

Queensland



Explanatory Notes for SL 2003 No. 274

Building Act 1975

Integrated Planning Act 1997

State Penalties Enforcement Act 1999

BUILDING LEGISLATION AMENDMENT REGULATION (No. 1) 2003

GENERAL OUTLINE

Authorising law

The *Building Legislation Amendment Regulation (No. 1) 2003* is made under the provisions of the *Building Act 1975* (BA), *Integrated Planning Act 1997* (IPA) and *State Penalties Enforcement Act 1999*.

Section 4(1) of the BA states that a regulation (the “**Standard Building Regulation**”) made under the Act may be made about building work, the certification of building work, the occupation of buildings and matters relating to the accreditation of building certifiers. Other relevant sections of the BA are:

- Section 28 states that a regulation may authorise an entity to be an accrediting standards body (as amended by the *Plumbing and Drainage Act 2002* (PDA));
- Section 29A states that an application to the BSA for a building certifier licence must be made in the way prescribed under a regulation (as amended by the PDA);
- Section 32 gives the Chief Executive the authority to make a Code of Conduct and that this Code of Conduct must be approved by a regulation (as amended by the PDA); and

- Section 52 authorises the Governor in Council to make regulations, which may make provisions for fees payable under the Act, records required for the Act and fixing a penalty for an offence against a regulation.

Section 5.8.2(1) of the IPA provides the authority for the *Integrated Planning Regulation 1998*. Other relevant sections of the IPA are:

- Section 3.1.8 states that the jurisdiction of a referral agency is prescribed by a regulation;
- Section 4.2.7 provides for a Building and Development Tribunal to hear an appeal about matters prescribed by a regulation; and
- Section 4.2.15 provides for a Building and Development Tribunal's appeal fees to be prescribed by a regulation.

Section 165 of the State Penalties Enforcement Act provides the authority for *State Penalties Enforcement Regulation 2000*. The regulation may prescribe an offence to be an infringement notice offence and may also prescribe an infringement notice fine for an infringement notice offence.

Policy objectives and legislative intent

The policy objectives and intent of the legislation are to implement the outcomes of the National Competition Policy review of the BA and its subordinate legislation and improve the building certification system to ensure it operates to the highest possible standard and that public interests are properly protected by:

- Providing greater scrutiny in the licensing of building certifiers including a requirement for certifiers to have minimum regulatory competencies, a more objective suitability test for licence applicants and a new code of conduct regulating the practice of building certifiers;
- Improving documentation requirements for the approval of building work including requirements for building design professionals to lodge better information and certifiers to document reasons for decisions;
- Introducing more rigorous procedures for the inspection of building work including mandatory final inspection certificates

for housing and constraints on the use of competent persons carrying out inspections on behalf of building certifiers;

- Introducing of on-the-spot fines for certain offences by building certifiers;
- Implementing a legislative framework to adopt the Queensland Development Code (QDC); and
- Introducing new contemporary siting standards for single detached housing.

How policy objectives will be achieved

Greater scrutiny in the licensing of building certifiers

The reviews of the building certification system has identified the need for greater scrutiny in the licensing of building certifiers including a requirement for certifiers to have minimum regulatory competencies, a more objective suitability test for licence applicants, a revised scope of functions building surveying technicians may perform, and a new code of conduct regulating the practice of building certifiers.

Building certifiers issuing building approvals that do not comply with town planning requirements are the primary source of complaint by local governments. Investigations by the Department confirm the contributing factors for non-compliance are the complexity of planning schemes and inadequacies in the competence of the building certifier profession.

The NCP review acknowledges the current requirement for a building certifier to pass a “fit and proper person” test, results in a benefit to the public and should therefore remain part of the legislation. However, the review recommended the legislation needs to be more objective and not allow broad discretion by the BSA. A requirement that applicants must pass a subjective test as to their suitability to be licensed has the potential to unfairly exclude persons from practising despite possessing the necessary qualifications.

The *Standard Building Regulation 1993* (SBR) currently reserves certain areas of practice to building certifiers depending on their level of licence and whether a local government employs them. Building certifiers licensed at the bottom level of building surveying technicians employed by local governments can approve building work for the most common size buildings. Their private sector counterparts cannot approve any building work. They can only assist in assessing and inspecting building work. The

NCP review identified that these arrangements are a breach of competitive neutrality.

The review of the certification system also identified the need to improve the transparency and accountability of the licensing system by providing building certifiers with access to a timely, low cost and effective appeal mechanism for matters relating to licensing and show cause procedures before action to cancel, suspend or make other changes to a certifier's licence is taken.

To address these issues the amendment Regulation will improve the scrutiny, transparency and accountability in licensing building certifiers by:

- Establishing minimum planning and regulatory competencies for building certifiers who issue development permits;
- Introducing a more objective test for determining the suitability of applicants for licensing as building certifiers;
- Providing for a new code of conduct to regulate the behaviour of building certifiers;
- Revising the scope of functions building surveying technicians may perform.
- Requiring the BSA to provide a building certifier an opportunity to show cause why action to cancel, suspend or make other changes to a certifiers licence should not be taken; and
- Providing for an appeal against the BSA decision on a licence application to a Tribunal established under the *Commercial and Consumer Tribunal Act 2003*.

Improved documentation requirements for the approval of building work

Audits undertaken by the BSA have identified a range of poor professional practice issues regarding the approval of building work. These include building certifiers not obtaining site information, building design professionals not lodging adequate information in applications, and certifiers not documenting reasons for decisions.

The auditing of building certifiers has identified difficulties in proving professional misconduct against some building certifiers because of the lack of available evidence. If a building certifier is required to document the reasons for various decisions, this will increase accountability of building certifiers, particularly when audits are undertaken or complaints investigated. Building certifiers should also be able to demonstrate that

they have acted in the public interest when forming an opinion or making a decision.

Owner awareness is considered a critical accountability mechanism in ensuring both builders and certifiers perform adequately. Where builders engage certifiers, the owner is unlikely to receive approval documents until after the contract is completed as these documents are currently forwarded to the applicant for the building work who is often the builder.

To address these issues the amendment regulation will increase the accountability of building design professionals and building certifiers by:

- Improving the availability of development information by enabling building design professionals and building certifiers to apply to a local government on an approved form for a copy of development information and the local government must give the person a copy of the information.
- Requiring building design professionals to prepare plans for a development application for building work to a suitable standard. This will require building design professionals to take greater care in designing buildings, including obtaining any necessary information from the local government and inspecting the site.
- Requiring the names and licence numbers of building design professionals who prepare documents for an application to be shown on the documents. This will underpin the BSA's compliance role and in combination with prescribing the standard of documentation required to accompany an application, will place greater onus on the person preparing documents for the application.
- Imposing more rigorous documentation requirements on what documents building certifiers are to provide to local governments after approving a development application or undertaking inspections.
- Requiring building certifiers to directly provide owners (nominated on the application form) of building work for a single detached house and other associated outbuildings (i.e. carport, shed, pool or the like) a copy of the building approval and inspection certificates for their building.

More rigorous procedures for the inspection of building work

The reviews of the building certification system has identified the need for more rigorous procedures for the inspection of building work including mandatory final inspection certificates for housing and constraints on the use of competent persons carrying out inspections on behalf of building certifiers.

Currently, mandatory inspections are required on all houses and domestic sheds. The inspections can be carried out by a licensed building certifier or by a competent person on behalf of the building certifier. No specific documentation is required to be produced as a record of these inspections. However, the SBR does require a private certifier to provide a copy of any inspection documents they do produce to the local government. This includes any diary notations made by the private certifier.

Brisbane City Council reports that approximately 50% of houses approved within Brisbane have had no inspection information lodged with the local government. This indicates many houses may have been completed without inspection being requested by the builder. Alternatively, it may indicate that some certifiers are not lodging inspection information with local government.

Building certifiers currently may accept certification of particular components or aspects of building work from a person competent to assess and inspect the work. Certification by competent persons is intended to apply to the assessment of those elements of building work which are outside the expertise of a building certifier, or which can be equally assessed by another person. However, some certifiers are either not using competent persons to assess specialised aspects of a building beyond their own competencies (eg. fire engineering), or are accepting certification from persons of questionable independence or competency (eg. builders).

Remote local governments are experiencing problems in carrying out the mandatory inspections because of a lack of readily available expertise, either in their area or within a reasonable distance of their local government area. In remote localities where there is acceptable low risk to the community, there is merit in exempting building work from mandatory inspection requirements.

To address these issues the draft regulation proposes more rigorous procedures for the inspection of building work by:

- Providing that the builder must ensure a notice for inspection of building work is given to the building certifier for the work;

- Providing that it is an offence for building certifiers not to carry out mandatory inspections for particular stages of building work;
- Placing constraints on the use of competent persons carrying out inspections on the behalf of building certifiers;
- Requiring mandatory final inspection certificates for class 1a buildings and class 10 buildings and structures to be given directly to an owner of building work;
- Requiring building certifiers to give builders a written notice about the compliance with the Building Act of inspected building work;
- Requiring a building certifier to notify local government if a builder fails to comply with an enforcement notice;
- Providing local governments with the ability to declare localities and forms of building work exempt from inspection.

Legislative Framework to Adopt Queensland Development Code

The amendment regulation will establish a legislative framework to adopt the QDC.

Queensland building standards are primarily contained in the SBR, which calls up the Building Code of Australia (BCA). Whilst the BCA is promoted as a uniform national standard for building work, the SBR also contains Queensland specific standards relating to building setbacks, site-work, swimming pool fencing, temporary and special structures, and floating buildings. Many new buildings are also subject to a range of State Acts, which require additional building and construction standards for specific matters.

For several years, the Department has been working on integrating these additional building standards into the Queensland Additions to the BCA. The QDC complements the BCA by consolidating many of these building standards into a single document. It will replace the current Queensland additions to the BCA and contain new building standards currently being prepared by the Department.

The objective is to consolidate all building standards contained in Queensland legislation into a single document. This provides ease of use and certainty to the building industry by avoiding unnecessary duplication and possible conflict with other building standards. It also improves the quality and cost effectiveness of regulations.

New siting standards for single detached housing

The amendment regulation will replace the dated provisions currently contained in the SBR relating to siting of single detached housing and associated buildings and structures with new contemporary standards contained in the QDC. These standards have been developed with the help of an industry and local government working group.

