



# Queensland Building and Construction Commission Act 1991

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Queensland

# Queensland Building and Construction Commission Act 1991

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# 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; and
- (f) to provide for the proper, efficient and effective management of the commission in the performance of its functions.

## 4 Definitions

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

### 4AA Who is an *influential person* for a company

- (1) An *influential person*, for a company, is an individual, other than a director or secretary of the company, who is in a position to control or substantially influence the company's conduct.
- (2) However, an influential person does not include—
  - (a) a professional, only because the advice given by the professional influences the company's conduct; or
  - (b) a regulator, only because the regulator, when exercising a power or performing a function under an Act or other law, influences the company's business; or
  - (c) an administrator, controller, provisional liquidator or liquidator within the meaning of the Corporations Act, section 9.
- (3) Without limiting subsection (1), a person may be an influential person for a company if the person—
  - (a) is the chief executive officer or general manager of the company, or holds an equivalent position in the company; or
  - (b) is acting in a position mentioned in paragraph (a); or

- 
- (c) directly or indirectly owns, holds or controls 50% or more of the shares in the company, or 50% or more of a class of shares in the company; or
  - (d) gives instructions to an officer of the company and the officer generally acts on those instructions; or
  - (e) makes, or participates in making, decisions that affect the whole or a substantial part of the company's business or financial standing; or
  - (f) engages in conduct or makes representations that would cause someone else to reasonably believe the person controls, or substantially influences, the company's business.
- (4) In this section—

***professional***—

- (a) means a person who provides professional advice to more than 1 client; but
- (b) does not include a person who provides professional advice to a client in the person's capacity as an employee of the client.

*Example*—

a lawyer or accountant, employed in that capacity by a firm of lawyers or accountants, engaged by a company to give the company advice on a particular topic

***regulator*** means—

- (a) a person employed by a State, a local government or the Commonwealth; or
- (b) a person engaged by a State, a local government or the Commonwealth to provide a particular service or carry out a particular activity; or
- (c) an agent of a person mentioned in paragraph (b) if, in that capacity, the person provides the service or carries out the activity the person is engaged to provide or carry out.

#### **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) providing guidance and leadership to the commissioner;

- 
- (d) 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 not more than 10 members appointed by the Governor in Council.
- (2) In appointing a person as a member, the Governor in Council is to—
  - (a) have regard to the person's ability to make a contribution to the effective and efficient performance of the commission's functions; and
  - (b) have regard to the person's experience and competence in the following areas—
    - (i) building and construction;
    - (ii) finance;
    - (iii) corporate governance and risk;

- (iv) insurance, including knowledge and experience in the reinsurance market;
  - (v) consumer advocacy and awareness;
  - (vi) public sector governance, including administration and enforcement of laws; and
- (c) as far as possible, ensure the board has equal representation of the areas mentioned in paragraph (b).
- (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 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) the number of members that is half the number appointed at the time of the meeting constitutes 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.

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## **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.

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## **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.

[s 20H]

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- (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.

[s 20K]

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- (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

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- (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.

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## 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).



- (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

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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—

[s 30A]

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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

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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

- (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

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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.

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- (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

[s 32A]

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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.

- (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



- (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) Unless exempt under schedule 1A, 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—

  - (a) for a first offence—250 penalty units; or
  - (b) for a second offence—300 penalty units; or
  - (c) for a third or later offence, or if the building work carried out is tier 1 defective work—350 penalty units or 1 year's imprisonment.
- (2) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment, commits a crime.
- (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.

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- (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—
    - (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;

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- (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—

- (a) for a first offence—250 penalty units; or
  - (b) for a second offence—300 penalty units; or
  - (c) for a third or later offence, or if the building work carried out is tier 1 defective work—350 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.
- (3) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units, commits a crime.

#### **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—

- (a) for a first offence—250 penalty units; or
- (b) for a second offence—300 penalty units; or
- (c) for a third or later offence, or if the fire protection work carried out is tier 1 defective work—350 penalty units or 1 year's imprisonment.
- (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
- (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

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- (d) a student who, for work experience, personally carries out fire protection work as part of a pre-vocational course.
- (4) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment, commits a crime.

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

- (1) 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—

- (a) for a first offence—250 penalty units; or
- (b) for a second offence—300 penalty units; or
- (c) for a third or later offence, or if the fire protection work carried out is tier 1 defective work—350 penalty units or 1 year's imprisonment.
- (2) An individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment, commits a crime.

*Note—*

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

**42E Avoidance of contractual obligations causing significant financial loss**

- (1) This section applies to a person who is a party to a building contract.
- (2) The person must not, without reasonable excuse, cause another party to the building contract to suffer a significant financial loss because the person deliberately avoids complying with, or fails to comply with, the contract.

Maximum penalty—350 penalty units.

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**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;



- (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

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- (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

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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.

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- (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]

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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.

#### **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.

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

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

### **48           Cancellation or suspension of licence**

- (1) The commission may suspend or cancel a licence if—
- (a) the licence was obtained on the basis of incorrect information supplied to the commission, whether or not fraud was intended; or
  - (b) the licence was obtained by fraud or other improper means; or
  - (c) the licensee is convicted of an indictable offence or an offence that, if committed in Queensland, would be an indictable offence; or
  - (e) the licensee is a company and it ceases, for a period exceeding 28 days, to have a nominee holding a licence authorising supervision of building work of the appropriate class or classes; or
  - (f) the licensee is convicted of—
    - (i) an offence against this Act or the *Building Act 1975*; or
    - (ii) an offence against a relevant Act in relation to building work carried out under the licence; or
  - (h) the licensee contravened a condition to which the licence is subject under section 35 or that is imposed under section 36 on the licensee’s licence; or
  - (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 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]

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- (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.



