes

def *internal reviewer* ins 2016 No. 11 s 23
def *judgment debt* ins 2003 No. 1 s 44(2)
def *level 1 regulated contract* ins 2014 No. 57 s 61(2)
def *level 2 regulated contract* ins 2014 No. 57 s 61(2)
def *licence reloc* 1999 No. 43 s 4(4)
def *licence card* ins 2007 No. 47 s 82(2)
def *licence certificate* ins 2007 No. 47 s 82(2)
def *licensed builder* ins 1994 No. 20 s 4(2)
reloc 1999 No. 43 s 4(4)
def *licensed contractor* reloc 1999 No. 43 s 4(4)
def *licensed supervisor* reloc 1999 No. 43 s 4(4)
sub 2007 No. 47 s 82(1)–(2)
def *licensee* reloc 1999 No. 43 s 4(4)
def *licensee register* ins 2007 No. 47 s 82(2)
def *major commercial building dispute* ins 2003 No. 30 s 169 sch 1
def *major domestic building work* reloc 1999 No. 43 s 4(4)
om 2000 No. 9 s 104 sch 1
def *manage* ins 2014 No. 57 s 61(2)
def *management services* ins 2007 No. 47 s 82(2)
def *member* ins 2013 No. 38 s 11(2)
def *minor commercial building dispute* ins 2003 No. 30 s 169 sch 1
def *minor domestic building dispute* ins 2003 No. 30 s 169 sch 1
def *mixed-purpose contract* ins 2014 No. 57 s 61(2)
def *nominated supervisor* reloc 1999 No. 43 s 4(4)
om 2003 No. 1 s 44(1)
def *nominee* ins 2003 No. 1 s 44(2)
def *nominee supervisor* ins 2007 No. 47 s 82(2)
def *nominee supervisor's licence* ins 2007 No. 47 s 82(2)
def *non-compliance risk* ins 2017 No. 29 s 31(2)
def *non-conforming building product* ins 2017 No. 29 s 31(2)
def *notifiable incident* ins 2017 No. 29 s 31(2)
def *occupational licence* ins 2003 No. 1 s 44(2)
amd 2013 No. 38 s 11(5)
def *occupier* ins 2017 No. 29 s 31(2)
def *offence warning* ins 2017 No. 29 s 31(2)
def *optional additional cover* ins 2014 No. 57 s 61(2)
def *owner* sub 1994 No. 11 s 194 sch 2
reloc 1999 No. 43 s 4(4)
amd 2007 No. 47 s 82(12)
sub 2017 No. 29 s 31(1)–(2)
def *owner-builder course* ins 2007 No. 47 s 82(2)
def *owner-builder permit* reloc 1999 No. 43 s 4(4)
sub 2007 No. 47 s 82(1)–(2)
def *owner-builder register* ins 2007 No. 47 s 82(2)
def *owner-builder work* ins 2007 No. 47 s 82(2)
def *payment claim* ins 2004 No. 6 s 113 sch 1
def *period of 3 years* ins 2003 No. 1 s 44(2)
def *permanently excluded individual* ins 2003 No. 1 s 44(2)

def *permitted individual* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
om 2014 No. 57 s 61(1)
def *permittee* ins 2007 No. 47 s 82(2)
def *personal details requirement* ins 2017 No. 29 s 31(2)
def *personally supervise* ins 2007 No. 47 s 82(2)
def *person in control* ins 2017 No. 29 s 31(2)
def *person in the chain of responsibility* ins 2017 No. 29 s 31(2)
def *PIN* ins 2000 No. 20 s 29 sch 3
def *place* ins 2017 No. 29 s 31(2)
def *Planning Act* ins 2016 No. 27 s 376(2)
def *practical completion* ins 2014 No. 57 s 61(2)
def *premises* ins 2017 No. 29 s 31(2)
def *primary insurable work* ins 2014 No. 57 s 61(2)
def *prime cost item* ins 2014 No. 57 s 61(2)
def *principal* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
amd 2007 No. 47 s 82(13)
def *private sector entity* ins 2013 No. 58 s 32(2)
def *progress payment* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2014 No. 57 s 61(1)–(2)
def *project management agreement* ins 2007 No. 47 s 82(2)
def *project manager* ins 2007 No. 47 s 82(2)
def *provisional sum* ins 2014 No. 57 s 61(2)
def *public place* ins 2017 No. 29 s 31(2)
def *public-private partnership* ins 2013 No. 58 s 32(2)
def *Real Property Acts* om from prev s 4 1994 No. 11 s 194 sch 2
def *reasonably believes* ins 2014 No. 57 s 61(2)
sub 2017 No. 29 s 31(1)–(2)
def *reasonably practicable* ins 2017 No. 29 s 31(2)
def *reasonably suspects* ins 2017 No. 29 s 31(2)
def *recall order* ins 2017 No. 29 s 31(2)
def *rectify* reloc 1999 No. 43 s 4(4)
def *recorded conviction* ins 2013 No. 38 s 11(2)
def *registrar* ins 2003 No. 1 s 44(2)
sub 2009 No. 24 s 1697(2)
def *registrar of titles* sub 1994 No. 11 s 194 sch 2
reloc 1999 No. 43 s 4(4)
def *regulated amount* ins 2014 No. 57 s 61(2)
def *regulated contract* ins 2014 No. 57 s 61(2)
def *related roofed building* ins 2014 No. 57 s 61(2)
def *relevant Act* ins 2017 No. 29 s 31(2)
def *relevant bankruptcy event* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
def *relevant company event* ins 1999 No. 43 s 4(2)