Local governments will be able to apply alternative standards under planning schemes to the siting standards in the code. For boundary clearances and site cover, unless a local government introduces its own siting standards for single detached housing in its planning scheme, the QDC siting standard will have effect (by default). This is necessary to ensure that minimum siting standards are always applicable even if they are not contained in a planning scheme.

Private certifiers will be permitted to assess building applications against the prescriptive requirements of the siting standards (as currently allowed under the SBR). Any discretion provided by the performance criteria of these standards will be exercised by referral of applications to the local government.

These amendments will not in themselves increase the responsibilities of private certifiers.

The amendment regulation will also clarify the jurisdiction of Building and Development Tribunals established under the IPA to decide appeals involving siting requirements for housing contained in planning schemes.

Proposed changes to section 3 of the SBR resolve the current uncertainty about alternative siting provisions in planning schemes by clarifying that the alternative provisions are also SBR provisions for applying and performing functions under the SBR. This amendment makes it clear that the tribunal has jurisdiction to deal with alternative siting provisions in schemes because they are SBR provisions.

Consistency with authorising Act and other legislation

Building Act 1975

The *Building Act 1975* does not include an objects clause in its preliminary section. However, an indication of the objectives of the *Building Act 1975* may be found in the long title, which is:

‘An Act to authorise the making of standard laws about the erection of buildings and other structures, to provide for building certifying, and for other purposes.’

Further clarification with respect to the objectives of the *Building Act 1975* are detailed in the first reading speech, as follows:

‘The purpose of this Bill primarily is to introduce in Queensland a standard set of by-laws governing the erection of buildings and to provide machinery for the effective implementation of such by-laws. The introduction of the by-laws is aimed at providing sound technical standards for the construction of buildings and to ensure adequate protection for the public, particularly in the use of multi-storey buildings.’

The proposed amendments are consistent with the above stated policy objectives. Particularly, the proposed amendments to the SBR ensure adequate protection for the public by:

- Increasing the accountability of builders, building certifiers and building design professionals through more rigorous documentation requirements and effective disciplinary processes;
- Ensuring that building certifiers have the appropriate competencies to undertake building certification functions; and
- Ensuring that competent persons are relied upon only where they are licensed practitioners.

Integrated Planning Act 1997

The objectives of the *Integrated Planning Act 1997* are set out in s.1.2.1, namely:

‘The purpose of this Act is to seek to achieve ecological sustainability by—

- (a) coordinating and integrating planning at the local, regional and State levels; and*
- (b) managing the process by which development occurs; and*
- (c) managing the effects of development on the environment (including managing the use of premises).’*

Ecological sustainability is defined in s.1.3.3 as:

‘... a balance that integrates—

- (a) *protection of ecological processes and natural systems ...;*
and
- (b) *economic development; and*
- (c) *maintenance of the cultural, economic, physical and social wellbeing of people and communities.'*

The proposed amendments are consistent with the above stated policy objectives. Particularly, the amendments to the *Integrated Planning Regulation 1998* ensure:

- Coordination between the *Building Act 1975* and *Integrated Planning Act 1997* by setting definitions in the legislation with reference to another (see proposed cl.6); and
- Maintenance of economic and physical wellbeing of people and communities by requiring certain types of building work to be referred to a referral or concurrence agency for approval (Proposed cl.9).

Consistency with other legislation

Queensland legislation

The amending legislation is not inconsistent with the objectives of other relevant legislation, including:

- *Queensland Building Services Authority Act 1991;*
- *Commercial and Consumer Tribunal Act 2003;*
- *Plumbing and Drainage Act 2002* (not yet commenced);
- *Local Government Act 1993;* and
- *Workplace Health and Safety Act 1995.*

National consistency

The SBR is the enabling legislation for the Building Code of Australia (BCA). More specifically, s.8 of the SBR, states:

'BCA forms part of and is to be read as one with this Regulation.'

The proposed amendments do not amend this particular provision, thereby maintaining consistency with the BCA. Specific provisions of the amending legislation do amend the performance standards included within the BCA. However, these amendments move building standards from the

Queensland chapters of the BCA into the QDC, consistent with the consolidation of Queensland building standards into the QDC.

Benefits and costs of implementing the legislation

The table provides a summary of costs and benefits of the amending legislation.

Summary of Costs and Benefits		
Stakeholder Group	Costs	Benefits
Local Government (including Assessment Managers)	<ul style="list-style-type: none"> • Additional administration and documentation costs. • Additional costs for training and educating staff. • Additional costs where building surveying technicians will need to be supervised by building certifiers with a higher level licence. 	<ul style="list-style-type: none"> • Efficiencies through the consolidation of building standards into the Queensland Development Code. • Reduced time spent on making complaints.
Department of Local Government and Planning	<ul style="list-style-type: none"> • Costs relating to the development of approved forms, checklists and guidelines (and subsequent updates). • Cost of developing and administering the Code of Conduct. • Small increase in administrative costs. 	<ul style="list-style-type: none"> • Efficiencies through the consolidation of building standards into the Queensland Development Code.

Summary of Costs and Benefits		
Stakeholder Group	Costs	Benefits
Building Services Authority	<ul style="list-style-type: none"> • Costs of changing systems from accrediting to licensing. • Cost of administering and issuing on-the-spot fines. • Cost of subsidising hearing costs of Commercial and Consumer Tribunal for licensing appeals. 	<ul style="list-style-type: none"> • More effective auditing processes due to need for building certifiers to keep better records. • Reduced time spent on investigating complaints. • Revenue from on-the-spot fines. • Any costs in administering the Code of Conduct is eliminated. • More effective disciplinary process.
Building and Development Tribunal	<ul style="list-style-type: none"> • Additional responsibilities will increase operating costs (offset by appeal fees). 	<ul style="list-style-type: none"> • Increases in appeal fees • More effective appeals process due to a broader range of skills.
Commercial and Consumer Tribunal	<ul style="list-style-type: none"> • Additional responsibilities will increase operating costs (offset by appeal fees collected by Tribunal and licensing fees collected by BSA). 	<ul style="list-style-type: none"> • More effective appeals process through access to timely, low cost appeals mechanism.

Summary of Costs and Benefits		
Stakeholder Group	Costs	Benefits
Building Certifiers (including private certifiers)	<ul style="list-style-type: none"> • Increased documentation requirements, such as mandatory final inspection certificates for housing and mandatory provision of final inspection documents to owners. • Minimum planning and regulatory competencies for building certifiers who issue development permits. • It may take some time for industry participants to come to terms with the new requirements. • Additional obligations under the amended Code of Conduct. • On-the-spot fines for non-compliance with certain provisions of the legislation. • Costs may be passed on to consumers. 	<ul style="list-style-type: none"> • Improved perception of the industry / profession. • Efficiencies through the consolidation of building standards into the Queensland Development Code. • More effective processing of building applications. • Fairer, more objective suitability test. • More effective and less costly appeals processes. • Clarification of building certifiers' responsibilities. • Greater flexibility in setting times for inspections.

Summary of Costs and Benefits		
Stakeholder Group	Costs	Benefits
Private Certifiers (i.e. costs and benefits applying only to private certifiers)	<ul style="list-style-type: none"> • Additional administration and documentation requirements. • It may take some time for industry participants to come to terms with the new requirements. • Costs may be passed on. 	<ul style="list-style-type: none"> • Improved perception of the industry / profession. • More effective processing of building applications. • Greater access to information. • Clarification of private certifiers' responsibilities. • Some of the competitive advantage of local governments eliminated.
Competent Persons	<ul style="list-style-type: none"> • Only practitioners who are licensed or registered will be able to provide certification as a competent person. • It may take some time for industry participants to come to terms with the new requirements. • This may exclude some persons, such as fire engineers, who are not required to be licensed or registered, from providing a certificate as a competent person. 	<ul style="list-style-type: none"> • Where builders are no longer able to provide certification as a competent person, other persons may take on these roles.

Summary of Costs and Benefits		
Stakeholder Group	Costs	Benefits
Builders	<ul style="list-style-type: none"> • It may take some time for industry participants to come to terms with the new requirements. • Builders are no longer able to provide certification as a competent person (for their own building work). • Additional administrative costs. • Costs may be passed on. 	<ul style="list-style-type: none"> • Improved perception of the industry / profession. • Clarification of builders' responsibilities. • Greater flexibility in setting times for inspections.
Building Design Professionals (Designers, Architects, Engineers, etc)	<ul style="list-style-type: none"> • Higher expectation on the work that building design professionals submit will mean that some designers will need to "lift their game". • Additional costs relating to the extended requirements for development application. • It may take some time for industry participants to come to terms with the new requirements. • Costs may be passed on. 	<ul style="list-style-type: none"> • Improved perception of the industry / profession.
Australian Institute of Building Surveyors	<ul style="list-style-type: none"> • Minimal additional costs as there are no new obligations. 	<ul style="list-style-type: none"> • Clarification of the AIBS' role as an accreditation standards body.

Summary of Costs and Benefits		
Stakeholder Group	Costs	Benefits
Building Owners	<ul style="list-style-type: none"> • Additional costs incurred by building certifiers are likely to be passed on to consumers. • Additional cost for information requests from local government. 	<ul style="list-style-type: none"> • Improved consumer protection through greater building certifier accountability. • Improved confidence in the industry / profession. • Greater owner awareness through the provision of final inspection documents. • Quality of building work is likely to improve as building work becomes more integrated with town planning and the mandatory licensing of “competent persons” will minimise defects. • Greater access to information.
Community	<ul style="list-style-type: none"> • Additional cost for information requests from local government. However, these are likely to be minimal as proposed legislation will streamline the processes. 	<ul style="list-style-type: none"> • Improved compliance with performance standards is likely to lead to a reduction in public health risks and improved amenity and aesthetic aspects of building work. • Efficiency gains through the removal / reduction of anti-competitive provisions within the legislation.

Costs relating to additional documentation requirements

Estimates provided by stakeholders indicate that the additional documentation requirements of the proposed regulation represent an additional hour of administrative tasks.

Based on average salary costs for administrative support, this equates to \$21.60 per application for a junior administrative assistant to \$25.95 per application for an administrative assistant.¹ In 2001/02, there were 25,918 new houses approved in Queensland.² Thus, these additional administrative tasks are estimated to add \$560,000 to \$673,000 to total building certifiers' costs each year.

These costs are likely to underestimate the actual cost to building certifiers as they do not include those applications that were not approved or applications pertaining to other types of building work.³

While these costs are initially borne by building certifiers, they are likely to be passed on to consumers.⁴ Given that these additional costs represent less than 0.05% of the value of new homes approved in 2001/02,⁵ they are therefore not considered to be significant.