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## Division 9A                      **Monitoring continued satisfaction of minimum financial requirements and particular laws**

### 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;
  - (c) to find out if they have been complying with the *Building Act 1975*, chapter 8;
  - (d) to find out if they have been complying with the *Building Industry Fairness (Security of Payment) Act 2017*, chapter 2.
- (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.
- (3) In this section—

*licensee* includes a pool safety inspector under the *Building Act 1975*.

**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 the provision of an Act mentioned in section 50A(1).
- (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 the provision of an Act mentioned in section 50A(1).
- (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 the provision of an Act mentioned in section 50A(1).
- (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.

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- (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.
- (6) In this section—  
*licensee* includes a pool safety inspector under the *Building Act 1975*.

## 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.

[s 53A]

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- (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.
- (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
- (ba) does not include any false or misleading information; and

*Examples—*

stating that particular work may only be lawfully carried out by a licensee if it would be lawful for an unlicensed person to carry out the work

stating that particular work must be carried out by a particular date to comply with a law if no such deadline exists under the law

- (bb) does not omit any information, if the omission of the information causes the advertisement to be misleading; 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.
- (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—
    - (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 2 years 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 unless the individual can satisfy the commissioner that at the time the individual ceased to be an influential person, director or secretary for the construction company the company was solvent.
- (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***—
- (a) means a company that directly or indirectly carries out building work or building work services in this or another State; and
- (b) includes a company that, within 2 years immediately before a relevant company event for the company, directly or indirectly carries out building work or building work services in this or another State.

## **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—
  - (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.

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- (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.
- (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

[s 58]

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- (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.

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## **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
- (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—

[s 63]

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- (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.

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**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.
- (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.

[s 67]

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- (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.

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- (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 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—

[s 67AC]

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- (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.



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## **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.

[s 67AG]

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*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

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- (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—
- (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

[s 67AI]

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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

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- (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
  - (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—

[s 67AK]

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- (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

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that no further action under this part will be taken in relation to the notice given under section 67AJ(2).

**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

[s 67AL]

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- (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).



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- (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).

**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).

[s 67AM]

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- (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.

#### **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).

[s 67AO]

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- (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

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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 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.

[s 67AQ]

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**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.

### **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.

[s 67AT]

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### **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.

[s 67AY]

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- (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

[s 67AZC]

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- (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 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—

[s 67AZH]

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- (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—
    - (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—
    - (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

[s 67AZK]

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- (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.

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- (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—
      - (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).

[s 67AZL]

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- (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).

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## 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.
- (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

[s 67AZN]

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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.

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## 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.

***defects liability period***, for a building contract, means—

- (a) the period worked out under the contract as being the period that—

[s 67A]

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- (i) starts on the day of practical completion for the building work carried out under the contract; and
  - (ii) ends on the last day any omission or defect in the building work, carried out under the contract, may be required or directed to be rectified under the contract; or
- (b) if the contract does not provide for a period mentioned in paragraph (a)—the statutory defects liability period under the *Queensland Building and Construction Commission Act 1991*, section 67NA(2).

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

**practical completion**, for building work carried out under a building contract, means—

- (a) the day practical completion of the work is achieved, as worked out under the contract; or
- (b) if the contract does not provide for the day practical completion of the work is achieved—the day the work is completed—
  - (i) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and
  - (ii) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect the intended use of the work.

**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

[s 67B]

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- (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—

[s 67F]

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

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## **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—
- (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

## **67GA Building contracts to include mandatory conditions**

- (1) A building contractor must not enter into a building contract that does not include the conditions (*mandatory conditions*) prescribed by regulation for inclusion in that type of building contract.

Maximum penalty—80 penalty units.

- (2) Subsection (1) does not apply to a building contractor who—
  - (a) enters into a building contract as a principal; or
  - (b) enters into a subcontract as the contracted party.
- (3) A building contract is subject to the mandatory conditions regardless of whether the conditions are stated in the contract or not.
- (4) The mandatory conditions have effect despite any provision to the contrary in a building contract.
- (5) A provision of a building contract is of no effect to the extent to which it—
  - (a) is contrary to a mandatory condition; or
  - (b) purports to annul, exclude or change a mandatory condition; or
  - (c) may reasonably be construed as an attempt to deter a person from enforcing a mandatory condition.

- (6) This section does not apply in relation to a condition of a building contract that imposes a greater or more onerous obligation on a building contractor than are imposed under the mandatory conditions.

### **67GB Particular conditions void in building contracts**

- (1) A building contractor must not enter into a building contract that includes a prohibited condition (*prohibited conditions*) prescribed by regulation.

Maximum penalty—80 penalty units.

- (2) Subsection (1) does not apply to a building contractor who—
  - (a) enters into a building contract as a principal; or
  - (b) enters into a subcontract as the contracted party.
- (3) A provision of a building contract is of no effect to the extent to which it—
  - (a) is or incorporates a prohibited condition; or
  - (b) may reasonably be construed as an attempt to enforce a prohibited condition.
- (4) To remove any doubt, it is declared that this section does not apply to a building contract entered into before the commencement of this section but does apply to a provision of the contract included after the commencement to the extent the provision is a prohibited condition.

### **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.



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- (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

[s 67K]

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(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.
- (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

[s 67N]

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- (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 for the contract, in the building work for 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;

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- (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—

[s 67P]

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- (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—
- (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—

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- (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
  - (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



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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—
- (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, lock-up, prison, reformatory or watch house;
    - (iii) a hospital, nursing home or other health care building;
    - (iv) an orphanage or children's home;
    - (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;

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- (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—
    - (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) air conditioning;
    - (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—
- (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—
  - (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.