Endnotes

reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
def *relevant entity* ins 2014 No. 56 s 67(1)
def *relevant event* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
sub 2003 No. 1 s 44(1)–(2)
def *relevant officer* ins 2007 No. 20 s 59
amd 2013 No. 38 s 11(5)
def *relevant regulatory provisions* ins 2017 No. 29 s 31(2)
def *relevant work* ins 2017 No. 29 s 31(2)
def *renewal day* ins 2007 No. 47 s 82(2)
def *representation* ins 2017 No. 29 s 31(2)
def *residence* ins 2014 No. 57 s 61(2)
def *residential construction work* reloc 1999 No. 43 s 4(4)
sub 2014 No. 57 s 61(1)–(2)
def *residential unit* ins 2007 No. 47 s 82(2)
def *resident owner* ins 2014 No. 57 s 61(2)
def *retention amount* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *review* ins 2000 No. 10 s 183 sch 1
def *reviewable commercial work* ins 2003 No. 30 s 169 sch 1
def *reviewable decision* ins 2014 No. 56 s 67(1)
def *reviewable domestic work* ins 2003 No. 30 s 169 sch 1
sub 2014 No. 57 s 61(1)–(2)
def *safe* ins 2017 No. 29 s 31(2)
def *safety risk* ins 2017 No. 29 s 31(2)
def *schedule section* ins 2014 No. 57 s 61(2)
def *security* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *seized thing* ins 2017 No. 29 s 31(2)
def *serious injury or illness* ins 2017 No. 29 s 31(2)
def *Services Trade Council* ins 2016 No. 11 s 23
def *site classification* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *site supervisor* ins 2007 No. 47 s 82(2)
def *site supervisor's licence* ins 2007 No. 47 s 82(2)
def *site testing* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *special purpose vehicle* ins 2013 No. 58 s 32(2)
def *speculative residential construction work* ins 2007 No. 47 s 82(2)
sub 2014 No. 57 s 61(1)–(2)
def *spent conviction* ins 2013 No. 38 s 11(2)
def *SPER* ins 2003 No. 1 s 44(2)
def *statutory insurance scheme* reloc 1999 No. 43 s 4(4)
def *statutory warranties* ins 2014 No. 57 s 61(2)
def *subcontract* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *subcontractor* ins 2003 No. 30 s 169 sch 1

amd 2004 No. 53 s 2 sch
sub 2014 No. 57 s 61(1)–(2)
def *subject work* ins 2014 No. 57 s 61(2)
def *supervisor's licence* reloc 1999 No. 43 s 4(4)
om 2007 No. 47 s 82(1)
def *supervisory services* ins 2007 No. 47 s 82(2)
def *term of ban* ins 2003 No. 1 s 44(2)
def *term of disqualification* ins 2003 No. 1 s 44(2)
def *tier 1 defective work* ins 2003 No. 1 s 44(2)
def *trade licence* reloc 1999 No. 43 s 4(4)
om 2004 No. 53 s 2 sch
def *trainee* ins 2007 No. 47 s 82(2)
sub 2014 No. 25 s 223 sch 1 pt 2
def *tribunal* reloc 1999 No. 43 s 4(4)
sub 2000 No. 10 s 183 sch 1; 2003 No. 30 s 169 sch 1; 2009 No. 24 s 1697(3)
def *Tribunal Act* ins 2000 No. 10 s 183 sch 1
sub 2003 No. 30 s 169 sch 1
om 2009 No. 24 s 1697(1)
def *tribunal work* ins 2007 No. 47 s 82(2)
def *undertake to carry out* ins 2007 No. 47 s 82(2)
def *unsatisfied* ins 2003 No. 1 s 44(2)
def *valuable instrument* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *value* reloc 1999 No. 43 s 4(4)
def *variation* ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
def *warning statement* ins 2017 No. 29 s 31(2)
def *work performance arrangement* ins 2007 No. 20 s 59
def *written form* prev def ins 1999 No. 43 s 4(2)
reloc 1999 No. 43 s 4(4)
om 2004 No. 6 s 113 sch 1
pres def ins 2014 No. 57 s 61(2)

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