These estimates were considered too low by a number of industry participants, particularly in relation to the additional time required to meet the requirements of the amendments. Also, one industry practitioner argued that these responsibilities would not be delegated to an administration assistant.

1 Australian Institute of Management National Salary Survey 2002, Mercer Human Resource Consulting Quarterly Salary Review 2003.

2 ABS Building Approvals Report, Catalogue No. 8731.3, March Quarter 2003.

3 There is insufficient data to estimate the costs for building certification for other types of building work.

4 Some practitioners indicated these costs would be passed on to consumers immediately, while other practitioners argued that there would be limited scope for the costs to be passed on.

5 The value of new houses approved in 2001/02 was \$3.6 billion (ABS Building Approvals Report, Catalogue No. 8731.3, March Quarter 2003).

Costs relating to endorsement for issuing a development permit

Building certifiers will incur additional costs where they seek to have their licence endorsed to issue a development permit. Based on an assumption that 288 building certifiers⁶ will seek endorsement, the cost to the industry of obtaining the additional required competencies has been estimated in the first year at \$253,440 (excluding any travel and accommodation costs). Given that not all building certifiers are likely to seek endorsement to issue development permits, this estimate is likely to represent the upper limit of the additional training costs for building certifiers. Thereafter, the BSA estimate that there will be approximately 15 to 20 new building certifiers licensed each year. This translates to an annual cost to the industry of up to \$17,600.

The above estimate is based on the cost of a course (“Accredited Certifier Program”) provided by the University of Technology in Sydney. This course, which is directed at building certifiers in NSW, is designed to provide a comprehensive understanding of the detailed provisions of the relevant legislation and related requirements. It is a two-day course with a course fee of \$880 per person.

The Department is currently developing a training program, which will allow building certifiers to attain the required planning and regulatory competencies. It is expected that this will be a two-day course, with flexible delivery options. That is, the Department will be considering a range of delivery options, including lectures and online training.

This course is being developed in two stages, with the first stage being the development of the competency standards. These standards will outline the abilities required from building certifiers including the learning outcomes for each standard and the level of achievement required. The first stage also involves the development of the terms of reference for the training program to be delivered in the second stage. At the completion of the first stage, the Department will seek an invitation to offer from suitably qualified suppliers to deliver the training program using the terms of reference developed in the first stage.

These costs are initially borne by building certifiers, but are likely to be passed on to consumers.

⁶ This includes all licensed private certifiers at building surveyor and assistant building surveyor level, as at December 2002 (BSA Midyear Financial Report on Building Certification, December 2002).

Costs to local government

The additional costs and resources incurred by local governments will include those relating to:

- Implementation of changed administrative processes and related training costs for staff;
- Changes to literature, facts sheets, application kits, web information and other information sources;
- Additional archiving requirements for the additional information provided by building certifiers;
- Additional reporting and budget amendments for fees and charges;
- Training to enable building surveyors to be endorsed to issue development permits;⁷ and
- Changes to forms for application for siting requirements under the Queensland Development Code.

The extent of any increase in the administrative burden on a local government will depend on the procedures currently used for these processes. Further, local governments may fix a fee to recover the real costs for performing these functions.

Some local governments will also incur additional costs where the local government chooses to retain building surveying technicians and have them supervised by building certifiers with a higher level of accreditation or provide for training (rather than demote or make the building surveyor technician redundant).

Costs to State agencies

Additional responsibilities imposed by the Regulation will increase the operating costs of the Building and Development Tribunal and the Commercial and Consumer Tribunal. These costs will be offset by appeal fees collected by the Tribunals.

⁷ This cost is included in the additional training costs for the building certifiers.

These Tribunals provide a timely, low cost, and effective dispute resolution system more accessible than the Court for small-scale disputes. This greater accessibility to a dispute resolution system also makes decision-making processes more accountable.

The proposed Regulation will impose additional costs on the BSA to change systems from accrediting to licensing, administer and issue on-the-spot fines, and subsidise hearing costs of Commercial and Consumer Tribunal for licensing appeals.

However, the BSA will benefit from a more effective auditing process due to the need for building certifiers to keep better records, reduced time spent on investigating complaints, revenue from on-the-spot fines, and transferring the any cost in administering the Code of Conduct to the Department of Local Government and Planning.

Benefits

The proposed amendments are expected to deliver a range of benefits to several of the industry stakeholder groups, however, the ultimate beneficiary will be the end consumer, including the owners and users of buildings and structures.

By imposing more effective accountability mechanisms on building certifiers and other industry practitioners the community is certain to benefit from the reduced public safety risk.

The proposed amendments aim to improve the safety of all buildings and structures occupied by the community through improved accountability mechanisms for industry practitioners. Ensuring the buildings that the community reside in, including houses, units and boarding houses, are safe to occupy is a fundamental element of community safety and wellbeing. The proposed amendments also apply to places where communities congregate such as malls, churches and halls thereby making the community a safer place for everyone.

The decision to purchase or build a home is often one of the most important decisions that an individual or family will make in their lifetime. Accordingly, if problems arise during the building process it can be not only financially devastating for the owner,⁸ but emotionally devastating as well. Similarly, developers and project builders who assume the financial risks associated with building a home (before they sell it on to the consumer), also risk significant financial loss if building works do not go as planned. Unlike a faulty electrical good, it is not possible to return an unsafe house and get a replacement. The proposed amendments aim to establish more effective checks and balances and improve the documentation of building processes so that potential problems during building works are minimised.

The proposed amendments will also protect the outcomes of the local government planning schemes, which set out the desired environmental⁹ outcomes and the measures to facilitate those desired outcomes for each local government area. That is, greater compliance with the planning schemes (through improved planning and regulatory competencies) will ensure that development approvals are consistent with, and do not detract from, the desired social, economic and aesthetic outcomes outlined in the planning scheme.

Building industry practitioners, including designers, engineers, architects, surveyors, builders and building certifiers, also stand to benefit from the proposed amendments. It is expected that consumer perception of the industry's reliability and integrity will improve as a result of the proposed amendments and hence the overall industry reputation will improve.

8 In 2002, Australians were estimated to have held 58% of their wealth in dwelling assets (source: Commonwealth Department of Treasury).

9 "Environment" is broadly defined in the *Integrated Planning Act 1997* to include people and communities as part of the ecosystem, as well as the social, economic, aesthetic and cultural conditions affecting ecosystems.

The industry will also benefit from the additional documentation requirements imposed on industry practitioners. More effective documentation will result in benefits to building owners as they are better informed and will also make the auditing and investigation requirements more effective. The BSA will have better quality records to rely on for complaint investigations, and building certifiers and other practitioners will have more accurate records to demonstrate the basis of their decisions and actions.

Net costs / benefits

Overall, the additional costs on industry are likely to be small relative to the public health and safety benefits. The stakeholders consulted were generally in agreement that the majority of building certifiers already have appropriate quality controls. Further, some stakeholders believed that the majority of building certifiers would not have to amend their practices to any great extent. Therefore, it is expected to be only a small group of building certifiers who will need to significantly change their practices to meet the requirements of the amended legislation. While the industry will bear the initial costs of the new obligation, it is likely that these costs will be passed on to consumers.

Consistency with fundamental legislative principles

The fundamental legislative principles (FLPs), which are set out in section 4 of the *Legislative Standards Act 1992*, set out guiding principles for the development of legislation in Queensland. Particularly, the FLPs require legislation to have regard to the rights and liberties of individuals and the institution of Parliament.¹⁰

The proposed Regulation is consistent with the FLPs. Particularly, the amending legislation has sufficient regard to the rights and liberties of individuals as:

10 Section 4 of the *Legislative Standards Act 1992* expands on these principles.

- The administrative power of the BSA in relation to licensing of building certifiers and endorsement of licences to issue development permits is appropriately defined. Particularly, the criteria for licensing and endorsement under the amendments are more objectively defined. Further, the BSA will be required to provide reasons for cancelling licences or endorsements, and those decisions are reviewable;
- The review process included within the amending legislation is consistent with the principles of natural justice;
- The proposed amendments allow the delegation of administrative power only in appropriate cases and to appropriate persons. For example, the power to approve guidelines for inspections is provided only to the Chief Executive of the Department; and
- The proposed amendments do not adversely affect rights and liberties, or impose obligations, retrospectively. Particularly, the transitional provisions ensure that rights conferred under the existing legislation in relation to accreditation and rights of appeal are carried through under the amended legislation.

Also, the proposed legislation has sufficient regard to the institution of Parliament as:

- The amendment is within the power conferred by the authorising law and are consistent with the policy objectives of the authorising law;
- The content of the amending legislation is within the scope of subordinate legislation envisaged within the authorising law; and
- Only statutory instruments, namely regulations made under Acts, are amended.

The Scrutiny of Legislation Committee raised some concerns in relation to the introduction of the Code of Conduct under the *Plumbing and Drainage Bill 2002*. Specifically, the Committee was concerned that the bill placed significant reliance on government-generated documents that were not subordinate legislation.

However, the Code has no effect until it is approved under a regulation and has the legal status of a statutory instrument within the meaning of the *Statutory Instruments Act 1992*. Any amendments to the Code of Conduct will also require an amending regulation to adopt a new edition of the Code published at a future date.

As the approving regulation is subordinate legislation, it will be subject to the tabling and disallowance provision of Part 6 of the *Statutory Instruments Act 1992*. If for some reason the Legislative Assembly objects to the substance of the Code, it can disallow the approving regulation, which would prevent the Code from coming into force.

National competition policy

An Interdepartmental Review Committee¹¹ undertook a National Competition Policy (NCP) review of the *Building Act 1975* and subordinate legislation in 2002, with the assistance of independent consultants.¹² As noted previously, a number of the proposed amendments in the *Building Legislation Amendment Regulation (No. 1) 2003* stem from that NCP Review.

The restrictions on competition that remain within the amending legislation, but which were judged to be in the public interest by the NCP Review are:

- Accreditation requirements, particularly compulsory professional development (CPD), which are a restriction on market entry. The NCP Review concluded that CPD is necessary in light of the constant revisions to the building legislation and also to avoid additional pressures on the auditing system; and
- Accreditation fees, which are also a restriction on market entry, particularly for small operators. The NCP Review found that the fees were justified to cover the cost of operating the accreditation scheme.