[s 67Y]

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- (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

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- (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).

- (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.

[s 68A]

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- (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—

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- (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.

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## **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

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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.
- (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



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- (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.
- (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.

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- (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—
- (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—

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- (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.
- (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.

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- (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

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- (v) a licensed contractor whose licence number is stated on the contract for carrying out the work; and
  - (vi) a licensed contractor whose licence number is stated on an insurance notification form for the work; and
  - (vii) a licensed contractor whose PIN was used for putting in place, for the work, insurance under the statutory insurance scheme; and
  - (viii) a building contractor by whom the work was, or was to be, carried out; and
  - (ix) a person who, for profit or reward, carried out the work; and
- (b) a person through whose fault the claim arose is taken to include a person who performed services for the work if the services were performed without proper care and skill.
- (3) The commission is subrogated, to the extent of any payment that the commission has made, or has undertaken to make, to the rights of a person to whom, or for whose benefit, the payment has been, or is to be, made in respect of the matter out of which the insurance claim arose.
- (4) In a proceeding brought by the 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
  - (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.
- (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.

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**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—

***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

#### 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—

- (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
  - (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

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- (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.

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## **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.
- (4) Also, a request under subsection (1) or (2) must be made within 12 months after the person becomes aware of—
  - (a) for a request under subsection (1)—the building work the person considers is defective or incomplete; or
  - (b) for a request under subsection (2)—the consequential damage to the property.

### **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

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- (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 6 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 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.

## **72B Extending time to rectify or remedy**

- (1) A person given a direction to rectify or remedy may apply to the commission for an extension of the period for compliance with the direction.
- (2) The application must—
  - (a) be made before the end of the period stated in the direction; and
  - (b) state the reasons the extension is needed.
- (3) The commission must decide whether or not to grant the extension, and inform the applicant of the decision, within 10 business days after receiving the application.
- (4) The commission may grant the extension only if satisfied it is likely to be impracticable for the applicant to comply with the direction within the period stated in the direction.
- (5) Also, the commission must grant the extension if satisfied the person affected by the building work the subject of the direction has agreed to the extension being applied for.
- (6) If the commission grants the extension, the commission must give the applicant a written notice stating the period within which the applicant must rectify the work or remedy the damage.
- (7) If the commission refuses to grant the extension, the commission must give the applicant written notice of the refusal.
- (8) If the commission fails to comply with subsection (3), the commission is taken to have decided to refuse the application.
- (9) The direction to rectify or remedy is stayed while the commission considers the application.

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## **Division 3                      Offences and defences**

### **72AA    Delaying or obstructing compliance with direction to rectify or remedy**

- (1) A person must not, without reasonable excuse, delay rectifying building work that is defective or incomplete, or remedying consequential damage, as required by a direction given to the person under section 72(2).
- (2) A person must not, without reasonable excuse, obstruct another person rectifying building work that is defective or incomplete, or remedying consequential damage, as required by a direction given to the other person under section 72(2).

*Note—*

Contravention of subsection (1) or (2) is proper grounds for taking disciplinary action against a licensee or former licensee, see section 74B(1)(a).

### **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 to rectify or remedy given to the person, subject to any extension of time granted under section 72B.

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

[s 74]

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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.

*install* and *installer*—

A person *installs* a building product in a building, and is an *installer* of the building product, if the person—

[s 74AA]

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- (a) personally installs the product in the building; or
- (b) supervises the installation of the product in the building;  
or
- (c) carries out the relevant work in relation to which the product is installed in the building; or
- (d) engages a person to do an activity mentioned in paragraph (a), (b) or (c).

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

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

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

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

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

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

including whether the cost is grossly disproportionate to the risk.

**recall order** see section 74AW(1).

**relevant regulatory provisions** means—

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

**relevant work** means—

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

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

**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—a person who installed the product in the building; or
- (c) an architect or engineer who, in designing a building, specified that the product be associated with the building.

**safe** means—

- (a) all risks of injury or illness to a person have been removed, so far as reasonably practicable; or

[s 74AB]

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- (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.



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## **Division 2                    Duties relating to building products**

### **Subdivision 1            General provisions about duties**

#### **74AC Relationship with safety laws**

- (1) If a provision of this division and a provision of a safety law deal with the same thing and it is possible to comply with both provisions, a person must comply with both provisions.
- (2) However, to the extent it is not possible for the person to comply with both provisions, the person must comply with the provision of the safety law.
- (3) Evidence of a contravention of this division is admissible in any proceeding for an offence against a provision of a safety law.
- (4) If an act, omission or circumstances constitute an offence under this division and a safety law, the offender is not liable to be punished twice in relation to the act, omission or circumstances.
- (5) In this section—  
*safety law* means—
  - (a) the *Work Health and Safety Act 2011*; or
  - (b) the *Electrical Safety Act 2002*.

#### **74AD Principles applying to duties**

- (1) This section sets out principles applying to duties persons have under subdivision 2.
- (2) A person may have more than 1 duty because of the functions the person performs or is required to perform.
- (3) More than 1 person can concurrently have the same duty.
- (4) Each person must comply with the duty to the standard required under subdivision 2 even if another person has the same duty.

[s 74ADA]

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- (5) If more than 1 person has a duty for the same matter, each person—
  - (a) is responsible for the person’s duty in relation to the matter; and
  - (b) must discharge the person’s duty to the extent to which the person—
    - (i) has the capacity to influence and control the matter; or
    - (ii) would have the capacity but for an agreement or arrangement purporting to limit or remove that capacity.
- (6) A person’s duty can not be transferred to another person.

#### **74ADACode of practice about discharging duties**

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

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## **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; or
- (c) the person is an architect or engineer who, in designing a building, specifies that the product be associated with the building.

### **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) An architect or engineer who, in designing a building, specifies that a building product be associated with the building must ensure, so far as reasonably practicable, that when the architect or engineer gives the design to another person the design is accompanied by the information prescribed by regulation for this subsection.
- (6) A regulation, for subsection (4) or (5) or subsection (7), 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.

(7) 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) An architect or engineer must not, in designing a building, specify a building product be associated with the building that the architect or engineer knows, or ought reasonably to know, is the subject of a recall order or corresponding recall order.
- (4) Subsection (5) applies if—

[s 74AI]

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- (a) a building product becomes the subject of a recall order or corresponding recall order after an architect or engineer, in designing a building, specifies the building product be associated with the building; and
  - (b) the architect or engineer knows, or ought reasonably to know, the building product has become the subject of the recall order or corresponding recall order.
- (5) The architect or engineer must, at the architect's or engineer's own expense—
- (a) inform each person to whom the architect or engineer has given the design of the recall order or corresponding recall order; and
  - (b) either—
    - (i) amend the design to remove the specification; or
    - (ii) give each person to whom the architect or engineer has given the design a written notice specifying an alternative building product to be associated with the building.

- (6) 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.

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- (3) In this section, *due diligence* includes taking reasonable steps—
- (a) to acquire, and keep up to date, knowledge of matters about the safe use of building products; and
  - (b) to gain an understanding of—
    - (i) the nature of the company’s business activities relating to building products; and
    - (ii) safety risks and non-compliance risks associated with the building products; and
  - (c) to ensure the company has, and uses, appropriate resources to remove or minimise the risks mentioned in paragraph (b)(ii); and
  - (d) to ensure the company has, and implements, appropriate processes—
    - (i) to remove or minimise the risks mentioned in paragraph (b)(ii); and
    - (ii) for receiving, considering and responding in a timely way to, information about the risks mentioned in paragraph (b)(ii) and any incidents arising from the risks; and
    - (iii) for complying with the company’s duties under this Act; and
  - (e) to verify the resources and processes mentioned in paragraphs (c) and (d) are being provided, used and implemented.

### **Subdivision 3      Offences relating to duties**

#### **74AJ    Failing to comply with duty**

A person commits an offence if—

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

[s 74AK]

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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 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;

[s 74AO]

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- (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 matter relating to a contravention or alleged contravention of this part.
- (2) The giving of a building product undertaking does not constitute an admission of guilt by the person giving it for the contravention or alleged contravention to which the undertaking relates.

#### **74AP Notice of decision and reasons for decision**

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

- (2) The commission must publish, on the commission's website, notice of a decision to accept a building product undertaking and the reasons for the decision.

#### **74AQ When building product undertaking is enforceable**

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

#### **74AR Compliance with building product undertaking**

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

Maximum penalty—500 penalty units.

#### **74AS Contravention of building product undertaking**

- (1) If the commission considers that a person who made a building product undertaking has contravened the undertaking, the commission may apply to a Magistrates Court for an order under this section.
- (2) If the court is satisfied that the person has contravened the building product undertaking, the court, in addition to the imposition of any penalty, may make 1 or both of the following orders—
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order discharging the undertaking.
- (3) In addition to the orders mentioned in subsection (2), the court may make any other order the court considers appropriate in the circumstances, including orders directing the person to pay to the State—
  - (a) the costs of the proceeding, including legal costs; and

[s 74AT]

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- (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.

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- (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—

[s 74AX]

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- (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.

#### **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

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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;

[s 74AZA]

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- (v) for a building product that an architect or engineer has, in designing a building, specified be associated with the building—the action the architect or engineer must take to ensure the specification is removed from the design;

*Examples of action for (v)—*

- amending the design to remove the specification
- giving written notice to persons to whom the design has been given specifying an alternative building product to be associated with the building

- (vi) 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;

- (vii) the action a responsible person must take to help another responsible person to whom the recall order applies to comply with the order;

- (viii) 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 an architect, engineer, installer or supplier giving reasonable help in relation to the recall order under section 74AZA.
- (3) The recall order remains in force until the end of 2 years after the order is made unless sooner revoked by the Minister.
- (4) Subsection (3) does not prevent a further recall order being made for the same building product to which the recall order applied while it was in force.

### **74AZA Suppliers, installers and particular architects and engineers**

- (1) This section applies if a responsible person to whom a recall order applies—



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- (a) produces a copy of the recall order to any of the following persons—
- (i) a supplier or installer of a building product the subject of the order;
  - (ii) an architect or engineer who, in designing a building, specifies that a building product the subject of the order be associated with the building; and
- (b) asks the supplier, installer, architect or engineer for help in relation to the recall order.
- (2) The supplier, installer, architect or engineer 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

*Examples of reasonable help by architect or engineer—*

- ceasing to specify the recalled building product in designs
- identifying or contacting persons to whom the architect or engineer gave a design specifying the recalled building product be associated with a building

Maximum penalty—50 penalty units.

## Division 5                      Warning statements

### 74AZB Application of division

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

### 74AZC Minister may publish warning statement

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

- (2) The Minister may publish a warning statement for a building product whether or not—
  - (a) the Minister has made a recall order for the building product; or
  - (b) a responsible person for the building product has already undertaken a recall of the building product; or
  - (c) the building product has been associated with a building.
- (3) A warning statement may be published—
  - (a) in a newspaper circulating generally in the State; and
  - (b) on the commission’s website; and
  - (c) in any other way the Minister considers appropriate.