The restrictions on competition in the existing legislation that are being amended in accordance with the recommendations of the NCP Review are:

- Allowing building surveyor technicians employed by local government to certify certain buildings and structures, while technicians employed elsewhere can only assist in assessing and inspecting those certain building and structures. This is anti-competitive because it provides local governments with a

11 The Interdepartmental Review Committee comprised representatives from the Department of Local Government and Planning, Building Codes Queensland, Queensland Building Services Authority and Department of Treasury.

12 Department of Local Government and Planning 2002, National Competition Policy Review of the *Building Act 1975*.

legislated competitive advantage over private certifiers (i.e. a competitive neutrality issue);

- The amendment Regulation therefore provides a grandfather clause for a seven year period to allow accredited building surveying technicians currently employed by local governments to continue to perform building certifying functions as currently prescribed in the regulation. After the expiration of the grandfather period, only building surveying technicians employed by local governments other than those listed in the attached schedule 7 of the Regulation will be able to approve building work;
- The requirement for licence endorsement to issue development permits, which represents a restriction on market entry. The NCP Review recommended these amendments to address concerns that private certifiers were issuing building approvals that were not compliant with town planning requirements;
- The suitability test associated with accreditation (or licensing under the amended legislation) for building certifiers. The NCP Review concluded that the existing subjective test had the potential to exclude persons from practising as building certifiers even though they may have the necessary qualifications. Therefore, the NCP Review recommended that the “fit and proper person” test be made more objective and not allow broad discretion by the licensing body;
- The Code of Conduct, which is now to be approved by the Chief Executive of the Department. The NCP Review recommended this amendment so as to allow the Department to more effectively respond to emerging professional practice issues; and
- The inclusion of on-the-spot fines for offences against specific provisions of the legislation. The NCP Review recommended this amendment to enable the BSA to better address poor standards of professional practice.

The proposed Regulation contains additional restrictions on competition, namely the new definition for competent person (see proposed cl.16), the prohibition on accepting a certificate from a builder (see proposed cl.42 new section 87C) and the obligation placed on the building certifier to record their reasons for considering the person to be a competent person (see proposed cl.29). These amendments restrict the number of persons that

may be considered competent and increase compulsory costs for building certifiers, respectively.

However, the reason for making these amendments is to ensure that building certifiers do not accept certificates from persons of questionable independence or competency, which might otherwise compromise the public health aspects of the building work. Relative to the potential public health risks associated with accepting a certificate from a person of questionable competence, the costs of complying with these restrictions are small. Therefore, these restrictions are considered to have a net public benefit.

CONSULTATION

Community

In accordance with the requirements of the *Statutory Instruments Act 1992* advertisements about the availability of the RIS were placed in the press and notified in the Government Gazette following Cabinet's noting of the RIS.

Consultation kits containing copies of the RIS, the proposed amendment regulation, explanatory notes, and the proposed Code of Conduct for building certifiers were sent to key stakeholder groups and other persons with a known interest in the proposed legislation. Three hundred and twenty two copies of the consultation kits were distributed including all local governments, private certifiers and industry associations.

The consultation kits were also made available on request to other parties and were published electronically on the Internet through the Department of Local Government and Planning's website (www.dlgp.qld.gov.au) and a link was also placed on the "Queensland Regulations: Have your say!" website available through the Department of State Development website (www.sd.qld.gov.au).

Twenty-seven written submissions commenting on the Regulatory Impact Statement and the amendment regulation were received. The responses to the Regulatory Impact Statement have been considered in finalising the regulation.

Before the public release of the RIS, the major medium of consultation has been through the promulgation of confidential drafts of the amendment regulation to representatives of the following industry organisations.

- Australian Institute of Building Surveyors;
- Building Designers Association of Queensland;
- Housing Industry Association;
- Independent Private Certifiers Association of Queensland;
- Institution of Engineers;
- Local Government Association of Queensland;
- Queensland Master Builders Association; and
- Royal Australian Institute of Architects.

Government

Agencies consulted are listed below—

- Education Queensland;
- Department of Emergency Services;
- Department of Families;
- Department of Health;
- Department of Industrial Relations;
- Environmental Protection Agency;
- Department of Housing;
- Department of Innovation & Information Economy, Sport & Recreation Queensland;
- Department of Justice and Attorney-General;
- Department of Main Roads;
- Department of Natural Resources and Mines;
- Department of Primary Industries (Office of Rural Communities);
- Department of Public Works;
- Department of State Development (Business Regulation Reform Unit);

- Department of the Premier and Cabinet;
- Department of Tourism, Racing and Fair Trading
- Department of Transport;
- Queensland Building Services Authority;
- Department of Police;
- Queensland Treasury.

RESULTS OF CONSULTATION

The responses to the Regulatory Impact Statements have been considered in finalising the proposed regulation.

Departmental Agency Consultation

All agencies listed above agree to the authority to forward significant subordinate legislation.

Community

The Local Government Association of Queensland has expressed support for the proposed Regulation. Other industry stakeholders consulted are supportive of the proposed Regulation.

A number of industry practitioners have criticised the proposed Regulation for imposing additional costs on the building industry, which will be passed onto consumers.

However, the ultimate beneficiary will be the end consumer, including the owners and users of buildings and structures. By imposing more effective accountability mechanisms on building certifiers and other industry practitioners (as well as imposing on-the-spot fines for added incentive) the community will benefit from the building certification system operating to the highest possible standards, and the public interests being properly protected.

A series of minor changes to the Regulation resulted from consultation on the RIS including—

- Revised role of building surveying technicians;
- Which owner should receive approval and inspection documents;
- Enforcement notices mandated;
- Standard of inspection required;
- Assessment of competent persons;
- Offence by other building practitioners;
- Local government may declare exemption from inspection.

Revised Role of Building Surveying Technicians

The SBR currently reserves certain areas of practice to building certifiers depending on their level of licence and whether a local government employs them. Building certifiers licensed at the bottom level of building surveying technicians employed by local governments can approve building work for the most common size buildings. Their private sector counterparts cannot approve any building work. They can only assist in assessing and inspecting building work.

The National Competition Policy (NCP) review identified that these arrangements are a breach of competitive neutrality. The review concluded allowing only building surveying technicians employed by remote councils to approve building work is in the public interest. Otherwise, building surveying technicians should only assist in assessing and inspecting building work irrespective of their employer.

Concern was expressed by stakeholders that by allowing only building surveying technicians employed by remote and small councils to approve building work would render redundant building surveying technicians currently employed by other local governments. Discussions with a number of local governments reveal that redundancy or demotion to a lower paid position could occur should the legislation change.

As at September 2003 there are 25 persons accredited with BSA as building surveying technicians. In the main, these certifiers have at least the equivalent practical experience as most building surveyors, however lack the formal qualifications possessed by surveyors. The predominant reason for this is that the majority of building surveying technicians are in the 45 plus age group and are from an era where the emphasis was on entering the workforce at an earlier age without pursuing senior, tertiary, or higher education. The educational component of the current accreditation process would present a major disadvantage to these certifiers.

Concern was also been expressed that the concession to only allow building surveying technicians employed by remote councils to approve building work is too harsh. A more appropriate threshold could be for the concession to apply to local governments where there is insufficient building activity (and therefore insufficient market competition) to warrant concern about competitive neutrality.

Analysis of building activity in local government areas indicates those councils which have an average number of house approvals in excess of 100 per annum have significant market competition occurring for building certification services. New schedule 7 (cl. 63) lists the top 29 councils calculated in order of rank that would be captured by this proposal.

This criteria is based on—

- The average number of annual dwelling approvals between 1996 and 2001 is above 100 which means councils would approve approximately one application every 2 days (on the basis there are approximately 204 working days in a year). More than one building certifier would be required to assess a greater number of applications.
- 89.7% of the cumulative market of all dwelling approvals are captured.
- All captured councils have competition between public and private sector building certifiers.

The amendment Regulation therefore provides a grandfather clause for a seven year period to allow accredited building surveying technicians currently employed by local governments to continue to perform building certifying functions as currently prescribed in the regulation. After the expiration of the grandfather period, only building surveying technicians employed by local governments other than those listed in new schedule 7 (see cl. 63) of the Regulation will be able to approve building work.

Which Owner Should Receive Approval And Inspection Documents

Owner awareness is a critical accountability mechanism in ensuring both builders and certifiers perform adequately. Where builders engage certifiers, the owner is currently unlikely to receive approval documents until after the contract is completed as these documents are currently forwarded to the applicant who is often the builder.

The RIS proposed that building certifiers directly provide owners of building work for a single detached house and other associated

outbuildings (i.e. carport, shed, pool or the like), a copy of the building approval and inspection certificates for their building.

Consultation feedback indicated in many circumstances there will be multiple owners and providing a copy to every owner would be wasteful. The amendment Regulation therefore requires a copy of the building approval and inspection certificates for these buildings to be given to the owner nominated on the application form for the building work.

Enforcement Notices Mandated

The RIS proposed that a building certifier give a builder a written notice if inspected building work does not comply with the BA. The builder must perform the work required to make the work comply and give the building certifier another notice for inspection.

If the builder fails to perform the work required to make the work comply, the RIS proposed the building certifier must give the builder an enforcement notice under part 4 of the BA.

The IPA provides building certifiers with the authority to issue enforcement notices and bring prosecutions in the Magistrates Court for failure by a person to comply with an enforcement notice. This is provided to enable building certifiers to fulfil their statutory duty to act in the public interest if inspected work does not comply with the BA.

However, due to the significant risk of failing to bring a successful prosecution and the expense involved, building certifiers have been unwilling to instigate prosecution proceedings. On the other hand, local governments with their greater expertise have achieved greater success in bringing prosecution proceedings and unlike building certifiers, recoup some costs from receiving the proceeds of any fines paid.

To address this issue, the amendment Regulation has been revised to require a building certifier to notify the local government or the BSA if a builder fails to comply with an enforcement notice.

The RIS also proposed that a building certifier will have to take enforcement action if a building, other than a dwelling or associated outbuilding, is being occupied before a required certificate of classification is issued for the building. In these instances the amendment Regulation will require a building certifier to notify the local government if an owner occupies a building before a certificate of classification is issued.

Standard Of Inspection Required

The RIS proposed building work be inspected and certified for compliance with the BA by certifiers. However, the current regulation provides that the purpose for the inspection is to decide if building work is “generally in accordance” with Act.