#### **74AZD Notice required before publishing warning statement**

- (1) Before publishing the warning statement, the Minister must—
  - (a) give each person in the chain of responsibility for the building product whose identity is known or reasonably ascertainable by the Minister written notice of the following—
    - (i) the Minister’s intention to publish the warning statement;
    - (ii) the reasons for publishing the statement; and
  - (b) give the person a copy of the proposed warning statement; and
  - (c) ask the person to show cause why the Minister should not publish the warning statement.
- (2) If the person wishes to show cause why the warning statement should not be published, the person may make written submissions to the Minister within 7 days after receiving the notice and copy of the proposed warning statement.
- (3) The Minister must consider any written submissions made by the person within the period mentioned in subsection (2) before publishing the warning statement.

## **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 investigator 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
  - (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
- (n) the licensee fails to pay a subcontractor in compliance with a building contract that is a subcontract under section 67D; or

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- (o) the licensee contravenes an offence provision of the *Building Industry Fairness (Security of Payment) Act 2017*; or
- (r) the licensee contravenes section 67NC.
- (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

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- (c) contravenes or is taken to have contravened the *Fair Trading Act 1989* in relation to building work carried out by the person; or

*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 investigator 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

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- 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.

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- (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;

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- (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.

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- (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—



- (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.

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*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

- (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;

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- (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 investigator 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 investigator 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.

## **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.



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## **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 investigator to seize a place, part of a place, building, structure or other thing under part 9, division 6;
  - (c) a decision of an investigator 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—

- 
- (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 investigator 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—

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- (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

- (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 non-completion under the statutory insurance scheme; and

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- (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 investigator 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 investigator to seize a place, part of a place, building, structure or other thing under part 9, division 6; or

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- (iv) a decision of an investigator 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.



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- (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.

[s 97A]

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### **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.

- (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;

- (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, or the *Building Industry Fairness (Security of Payment) Act 2017*, and the provision of the 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

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- circumstances that led to the exclusion, ban or disqualification; and
- (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—

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- (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—

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- (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—

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- (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;
  - (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



71I(1) 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—
  - (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 73.
- (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 73; and
  - (b) an executive officer of the company is convicted of an offence under section 111B in relation to the offence under section 73; 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.

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- (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 Investigators**

### **Division 1 Preliminary**

#### **103G Definitions for part**

In this part—

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***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 investigators, means an identity card issued under section 104F.

***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—

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

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

**personal details requirement** see section 105O(5).

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

**place** includes the following—

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

**premises** includes—

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

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

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

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

a beach, a park, a road

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

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

a saleyard, a showground

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

***relevant Act*** means—

- (a) this Act; or  
(b) the *Building Act 1975*; or  
(c) the *Building Industry Fairness (Security of Payment) Act 2017*; or  
(d) the *Plumbing and Drainage Act 2002*.

***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 investigator; and  
(b) there is no reference to a specific power;

the reference is to the exercise of all or any investigators' 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 investigators**

### **Subdivision 1 Appointment**

#### **104 Investigators**

- (1) This part includes provision for the appointment of investigators, and gives investigators particular powers.
- (2) The purpose of these provisions is to ensure the commission has available to it suitably qualified persons who can help the commission deal with issues about compliance under—
  - (a) this Act; or
  - (b) the *Building Act 1975*; or
  - (c) the *Building Industry Fairness (Security of Payment) Act 2017*; or
  - (d) the *Plumbing and Drainage Act 2002*.

#### **104A Functions of investigators**

An investigator has the following functions—

- (a) to investigate, monitor and enforce compliance with—
  - (i) this Act; or
  - (ii) the *Building Act 1975*; or

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- (iii) the *Building Industry Fairness (Security of Payment) Act 2017*; or
  - (iv) the *Plumbing and Drainage Act 2002*;
  - (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under an Act mentioned in paragraph (a);
  - (c) to facilitate the exercise of powers under an Act mentioned in paragraph (a).

#### **104B Appointment and qualifications**

- (1) The commission may, by instrument in writing, appoint any of the following persons as investigators—
  - (a) an officer or employee of the commission; or
  - (b) an employee of the employing office or of another government entity performing work for the commission under a work performance arrangement.
- (2) However, the commission may appoint a person as an investigator only if the commission is satisfied the person is appropriately qualified.

#### **104C Appointment conditions and limit on powers**

- (1) An investigator holds office on any conditions stated in—
  - (a) the investigator's instrument of appointment; or
  - (b) a signed notice given to the investigator; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the investigator or a regulation may limit the investigator's powers.
- (3) In this section—  
*signed notice* means a notice signed by the commissioner.

### **104D When office ends**

- (1) The office of a person appointed as an investigator ends if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the office ends;
  - (c) the investigator's resignation under section 104E takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an investigator ends.
- (3) In this section—

*condition of office* means a condition under which the investigator holds office.

### **104E Resignation**

- (1) An investigator may resign by signed notice given to the commission.
- (2) However, if holding office as an investigator is a condition of the investigator holding another office, the investigator may not resign as an investigator without resigning from the other office.

## **Subdivision 2 Identity cards**

### **104F Issue of identity card**

- (1) The commission must issue an identity card to each investigator.
- (2) The identity card must—
  - (a) include a recent photo of the investigator; and
  - (b) include a copy of the investigator's signature; and
  - (c) identify the person as an investigator appointed under this Act; and



- (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **104G Production or display of identity card**

- (1) In exercising a power in relation to a person in the person's presence, an investigator must—
  - (a) produce the investigator's identity card for the person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an investigator does not exercise a power in relation to a person only because the investigator has entered a place as mentioned in section 105(1)(b) or (d).