Consultation feedback indicated in many circumstances it is not possible for the certifier to confirm that every aspect of the work complies. A lot of work is carried out when the certifier is not on site and cannot be seen by the certifier. Consequently, it is appropriate to require certifiers to be satisfied the building work complies after undertaking an inspection in accordance with best industry practice.

The amendment Regulation will therefore require a building certifier to be satisfied the building work complies with the BA and the development permit after undertaking an inspection in accordance with best industry practice.

Assessment of competent persons

Building certifiers currently may accept certification of particular components or aspects of building work from a person competent to assess and inspect the work. Certification by competent persons is intended to apply to the assessment of those elements of building work which are outside the expertise of a building certifier, or which can be equally assessed by another person.

Before accepting such a certificate, the building certifier must be satisfied that the person who is to give the certificate is competent to practice in respect of the aspect of the work involved, and if applicable, is registered or licensed.

To increase accountability the RIS proposed building certifiers should only accept certification from a practitioner who is registered under current Queensland legislation. Any malpractice by a registered practitioner would be able to be prosecuted by the agency responsible for registering the practitioner.

Building certifiers will also be required to document their reasons for accepting a certificate from the practitioner. However, building certifiers expressed concern as to the extent they are required to assess the skill and experience of a competent person to satisfy this requirement. While it may be practical to obtain a resume to assess the skill and experience from an engineering professional, in many instances building certifiers are not

able to check anything more than the registration details of a competent person such as a shower tray installer.

The amendment Regulation therefore requires a building certifier to assess the skill and experience of a competent person in accordance with guidelines to be approved by the chief executive. The guidelines will identify an appropriate level of assessment for various types of competent persons.

Offence By Other Building Practitioners

The RIS proposed that a builder must give the building certifier a notice to inspect building work at a mandatory inspection stage and it will be an offence for a building certifier not to inspect building work, upon receiving the notice.

The RIS was criticised for not providing an offence if a builder fails to give the notice to inspect to the building certifier when building work is ready for a mandatory inspection stage.

The current BA provides for the prosecution of most offences against the Act to be brought by local governments in the Magistrates Court. Amendments to the Act made under the *Plumbing and Drainage Act 2002* will allow for the prosecution of building certifiers by the BSA. This enables amendments to be made to the *State Penalties Enforcement Regulation 2000* to provide for on-the-spot fines as part of the improvements to the disciplinary process for building certifiers.

However, amendments to the BA would be necessary to enable offences by builders to be prosecuted by the BSA.

The *Queensland Building Services Authority Act 1999* states if a licensee is negligent or incompetent in carrying out building work under a licence, proper grounds exist for taking disciplinary action against the licensee. If a building certifier was required to notify the BSA a builder has failed to give notice for an inspection, the Authority may take disciplinary action against the builder. The amendment Regulation could be revised to require a building certifier to notify the BSA if a builder fails to give notice for an inspection when building work is ready for a mandatory inspection stage. The BSA sees referrals about “licensed” builders not giving a notice for an inspection as beneficial to the continuity of their overall compliance agenda.

The amendment Regulation therefore requires a building certifier to notify the BSA if a builder fails to give notice for an inspection when building work is ready for a mandatory inspection stage.

Local Government may declare exemption from inspection

The RIS proposed that a local government may, by resolution, declare localities and forms of buildings or structures exempt from mandatory inspection only if the exemption will not adversely affect public safety. Such an exemption could include the mandatory inspection at the completion of a swimming pool and fencing.

The amendment Regulation therefore excludes a swimming pool and fence from a local government declaration for an exemption from inspection.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 specifies the short title of the regulation as the *Building Legislation Amendment Regulation (No. 1) 2003*.

Commencement

Clause 2 provides that this regulation (except section 50, to the extent it inserts section 121B and section 63) commences on 14 November 2003.

Section 50, to the extent it inserts section 121B, and section 63, commence on 14 December 2004. The delayed commencement of these sections will provide a transitional period for building certifiers to acquire competency standards necessary to issue development permits.

PART 2—AMENDMENT OF BUILDING REGULATION 2003

Regulation amended in pt 2

Clause 3 provides that this part amends the *Building Regulation 2003*.

Amendment of sch 1 (Fees)

Clause 4 amends sch 1 to specify the application fee for a licence and the licence fee for licensing as a building certifier. The amendment is consequential to changes made to the Building Act to separate the accreditation of building certifiers by an authorised accreditation standards body from the licensing of building certifiers by the Building Services Authority (BSA).

PART 3—AMENDMENT OF THE INTEGRATED PLANNING REGULATION 1998

Regulation amended in pt 3

Clause 5 provides that this part amends the *Integrated Planning Regulation 1998*.

Amendment of s 2A (Definitions)

Clause 6 amends section 2A to insert the definition “alternative provisions” to have the meaning given under section 5 of the SBR, that is, provisions mentioned in part 3 that are:

- identified or stated in a planning scheme; and
- alternative to the provisions of QDC, part 11 or 12; and
- qualitative statements or quantitative statements.

Insertion of new s 5AA (Jurisdiction of tribunals—Act, s 4.2.7)

Clause 7 inserts a new section 5AA.

Section 5AA(1) declares a decision on a development application about an alternative provision is a matter prescribed for section 4.2.7(2)(b) of the Act to clarify the jurisdiction of the Building and Development Tribunal to decide appeals involving siting requirements for housing contained in planning schemes. The IPA permits the jurisdiction of the Building and Development Tribunal to be expanded as prescribed by a regulation. To consolidate appeal processes, the jurisdiction of the Tribunal is expanded to include appeals concerning compliance with alternative provisions made under a local planning instrument or a local law. Assessment of compliance with alternative provisions is a technical assessment that would be within the capabilities of the Tribunal and mirrors the jurisdiction of building certifiers.

Allowing appeals regarding alternative provisions to be brought before the Tribunal will allow a greater proportion of the community to benefit from access to the Tribunal. The Tribunal provides a quick, low cost and effective non legal dispute resolution system. The minimal costs and prohibition on legal representation makes the Tribunal more accessible than the Court for small scale disputes. This greater accessibility to a dispute resolution system also makes approval process more accountable. Section 2A defines “alternative provisions”.

Amendment of s 6 (Tribunal appeal fees—Act, s 4.2.15)

Clause 8(1) amends section 6 to exempt building referral agencies from having to pay Tribunal fees. Previously the Standard Building Law did not require a fee for an appeal lodged by building referral agencies. The imposition of a fee for appeals lodged by referral agencies unjustly favours assessment managers and private certifiers, as it will cost the referral agency a significant amount to argue their case.

Clause 8(2) to (6) amends section 6 to increase tribunal appeal fees equivalent to the consumer price index increase over the past 12 months.

Amendment of s 8 (Qualification of general referees—Act, s 4.2.37)

Clause 9 amends section 8 to replace the term “alternative siting provisions” with the new defined term “alternative provisions” under the SBR.

Amendment of s 9 (General manager of Queensland Building Services Authority may prosecute certain offences)

Clause 10 amends section 9 to extend the current power of the general manager of the BSA to include the power to prosecute the new offences under the *Integrated Planning Act 1997*.

Amendment of s 10 (Offence about acting as private certifier)

Clause 11 amends section 10 as a consequence of the separation of functions performed by an accreditation standards body to issue accreditation and the function of the BSA to issue licenses to building certifiers.

Amendment of sch 2 (Referral agencies and jurisdiction)

Clause 12 amends schedule 2 to:

- Clarify the referral jurisdiction of the Queensland Fire and Rescue Service includes assessment of a performance-based solutions for fire safety systems.
- Nominate referral jurisdictions of referral agencies for development now regulated by the QDC. This development was previously regulated by the Queensland additions to the Building Code of Australia.

PART 4—AMENDMENT OF STANDARD BUILDING REGULATION 1993

Regulation amended in pt 4

Clause 13 provides that this part amends the *Standard Building Regulation 1993*.

Replacement of s 3 (No changes by local planning instruments or local laws)

Clause 14 substitutes section 3 (Interaction between this regulation and local planning instruments or local laws) to declare under IPA, section 3.1.3(4), this regulation is a code that can not be changed under a local planning instrument or local law. However, a planning scheme may under pt 3 identify alternative provisions or deal with building work in regard to matters not within the scope of this regulation.

Section 3(3), specifies that alternative provisions apply as if they were part of the SBR, while section 3 (4) specifies that subsection (3) applies only if the development application is for a development that is an exempt development or a self-assessable development under a planning scheme.

Amendment of s 4 (Most building work assessable against regulation)

Clause 15(1) amends the heading of section 4 (Building work that is assessable against regulation) to better reflect the application of the section.

Clause 15(2) substitutes subsections 4(2) and (3) to require building work listed as self-assessable under schedule 5 to default to assessable development if the work does not comply with a deemed-to-satisfy provision of Building Code of Australia or an acceptable solution stated in a part of QDC. The building work set out in schedule 5, part 2, of this regulation is declared exempt development under IPA for assessment against the SBR.

Amendment of s 5 (Definitions)

Clause 16(1) deletes the following definitions no longer required in section 5: “building certifier”, “building certifying functions”, “competent person”, “development application”, “development approval”, “local planning instrument”, “performance standards”, “prescribed qualifications”, “Queensland Residential Design Guidelines”, “road boundary clearance”, “self-assessable development” and “side and rear boundary clearance”.

Clause 16(2) inserts the following new definitions:

- A new definition for “alternative provisions” means provisions mentioned in part 3 (Requirements for siting, amenity and aesthetics) that may be alternative to provisions of the QDC,

part 11 or 12 identified or stated in a planning scheme and may be qualitative statements or quantifiable standards.

- A new definition for “another Act”, for part 11, which refers to section 111.
- A new definition for “builder”, for part 8, which refers to section 86.
- A revised definition for “building certifier” to clarify that duties required to be carried out by the building certifier for an application may be undertaken by another appropriately qualified building certifier employed by the same entity. Only the individual who issued a building approval can currently give a certificate of classification. This causes administrative difficulties.
- A new definition for “building development application” means the aspect of a development application for building work requiring assessment against the SBR.
- A new definition for “certificate of inspection”, for part 8, which refers to section 87E(2).
- A definition for “Commercial and Consumer Tribunal” means the Commercial and Consumer Tribunal established under the *Commercial and Consumer Tribunal Act 2003*, section 6.
- A revised definition for “competent person” to allow only a person who is licensed or registered under a law applying in the State to provide certification of a component of work as a competent person.