### **104H Return of identity card**

If the office of a person as an investigator ends, the person must return the person's identity card to the commission within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **Division 3                    Entry of places by investigators**

### **Subdivision 1            Power to enter**

#### **105    General power to enter places**

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

- (b) the warrant may confer a power to re-enter the place and paragraph (a) applies to the power to re-enter.

## **Subdivision 2      Entry by consent**

### **105A    Application of subdivision**

This subdivision applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator 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 investigator 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 investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

### **105C    Matters investigator must tell occupier**

Before asking for the consent, the investigator 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 investigator may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
  - (a) the purpose of the entry, including the powers to be exercised; and
  - (b) the following has been explained to the occupier—
    - (i) the purpose of the entry, including the powers intended to be exercised;
    - (ii) that the occupier is not required to consent;
    - (iii) that the consent may be given subject to conditions and may be withdrawn at any time; and
  - (c) the occupier gives the investigator or another investigator 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 investigator 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.

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## **Subdivision 3      Entry under warrant**

### **105E    Application for warrant**

- (1) An investigator may apply to a magistrate for a warrant for a place.
- (2) The investigator 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 investigator 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 investigator or any investigator 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 investigator's powers; and

[s 105G]

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- (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 investigator reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the investigator's remote location.
- (2) The application—
  - (a) may not be made before the investigator prepares the written application under section 105F(2); but
  - (b) may be made before the written application is sworn.

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## 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 investigator, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the investigator; or
  - (b) otherwise—
    - (i) the magistrate must tell the investigator the information mentioned in section 105F(2); and
    - (ii) the investigator 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 investigator 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 investigator 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)—

[s 105I]

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- (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 investigator is intending to enter a place under a warrant issued under this subdivision.



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- (2) Before entering the place, the investigator 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 investigator's identity card or another document evidencing the investigator's appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the investigator is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.
- (3) However, the investigator need not comply with subsection (2) if the investigator 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 investigators after entering places**

### **105K    Application of division**

- (1) The powers under this division may be exercised if an investigator enters a place under section 105(1)(a), (c), (d) or (e).
- (2) However, if the investigator 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 investigator 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 investigator reasonably requires for exercising the investigator's powers under this part;
  - (g) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The investigator may take a necessary step to allow the exercise of a general power.
- (3) If the investigator takes a document from the place to copy it, the investigator must copy the document and return it to the place as soon as practicable.
- (4) If the investigator takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the investigator must produce the document and return the article or device to the place as soon as practicable.
- (5) If the investigator takes a person to, into or onto the place under subsection (1)(f)—
  - (a) the person—

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- (i) may do the things at the place and in the way the investigator reasonably requires for exercising the investigator's powers under this part; and
  - (ii) must not do anything the investigator 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 investigator.
- (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 investigator may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the investigator 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 investigator 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.

[s 105O]

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- (4) The investigator 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 investigator 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 investigators**

### **105O Power to require name and address**

- (1) This section applies if an investigator reasonably suspects a person has committed an offence against a relevant Act.
- (2) The investigator may require the person to state the person's name, date and place of birth and residential address.
- (3) The investigator 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 investigator must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

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### **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 investigator may require a person to make available for inspection by an investigator, or to produce to the investigator for inspection, at a reasonable time and place nominated by the investigator, 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 investigator may keep the document to copy it.
- (5) If the investigator copies the document, or an entry in the document, the investigator 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 investigator must return the document to the person as soon as practicable after copying it.

[s 105R]

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- (8) However, if a document certification requirement is made of a person, the investigator 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 investigator must inform the person, in a way that is reasonable in the circumstances, that the person must comply with the document production requirement even though complying with the requirement might—

- (a) tend to incriminate the person or expose the person to a penalty; or  
(b) disclose commercial in confidence information or expose the person to a risk of financial loss.

- (4) If the person fails to comply with the document production requirement and the investigator 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.

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**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 investigator 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 investigator 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 investigator 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.

[s 105U]

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- (2) The investigator may, by notice given to the person, require the person to—
  - (a) give the investigator information related to the offence by a stated reasonable time; or
  - (b) attend before the investigator 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 investigator; 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 investigators and forfeiture**

### **Subdivision 1            Power to seize**

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

An investigator who enters a place the investigator 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 investigator 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 investigator is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
  - (b) the investigator enters the place after obtaining the consent or under a warrant.
- (2) If the investigator enters the place with the occupier's consent, the investigator may seize a thing at the place only if—
- (a) the investigator reasonably believes the thing is evidence of an offence against a relevant Act; and

[s 106B]

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- (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 investigator enters the place under a warrant, the investigator may seize the evidence for which the warrant was issued.
- (4) The investigator may also seize anything else at the place if the investigator 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 investigator may also seize a thing at the place if the investigator 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 investigator who has entered a place under this part may seize a building product at the place if the investigator reasonably believes—
  - (a) the product is, or is proposed to be, associated with a building for an intended use and the product is a non-conforming building product for the use; or
  - (b) the product is the subject of a recall order under part 6AA, division 4, or a corresponding recall order.
- (2) In this section—

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

### **106C Power to seize dangerous places, structures and things**

- (1) This section applies if—
  - (a) an investigator 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 investigator 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 investigator 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 investigator 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 investigator or a person acting under the direction or authority of the investigator.

## **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 investigator 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—

[s 106F]

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- (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 investigator 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 investigator reasonably believes is in control of the seized thing to do an act mentioned in paragraph (a) or (b) or anything else an investigator 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.