Currently, building certifiers may accept certification of particular components or aspects of building work from a person competent to assess and inspect the work. Certification by competent persons is intended to apply to the assessment of those elements of building work which are outside the expertise of a building certifier, or which can be equally assessed by another person. Some certifiers are accepting certification from persons of questionable independence or competency

The amendments provide that before accepting a certificate from a competent person, the building certifier must assess the competent person as competent to practice in the aspect of the work because of the person’s skill and experience in the aspect.

To assist building certifiers in the assessment of a competent person, the chief executive officer may approve guidelines.

To increase accountability, building certifiers will be required to only accept certification from a practitioner who is licensed or registered under current Queensland legislation. Any malpractice by a registered practitioner will be able to be prosecuted by the agency responsible for registering the practitioner.

- A new definition for “complies”, for part 8, which refers to section 84.
- A new definition for “conviction”, for part 11, which refers to section 111.
- A new definition for “development application” refers to IPA schedule 10 and means an application for a development approval.
- A new definition for “development information” means various documents providing site characteristic and other information likely to affect the assessment of a development application including the physical characteristics and location of infrastructure, local government easements, encumbrances or interests in land.
- A new definition for “final inspection certificate”, for part 8, which refers to section 87K(2)(b).
- A new definition for “inspected work”, for part 8, which refers to section 87D(1).
- A new definition for “inspection documentation”, for part 8, which refers to section 87G(2).
- A new definition for “licence” refers to section 111.
- A new definition for “notice for inspection”, for part 8, which refers to section 86.
- Insert a revised definition for “performance standards” to include performance requirements of BCA, performance criteria of the QDC, a requirement for building work for which a discretion may need to be exercised under section 10(1)(d) of the Act, and sections 69, 70, 71, 94 or 110 of the SBR.

- A revised definition of “prescribed qualifications” to refer to education and experience accreditation levels suitable for licensing building certifiers.

The accreditation of building certifiers is a two-stage, co-regulatory process involving an accreditation standards body and the BSA. To improve the clarity of the accreditation process, amendments to the *Building Act 1975* made under the *Plumbing and Drainage Act 2002* provides for an accreditation standards body to assess an applicant’s qualifications and experience to establish the particular level at which the applicant can be licensed by the BSA. The BSA will then license building certifiers to perform building certifying functions under a separate process.

Consequential amendments to the definition of prescribed qualifications are necessary to refer to education and experience accreditation levels suitable for licensing building certifiers.

- A new definition for “qualitative statement” means a statement about a performance or outcome sought to be achieved by an alternative provision under a planning scheme when applicable buildings or structures are completed.
- A new definition for “quantifiable standard” means a standard that achieves a qualitative statement.

For example—

A qualitative statement may require outdoor living space for a dwelling must have a suitable slope to allow residents to extend their living activities outdoors. A quantifiable standard for the qualitative statement is that the slope of the space must be not more than 1 in 10.

- A new definition for “show cause notice”, for part 11, which refers to section 121F(1);
- A new definition for “show cause period”, for part 11, which refers to section 121F(2);
- A new definition for “spent conviction”, for part 11, which refers to section 111;
- A new definition for “stages of building work”, for part 8, which refers to section 87(1);

- A new definition for ‘suitable person’, for part 11, which refers to section 111.

Clause 16(3) amends the definition of “outermost projection” to delete the outermost projection of structures from the point to which building clearances must be measured.

Amendment of s 6 (Meaning of “available for inspection”)

Clause 17 amends section 6 to require if a person authorised to inspect a document applies to a local government or assessment manager in the approved form for a copy of a document, the local government or assessment manager must give the person a copy of the document.

Councils are currently obliged to make available for inspection and purchase various documents including approval and inspection documentation. The Department is developing an approved form for use by applicants and private certifiers to streamline the provision of these documents.

A local government may fix a fee under the *Local Government Act 1993*, section 1071A for giving the person a copy of the document or making the document available for inspection.

Amendment of s 6A (Meaning of “Queensland Development Code”)

Clause 18 amends section 6A by inserting subsection (3) to provide that if a provision of this regulation mentions QDC, and for applying the provision, it is necessary to apply a part of QDC mentioned in schedule 13, the part to be applied is the part as at the date mentioned for the part in the schedule.

Amendment of s 9 (Proof of BCA)

Clause 19 amends section 9 to refer to the “BSA” instead of the “accrediting body” to be consistent with amendments to the *Building Act 1975* made under the *Plumbing and Drainage Act 2002*.

Amendment of s 10A (Application of QDC)

Clause 20 amends section 10A to clarify that the application of the QDC is of each part of the QDC mentioned in schedule 13 to the extent the part applies to the work.

Replacement of s 10C (Relationship between QDC and BCA)

Clause 21 replaces section 10C (relationship between QDC and BCA) to specify that if a part of QDC mentioned in schedule 13 is inconsistent with the BCA, the part prevails to the extent of the inconsistency.

Insertion of new pt 1, div 5

Clause 22 inserts a new Division 5 in Part 1 for Guidelines.

Division 5— Guidelines

New section 10D (Application of div 5)

Section 10D declares division 5 applies if the chief executive approves guidelines for matters within the scope of this regulation.

New section 10E (Public notice of guidelines)

Section 10E requires the chief executive to give notice of approving guidelines. The notice must be published in a newspaper the chief executive considers appropriate and state the places where copies of the guidelines may be inspected or bought.

Amendment of s 11 (Building certifiers to assess applications)

Clause 23(1) amends section 11(1)(b) to clarify that each development application must be assessed for compliance to the extent a local law or a local planning instrument that deals with building work in regard to matters within the scope of this regulation. A local law or local planning instrument can not change this regulation.

Clause 23(2) inserts subsection 11(1A) to declare if a concurrence agency is stated for an aspect of building work under the *Integrated*

Planning Regulation 1998, the agency, not the building certifier, must assess whether the building work complies with relevant parts of the Code.

Amendment of s 12 (Building certifier’s discretion—BCA)

Clause 24 amends section 12 to correct the typing of the words “deemed to satisfy” to be consistent with the Building Code of Australia.

Replacement of s 13A (Building certifier’s discretion—QDC)

Clause 25 replaces section 13A (Building certifier’s discretion—QDC, table 1).

Section 13A applies for a building development application if a part of QDC mentioned in schedule 13, table 1, applies to the application; and the part allows a discretionary decision about a material, system, method of building or other thing; and under the application, a person proposes to use the material, system, method of building or other thing.

Section 13A(2) is amended to require if the QDC, allows a discretionary decision about a material, system, method of building or other thing; the building certifier must, in assessing the application, must decide whether the material, system, method of building or other thing complies with QDC. However, if a concurrence agency is stated for an aspect of building work under the *Integrated Planning Regulation 1998*, the agency, not the building certifier, must assess whether the building work complies with relevant parts of the QDC.

Insertion of new s 14A – 14D

Clause 26 inserts new sections 14A to 14D.

New section 14A (Applications to include site works)

Section 14A requires details of site works associated with building works to be assessed as part of a building application. This will ensure site works such as earthworks are suitably retained where necessary.

New section 14B (Documents to accompany building development applications)

Section 14B(1) specifies that this section applies to an architect, licensed builder, building designer or engineer who prepares a document (an application document) the person knows, or ought reasonably to know, is a supporting document for a building development application.

Section 14B(2) and (3) specifies what each application document the person prepares must show. The guidelines in 14D will outline the scope of supporting documentation which meet the application document standards required under section 14B. The guidelines will require the person in section 14B to prepare plans, drawings or related documents showing how the building work complies with the Act or any previous development approval that has not lapsed, whether an earlier approval is required for development related to the building work.

Checking plans is made difficult when building designers do not prepare plans with sufficient regard to site conditions such as easements and other property constraints. Requiring applications to include this information as part of the application will encourage architects, engineers and other designers to take greater care in designing buildings, including obtaining any necessary information from the council and inspecting the site.

Section 14B(4) defines the meaning of terms for the section.

New section 14C (Information on certain documents)

Section 14C specifies that an application document prepared by an architect, licensed builder, building designer or engineer, must show the person's name and the person's registration or licence number or be accompanied by a cover sheet that shows these details.

New section 14D (Chief executive may approve guidelines)

Section 14D provides that the chief executive may approve guidelines for preparing an application document.

Amendment of s 19 (Public access to development information)

Clause 27 amends section 19 to require if a person applies to the local government in the approved form for a copy of development information

defined in section 5, the local government must give the person a copy of the information on payment of the fee fixed under the *Local Government Act 1993*, section 1071A.

Councils are currently obliged to make available for inspection and purchase all information in their possession that may affect the assessment of a building application on a subject site. The Department is developing an approved form for use by applicants and private certifiers to streamline the provision of development information.

Amendment of s 20 (Local government must consider certain matters)

Clause 28 amends section 20 to clarify that the section 20 procedures do not have to be followed, if the written advice of council has already been obtained about the matter in an earlier decision. The section is also amended to clarify the operation of the section in respect of amenity and aesthetic assessment of applications under section 50.

Amendment of s 23 (Optional acceptability of certificates)

Clause 29 amends section 23 to require building certifiers to record their reasons for considering a person giving a certificate to be a competent person. The record must be kept for auditing purposes for a period of 5 years.

Currently, building certifiers may accept certification of particular components or aspects of building work from a person competent to assess and inspect the work.

Certification by competent persons is intended to apply to the assessment of those elements of building work which are outside the expertise of a building certifier, or which can be equally assessed by another person.

Before accepting such a certificate, the building certifier must assess the competent person as competent to practice in the aspect of the work because of the person's skill and experience in the aspect, and if applicable, is registered or licensed. Some certifiers are accepting certification from persons of questionable independence or competency.

To increase accountability building certifiers will be required to document their reasons for accepting a certificate from the competent person. This complements amendments to section 5 requiring building

certifiers to only accept certification from a practitioner who is registered under current Queensland legislation and for the assessment of competent persons to be undertaken in accordance with guidelines approved by the Chief Executive.

Insertion of new s 23A (False or misleading documents)

Clause 30 inserts new section 23A. Subsection (1) provides that a competent person must not, under section 23, give an assessment manager or building certifier a document containing information the person knows is false or misleading in a material particular.

However subsection (1) does not apply if the competent person tells the assessment manager or certifier how the document is false or misleading or if the person gives the correct information to the assessment manager or certifier.

It is enough to state that the document was false or misleading without specifying which.

Amendment of s 26 (Information private certifier must give to assessment manager)

Clause 31 amends section 26 to impose more rigorous documentation requirements on what documents are to be provided to councils after approving a building application.