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## **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 investigator'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 investigator'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 investigator seizes a place, part of a place, building, structure or other thing under this division unless—

- (a) the investigator 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 investigator to comply with this section.

(2) The investigator 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 investigator may delay giving the receipt and information notice if the investigator reasonably suspects giving them may frustrate or otherwise hinder an investigation by the investigator under this Act.
- (6) However, the delay may be only for so long as the investigator 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 investigator 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.

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## 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.

[s 106K]

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- (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 investigator—
- (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 investigator is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
  - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

*Example for paragraph (b)—*

the owner of the thing has migrated to another country

- (3) Regard must be had to the seized thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

### **106L    Information notice about forfeiture decision**

- (1) If the commissioner decides under section 106K(1) to forfeit a seized thing, the commissioner must as soon as practicable



give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.

- (2) If the decision was made under section 106K(1)(a) or (b), the information notice may be given by leaving it at the place where the seized thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she applies to the tribunal for a review of the decision.
- (4) However, subsections (1) to (3) do not apply if—
  - (a) the decision was made under section 106K(1)(a) or (b); and
  - (b) the place where the seized thing was seized is—
    - (i) a public place; or
    - (ii) a place where the notice is unlikely to be read by the former owner.

## **Subdivision 5      Dealing with property forfeited or transferred to State**

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

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

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

### **106N How property may be dealt with**

- (1) This section applies if, under section 106M, a place, part of a place, building or other structure or other thing becomes the property of the State.
- (2) The commissioner may deal with the place, part of the place, building, structure or thing as the commissioner considers appropriate, including, for example, by destroying it or giving it away.
- (3) The commissioner must not deal with the place, part of the place, building, structure or thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the commissioner sells the place, part of the place, building, structure or thing, the commissioner may, after deducting the costs of the sale, return the proceeds of the sale to the former owner of the place, part of the place, building, structure or thing.

## **Division 7 Additional powers for building products**

### **106O Power to have building products or samples examined**

- (1) This section applies if an investigator takes for examination a building product, or a sample of or from a building product, under section 105L(1)(b).
- (2) The commission may have the building product or sample examined.
- (3) A person must not, with intent to adversely affect the examination of a building product or a sample of or from a building product—
  - (a) tamper with a building product before an investigator 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 investigator 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 investigator 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 investigator may, by written notice given to the person in control of the building or structure, direct the person—
  - (a) to not use the building product or to not use the building product in a stated way or for a stated use; or
  - (b) to make the building product incapable of operation.
- (3) A person to whom a notice is given under subsection (2) must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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

- (1) This section applies if an investigator 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 investigator may direct the person in control of the place, or another person at the place, to take action the investigator considers necessary to remove or minimise the risk.

*Example of direction—*

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

- (ii) the circumstances are, or involve, the presence of a building product at the place; and
- (b) briefly, the circumstances that have caused or are likely to cause the risk; and
- (c) if the investigator 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 investigator 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 investigator may take any remedial action the investigator 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 7A            Damage and compensation

### Subdivision 1        Damage

#### 106S    Duty to avoid inconvenience and minimise damage

In exercising a power, an investigator must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

*Note—*

See also section 106U.

#### 106T    Notice of damage

- (1) This section applies if—
  - (a) an investigator damages something when exercising, or purporting to exercise, a power; or
  - (b) a person (the *assistant*) acting under the direction or authority of an investigator damages something.
- (2) However, this section does not apply to damage the investigator reasonably considers is trivial or if the investigator reasonably believes—
  - (a) there is no-one apparently in possession of the thing; or
  - (b) the thing has been abandoned.
- (3) The investigator must give notice of the damage to a person who appears to the investigator to be an owner, or person in control, of the thing.
- (4) However, if for any reason it is not practicable to comply with subsection (3), the investigator must—
  - (a) leave the notice at the place where the damage happened; and
  - (b) ensure it is left in a conspicuous position and in a reasonably secure way.

- (5) The investigator may delay complying with subsection (3) or (4) if the investigator reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the investigator.
- (6) The delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place.
- (7) If the investigator believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the investigator or the assistant, the investigator may state the belief in the notice.
- (8) The notice must state—
  - (a) particulars of the damage; and
  - (b) that the person who suffered the damage may claim compensation under section 106U.

## **Subdivision 2 Compensation**

### **106U Compensation**

- (1) A person may claim compensation from the commission if the person incurs loss because of the exercise, or purported exercise, of a power by or for an investigator including a loss arising from compliance with a requirement made of the person under this part.
- (2) The compensation may be claimed and ordered in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an alleged offence against this Act or a relevant Act the investigation of which gave rise to the claim for compensation.

[s 106U]

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- (3) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) In considering whether it is just to order compensation, the court must have regard to—
  - (a) any relevant offence committed by the claimant; and
  - (b) whether the loss arose from a lawful seizure or lawful forfeiture; and
  - (c) whether the loss arose from performing a function or exercising a power of an investigator in good faith and without negligence.
- (5) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.
- (6) Section 106S does not provide for a statutory right of compensation other than as provided by this section.
- (7) In this section—

*loss* includes costs and damage.

*relevant Act* means—

  - (a) this Act; or
  - (b) the *Building Act 1975*; or
  - (c) the *Building Industry Fairness (Security of Payment) Act 2017*; or
  - (d) the *Plumbing and Drainage Act 2002*.



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## **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 investigator 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 investigators**

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

[s 107B]

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

### **107B Impersonating investigator**

A person must not impersonate an investigator.

Maximum penalty—40 penalty units.

### **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.

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### **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—

[s 108AC]

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- (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

[s 108AE]

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- (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.
- (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—
  - (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 investigator 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

[s 108D]

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- (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.
- (5) In this section—  
*official* means—
  - (a) the commission; or
  - (b) an investigator 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.

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## 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—
    - (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, or the Attorney-General, (either generally or in the particular case) to bring the prosecution.

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- (2A) However, the commission must not bring a prosecution for an offence against this Act that is a crime.
- (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.

### **111AAA Enforcement action to comply with prescribed guidelines**

- (1) An entity considering taking enforcement action must consider a guideline, about taking enforcement action, prescribed by regulation.
- (2) A failure to comply with subsection (1) does not invalidate or otherwise affect the enforcement action.
- (3) Nothing in subsection (1)—
- (a) affects the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1984*, section 10; or
  - (b) affects the power of the Director of Public Prosecutions to act under the *Director of Public Prosecutions Act 1984*, section 11; or
  - (c) prevents a person from complying with a guideline made by the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1984*, section 11(1).
- (4) To the extent of any inconsistency between a guideline prescribed under subsection (1) and a guideline mentioned in subsection (3)(c), the latter guideline prevails.
- (5) In this section—
- enforcement action*** means—
- (a) a proceeding for an offence against this Act; or
  - (b) issuing an infringement notice for an offence against this Act; or

[s 111A]

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- (c) allocating demerit points for contraventions of section 73.

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

## **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
  - (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.

[s 111C]

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(5) In this section—

*executive liability provision* means either of the following provisions—

- section 42
- 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.
- (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
- (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

[s 115A]

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- (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

### **115B Commissioner's policy**

- (1) The commissioner may make a policy to give guidance about—
  - (a) compliance with this Act; or
  - (b) making decisions under this Act; or
  - (c) consumers' and licensees' rights under this Act; or
  - (d) enforcement of this Act.
- (2) However, the policy does not take effect until approved by regulation.
- (3) The commissioner must—
  - (a) publish the policy on the commission's website; and

- (b) keep copies of the policy available for inspection, free of charge, at the commission's office when the office is open to the public; and
- (c) if asked, advise where copies of the policy may be obtained.

### **115C Approved forms**

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

### **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.

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- (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—





- (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*.

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## **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.



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## 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*.

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## Part 6 **Transitional provisions for the Building and Construction Industry Payments Act 2004**

### 27 **Definitions for pt 6**

In this part—

*commencement* means the commencement of this part.

*former provisions* means sections 67H, 67I, 67J, 67Q, 67U and 67W, as in force before the commencement.

### 28 **Application of former provisions to existing building contracts**

The former provisions continue to apply to building contracts entered into before the commencement as if the *Building and Construction Industry Payments Act 2004*, schedule 1 had not commenced.

## Part 7 **Transitional provisions for Statutory Bodies Legislation Amendment Act 2007**

### 29 **Rights and entitlements of particular employees**

- (1) This section applies to a person who—
  - (a) becomes an employee of the employing office; and
  - (b) was an employee of the authority—
    - (i) immediately before the commencement of this section; and
    - (ii) immediately before becoming an employee of the employing office.
- (2) On becoming an employee of the employing office, 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, 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.

(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.

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*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.

Schedule 1

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- (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

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- (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—



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*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.

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## 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.

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- (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.

## **Part 15**

# **Transitional provisions for Building Industry Fairness (Security of Payment) Act 2017**

### **76 Board's policy**

- (1) A policy, made by the board under repealed section 19 and approved by regulation, in force immediately before the commencement continues in force—
  - (a) despite the repeal of section 19; and
  - (b) until the matters provided for under the policy are prescribed by regulation.

*Note—*

The policies in force were the Rectification of Building Work made by the board on 16 May 2014 and the Minimum Financial Requirements made by the board on 28 August 2015.

- (2) A regulation may declare the day a policy mentioned in subsection (1) expires under that subsection.

### **77 Continuation of existing appointments of particular investigators and inspectors**

- (1) An existing appointment of a person as an inspector under section 104 continues as an appointment as an investigator under section 104B.
- (2) An existing appointment of a person as an investigator under repealed section 246CP of the *Building Act 1975* continues as an appointment as an investigator under section 104B.
- (3) An existing appointment of a person as an investigator under repealed section 33A of the *Plumbing and Drainage Act 2002* continues as an appointment as an investigator under section 104B.
- (4) In this section—

*existing appointment* means an appointment in force immediately before the commencement.

### **77A Validation of particular continued appointments**

- (1) An existing appointment of a person continued as mentioned in section 77 is taken to have been continued as mentioned in that section from the commencement of the section as originally enacted.

*Note—*

Section 77 as originally enacted commenced on 10 November 2017.

- (2) Anything done between 10 November 2017 and the commencement of this section by a person as the holder of the appointment is taken to have been validly done by the person as if the appointment had been continued as mentioned in section 77 as in force after the commencement.
- (3) Nothing in this section continues the appointment of a person beyond the end of that appointment under section 104D.

## **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.

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## 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).



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## 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.

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## 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.



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## 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 form*** means a form approved by the chief executive or the commissioner under section 115C.

***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.

***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

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- (c) the provision of lighting, heating, ventilation, air conditioning, 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 speccy”.

*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***, 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.

***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.

***defects liability period***, for part 4A, see section 67A.

***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*** means a direction given under section 72(2).

***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** 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** see section 4AA.

**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.

**install** and **installer**, for part 6AA, see section 74AA.

**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.

***practical completion***, for part 4A, see section 67A.

***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** 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.

**responsible person**, for part 6AA, see section 74AA.

**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.