The auditing of building certifiers has identified difficulties in proving professional misconduct against some building certifiers because of the lack of available evidence. The Practice Standard for Building Certifiers published by the Department advocates building certifiers should ensure that they maintain properly documented reasons for decisions. Building certifiers should be able to demonstrate that they have acted in the public interest when forming an opinion or making a decision.

If a building certifier is required to document the reasons for various decisions, this will increase accountability of building certifiers, particularly when audits are undertaken or complaints investigated.

Section 26 is amended to:

- Include in the information a private certifier must give to an assessment manager a list, in the approved form, of development

information relied upon by the private certifier to decide a development application.

The Department is preparing an approved form checklist, for building designers to submit to certifiers and in turn certifiers to submit to councils, to check that they have complied with the relevant planning scheme and relevant self-assessable codes and performance provisions before issuing building approvals.

The checklist would indicate that a certifier has taken into account relevant codes and has checked conditions on the site. This checklist could be adapted by Councils to suit their scheme and codes.

- Remove the requirement for a copy of accreditation certificate to be submitted with each application.
- Require private certifiers to mark each approved plan or a plan cover sheet consistent with the identity given to the decision notice and as approved by the certifier. There is a maximum of 20 penalty units.
- Require private certifiers to be responsible for ensuring the Integrated Development Assessment System (IDAS) application form is completed before forwarding approval details to council. This includes the statistical details required on the form.

Insertion of new s 26A (Documents to be kept by private certifiers—IPA, s 5.3.17)

Clause 32 inserts new section to 26A to specify the documents to be kept by private certifier for IPA, section 5.3.17, including the documents mentioned in section 26(1) and the development information relied upon by the private certifier to decide the application.

Section 26A(2) provides that it is an offence for the documents mentioned in subsection (1) not to be kept for 5 years after completion of the building work to which the approval relates or if the approval lapses, the day the approval lapses. There is a maximum of 20 penalty units.

Amendment of s 28 (Assessment manager must keep drawings and documents)

Clause 33 consequentially amends section 28(3)(f) to require an assessment manager to keep approval drawings and documents available for inspection to a person performing audits of licenses instead of a person performing audits of accreditations.

Insertion of new s 28A (Assessment manager must give owner documents)

Clause 34 inserts new section 28A to prescribe that a private certifier acting as an assessment manager, must give the owner of a single detached class 1a building or a class 10 building or structure. The owner of single detached class 1a building and class 10 building or structure is the person nominated on the approved form under IPA section 3.2.1(2).

Owner awareness is a critical accountability mechanism in ensuring both builders and certifiers perform adequately. Where builders engage certifiers, the owner is unlikely to receive approval documents until after the contract is completed as these documents are currently forwarded to the applicant who is often the builder. Certifiers will be required to directly provide owners with a copy of the building approval and inspection certificates for their building.

Replacement of pt 3, hdg (Requirements for siting, amenity and aesthetics)

Clause 35 replaces the heading of Part 3 to better reflect the application of the Part.

Replacement of pt 3, divs 1–3

Clause 36 replaces divisions 1 to 3 of Part 3 relating to siting of detached buildings. Parts 11 and 12 of the QDC replace these provisions.

New section 34 (Siting and design standards for other housing)

Section 34 identifies what standards apply to single detached houses and associated buildings and structures on the same lot. The standards are either those contained in parts 11 and 12 of the QDC, or alternative

provisions to the QDC provisions contained in a planning scheme. 'Alternative provisions' are defined in section 5 and consist of either 'quantifiable standards', 'qualitative statements' (both terms also defined), or both. The QDC provisions replace the standards that have been located directly within part 3 of the SBR. The two types of alternative provisions correspond to the 'acceptable solution' and the 'performance criteria' in the QDC.

Subsection (2) makes it clear that if a planning scheme does contain alternative provisions that apply to single detached dwellings and associated structures, then the alternative provisions apply rather than the QDC provisions.

Subsections (2) and (3) consider separately the provisions of QDC, parts 11 and 12 about boundary clearances and site cover, and those that deal with other matters. This addresses the extended range of matters dealt with by the QDC parts 11 and 12, compared with those in part 3 that are being replaced. The provisions about boundary clearances and site cover in the QDC apply if a planning scheme is silent on those matters, whereas for other matters the QDC provisions apply only to the extent stated in a planning scheme. This ensures for the additional matters now addressed by the QDC, that a deliberate decision is made about their application for each planning scheme.

New section 35 (Siting and design standards for other housing)

Section 35 provides for planning schemes to extend the application of alternative provisions to certain buildings other than single detached houses, or to apply stated provisions of QDC, parts 11 and 12, to those buildings. This provides for the QDC parts 11 and 12 to apply to buildings other than detached dwellings and for section 36 and section 20 to apply to such applications.

New section 36 (Local governments to assess compliance with alternative provisions and performance criteria of QDC, pts 11 and 12)

Section 36 acknowledges that alternative provisions in the planning scheme may replace—

- an 'acceptable solution' in a part of the QDC with a 'quantifiable standard'; or

- a ‘performance criterion’ in a part of the QDC with a ‘qualitative statement’; or
- both an ‘acceptable solution’ and a ‘performance criterion’ with a respective standard or statement.

Accordingly, a precise standard (e.g. a road boundary clearance of 6 m) applying to an application for development may be either an acceptable solution (QDC) or a quantifiable statement (alternative provisions), and the relevant statement of what the precise standard is intended to achieve (e.g. a statement referring to amenity, safety, streetscape character or the like) may be either a performance criterion (QDC) or a qualitative statement (alternative provisions),

The section also makes it clear, together with section 3(b), that as for non-compliance with an acceptable solution in a part of the QDC, non-compliance with a quantifiable statement in the alternative provisions of a planning scheme, is a matter dealt with under section 20 of this regulation. Section 20 provides for local governments to consider certain matters in the assessment of development applications made to private certifiers.

However, subsection (1)(a) also makes it clear that the facility to use section 20 to consider the suitability of an application that does not comply with a precise standard does not apply to a development application that also requires assessment under the planning scheme.

Subsection (2) states that the private certifier must not decide the application until advice has been received from the local government that the application complies with either the qualitative statement or performance criterion, whichever applies.

Omission of pt 3, div 4, hdg

Clause 37 deletes the heading to Part 3, division 4 dealing with the amenity and aesthetic assessment of buildings and structures.

Amendment of s 50 (Local government declaration about amenity and aesthetics on methods of building and locality)

Clause 38 amends section 50 to also allow a local government by resolution to require an amenity and aesthetic assessment to be undertaken of class 10b structures specified in the resolution.

Amendment of s 51 (Request to local government about amenity and aesthetics)

Clause 39 amends section 51 consequential to the amendment of section 50.

Replacement of s 58 (Building work over easements and statutory covenants)

Clause 40 substitutes section 58 to create an offence for a building certifier to issue a building development application for building work over land in an easement or subject to a statutory covenant unless the holders of registered interests in the easement or covenant consent to the building work. There is a maximum penalty of 20 penalty units for this offence.

Replacement of ss 84–87

Clause 41 replaces sections 84 to 87 and inserts new sections 87A to 87M to impose more rigorous procedures for the inspection of building work by—

- Providing that a builder must give a notice for inspection of building work to the building certifier for the work;
- Requiring the building certifier to notify the BSA if a builder fails to give a notice for inspection to the building certifier at a mandatory inspection stage;
- Providing an offence for building certifiers not to carry out mandatory inspections for particular stages of building work;
- Placing constraints on the use of competent persons carrying out inspections on the behalf of building certifiers;
- Requiring mandatory final inspection certificates for class 1a buildings and class 10 buildings and structures to be given directly to an owner of building work;
- Requiring a written notice to be given to the builder about compliance of the inspected building work;
- Requiring the building certifier to notify the Local Government and the BSA if a building fails to comply with an enforcement notice about noncompliant building work;

- Providing the ability of local governments to declare localities and forms of building work exempt from inspection;
- Requiring the building certifier to give the owner inspection documentation and the final inspection certificate;
- Requiring the building certifier to give the assessment manager the final inspection certificate.

Currently building work for a house is inspected at four mandatory stages to ensure the building work complies with the SBR. No specific documentation is required to be produced as a record of these inspections. This was in response to industry concerns that a mandatory final inspection certificate may delay final payments for house construction. The SBR does however require a private certifier to provide a copy of any inspection documents they have to the Council. This includes any diary notations made by the private certifier.

Consequently, the LGAQ review of building certification reports that approximately 50% of houses approved within Brisbane have had no inspection information lodged with the Council. This indicates many houses may have been completed without inspection being requested by the builder. Alternatively, it may indicate that some certifiers are not lodging inspection information with Council.

The new provisions will ensure that houses are inspected and a record for the inspection of the building work, by a building certifier or competent person is provided. The certifier or competent person will need to be satisfied on an inspection of the work, completed in accordance with best industry practice, that the work complies with the Act and the development permit for the work. Also, inspection documentation is required to be given to the owner and the local government (as assessment manager).

New Division 1—Preliminary

New section 84 (Definitions for pt 8)

Section 84 provides definitions for terms used in part 8 including:

- a new definition for “builder” which refers to section 86;
- a new definition of “certificate of inspection” which refers to section 87E(2);

- a new definition for “complies” means the building work complies if a building certifier or competent person inspecting building work, is satisfied on an inspection of the work, completed in accordance with best industry practice, that the work complies with the Act and the development permit for the work;

The policy intent is that the inspection is completed in accordance with best industry practice to determine if the building work complies.

- a new definition for “final inspection certificate” which refers to section 87K(3)(b), a certificate in the approved form;
- a new definition for “inspected work” which refers to section 87D(1);
- a new definition for “inspection documentation” which refers to section 87G(2);
- a new definition for “notice for inspection” which refers to section 86; and
- a new definition for “stages of building work” which refers to section 87(1).

New Division 2—Inspections for all assessable building work

New division 2 heading has been inserted to clarify the application of the provisions in this division to inspections for all assessable building work.

New Section 85 (Application of div 2)

Section 85 declares division 2 applies to assessable building work for all buildings.

New section 86 (Notice for inspection)

Section 86 provides that the person responsible for carrying out building work, the “builder”, must ensure a “notice for inspection” is given to the building certifier advising the certifier that the work has reached an inspection stage under section 87.

The defined term “builder” means the person who has the overall responsibility for carrying out the building work. Examples further clarify the builder as the person who contracts with an owner to perform building work for the owner, and in the case of an owner builder, the builder is the person who engages subcontractors to perform some or all of the work.

The defined term “notice for inspection” means the method by which the builder advises the building certifier that the building work has been carried out to a stage when inspection, and in some cases testing, must be carried out. The notice may be in writing or by another means agreed to by the builder and the building certifier.

This section replaces the previous section 84 to clarify who is responsible for notifying the building certifier and how the certifier is to be notified. The provision will require the notice for inspection to be given to the building certifier which will commence the process for mandatory inspections for particular stages of building work under section 87.

New section 87 (Stages of building work requiring inspection)

Section 87 requires a notice for inspection to be given at each stage mentioned in section 87I and at each stage of building work stated in the development approval for the building work. However, a building certifier may inspect building work at any time, whether or not the certifier is given a notice for inspection for the work.

If the licensed builder for the work does not give the building certifier for the work a notice for inspection at each of the stages of work as required by section 86, the certifier must notify the BSA of the fact.

New section 87A (Chief executive may approve guidelines for inspection of building work)

Section 87A provides for the chief executive to approve guidelines for aspects of building work to be inspected and ways of inspecting the work and certifying the work complies. Further clarification will be provided for both the builder and the building certifier, of the various aspects of the building work that make up a particular stage of work for which inspection is required.

New section 87B (Entering premises for inspection)

Section 87B provides for the occupier of the premises and the builder for the building work to allow the building certifier or competent person to enter the premises to inspect the building work at all reasonable times during business hours.

New section 87C (Inspection of building work)

Section 87C creates an offence if the building certifier for the building work who receives a notice for inspection for a stage of building work does not inspect the building work at a time agreed between the builder and the certifier; or if the stage of building work is not the final stage, accept from a competent person a certificate of inspection for the building work. The maximum penalty for this offence is 20 penalty units.

A certifier may accept from a competent person a certificate for an aspect of the stage of building work only if, before the work for the aspect is carried out, the certifier assessed the person as a competent person for certifying the aspect complies. If the stage of building work is the final stage, the competent person must be another building certifier who is licensed to perform building certifying functions for the work.

However, a building certifier may only accept a certificate of inspection from a competent person for a stage of building work if—

- (a) the certifier assessed the person as a competent person for the inspection before the person inspected the building work; and
- (b) the person is not the builder for the work or another person who carried out the work; and
- (c) the certificate certifies all the aspects for the stage of work comply; and
- (d) the aspects stated to comply are the aspects mentioned in any guidelines approved under section 87A.

Section 87C differs from the previous section 85(3) and (4) by removing the restriction on a builder to give the notice for inspection to the building certifier not more than 48 hours before the completion of the stage of building concerned. This will enable the builder to decide when the notice for inspection is given to the building certifier advising the certifier that the building work has reached an inspection stage.

New section 87D (Building certifier inspects building work)

Section 87D(1) requires the building certifier to give the builder a written notice stating that the work has passed inspection if the inspected work complies. Certifiers may decide the written notice will be in the format of a sticker to be adhered to the building work, giving details of the inspection.

Section 87D(2) requires the building certifier to give the builder a written notice if the inspected work does not comply with the Act, stating how the work does not comply.

Previously section 86(5) provided that the purpose for the inspection was to decide if the particular stage of the work was generally in accordance with this regulation.

Under new section 87D, building work is required to comply with the Act, including subordinate legislation made under the Act. This means the certifier or competent person is satisfied on an inspection of the work, completed in accordance with best industry practice, that the work complies with the Act and the development permit for the work.

New section 87E (Competent person inspects building work)

Section 87E applies if a competent person for the building work inspects a stage of work. If the inspected work complies, the competent person must give the building certifier a “certificate of inspection” stating the inspected work complies.

However, if the competent person decides the inspected work does not comply, the competent person must give the building certifier a written notice stating how the inspected work does not comply. The competent person must give the builder for the work a copy of a certificate or notice given.

New section 87F (Procedure if building work does not comply)

Section 87F applies if the building certifier or a competent person gives the builder for the work a notice the inspected work does not comply. The builder for the work must perform the work required to make the stage of work comply and give the building certifier another notice for inspection for the work.

If the builder does not perform the work required to make the stage of work comply, the building certifier must give the builder an enforcement notice under part 4 of the Act.

However, if the competent person gives the builder a notice the inspected work does not comply, the building certifier is not required to give the builder a show cause notice unless the certifier agrees with the competent person that the inspected work does not comply.

If the building certifier does not give the builder an enforcement notice, the certifier must give the competent person written reasons for not giving the notice and the builder a written notice stating the inspected work complies.

If the certifier gives the builder an enforcement notice and the builder does not comply with the notice, the certifier must notify the local government and the BSA of the fact.

Section 87F(7) provides that a builder must not start the stage of building work after the stage for which the notice of inspection has been given until the building certifier gives the builder a written notice stating that the inspected work complies; or the competent person gives the builder a certificate of inspection for the inspected work.

The option afforded by the previous sections 86(6) and (7) to allow building work (i.e. the placement of concrete or cladding of walls) to proceed without inspection by either a building certifier or competent person has been removed. The policy intent is to protect consumers by ensuring houses are inspected and the building work complies with the BA and the SBR prior to completion.

New section 87G (Building certifier to give assessment manager inspection documentation)

Section 87G requires private certifiers to give the assessment manager a copy of any inspection documentation. The private certifier must give these documents to the assessment manager within 5 business days after all of the building work is inspected and passed. Alternatively, if the engagement of the certifier is discontinued before all of the building work is inspected and passed, the private certifier must give these documents to the assessment manager within 5 business days after the engagement is discontinued. There is a maximum penalty of 20 penalty units.

If the inspection documentation includes inspection certificates from competent persons, the certifier may give a copy of the documentation to the assessment manager within 5 business days after the certifier accepts all the certificates.

Examples of inspection documentation include the certificate of inspection for the work and a written notice, given to the builder for the work by the certifier or a competent person for the work about an inspection of the work.

Currently, a private certifier is not required to give the assessment managers copies of inspection documentation until 5 days after completion of the work; the replacement certifier may not have access to the outcome of inspections carried out by the first private certifier, or competent person certificates. This could be important to the replacement private certifier where there is a problem, for example, a deficiency with the footings.

The private certifier must keep a copy of the certificate and documentation for 5 years after completion of the building work.

New Division 3—Inspections for assessable building work for particular buildings and structures

New division 3 heading has been inserted to clarify the application of the provisions in this division for particular buildings and structures in addition to the application of division 1.

New section 87H (Application of div 3)

Section 87H declares division 3 applies to assessable building work for a single detached class 1a building; a class 10 building or structure (other than a fence, mast, antennae or similar structure) or an alteration to such a building or structure. The requirements for building work mentioned in this division are in addition to the requirements for building work mentioned in division 1.

New section 87I (Other stages of building work requiring inspection)

Section 87I replaces the previous section 85 to clarify the specific stages of building work for which mandatory inspections are required for particular types of building. The previous section 85 imposed mandatory

inspection conditions on development approvals for particular types of building.

Inspections are mandatory for specific stages for a single detached class 1a building, for an alteration to a single detached class 1a building as stated on the development approval, for a class 10 building or structure and for a swimming pool. Guidelines will assist certifiers in determining what aspects of building work make up a stage of building work for which a mandatory inspection is required.

New section 87J (Local government declaration about inspection)

Section 87J provides for a local government to declare by resolution the forms of buildings and localities in their local government area that may be exempt from mandatory inspection requirements because of an acceptable low risk to the community. Exemptions for the inspection of a swimming pool and fencing is not provided for under this provision.

Currently, mandatory inspections are required on all houses and domestic sheds. The inspections can be carried out by a licensed building certifier or by a competent person on behalf of the building certifier.

Remote councils are experiencing problems in carrying out the mandatory inspections because of a lack of readily available expertise, either in their area or within a reasonable distance of their council area. In remote localities where there is acceptable low risk to the community, there is merit in exempting building work from mandatory inspection requirements.

New section 87K (Building certifier to give owner documents)

Section 87K replaces the previous section 87 and provides that if a building certifier for building work decides at the final inspection stage for the work that the work complies, the certifier must give the owner of the building, within 5 business days after all of the building work is inspected, a copy of the inspection documentation for the work and a certificate in the approved form (a final inspection certificate). There is a maximum penalty of 20 penalty units.

If the engagement of the building certifier for the building work is discontinued before the final inspection stage for the work, the certifier must give the owner of the building a copy of the inspection documentation for the work within 5 business days after the engagement is discontinued.

This provision applies whether or not the assessment manager has been given a notice about the discontinuance under IPA section 5.3.11(2). There is a maximum penalty of 20 penalty units.

If the inspection documentation includes any certificates of inspection from a competent person then the certifier must give the owner of the building a copy of the inspection documentation within 5 business days after the certifier accepts the certificates.

The approved form will cover all aspects of the stages of building work inspected. This will provide a clear record of the work inspected and provide property owners with a certificate showing their building work has been checked for compliance with the Act.

For this section “building” includes a structure and “owner” of a building, means the person who is nominated on the approved form under IPA section 3.2.1(2), as the person to receive the inspection documentation for the building work.

New section 87L (Building certifier to give assessment manager final inspection certificate)

Section 87L requires private certifiers when giving the owner the inspection documentation for the work under section 87K must give to the assessment manager a copy of the inspection documentation. The private certifier must keep a copy of the inspection documentation for 5 years after completion of the building work. There is a maximum penalty of 20 penalty units.

New Division 4—Other inspections and appeals

New division 4 heading has been inserted to clarify the application of the provisions in this division to other inspections and appeals.

New section 87M (Application of div 4)

Section 87M declares division 4 also applies to assessable building work for all buildings.

Amendment of s 88 (Inspections by building referral agencies)

Clause 42 amends section 88 as a consequence of the new defined term “builder” in section 86 to mean a person who contracts with an owner to perform building work for the owner is a builder.

Amendment of s 92 (Meaning of “substantially completed”)

Clause 43 inserts new section 92(2) consequential to the amendment to section 98.

Amendment of s 95 (No occupation until certificate is issued)

Clause 44(1) amends subsection 1 to include that it is an offence for a person or an owner of the building, to use or occupy or allow a person to use or occupy any part of the building, without reasonable excuse, for which a certificate of classification is required to be issued unless the certificate has been issued and remains in force.

Clause 44(2) inserts new subsections (1A) to (1C). Subsection (1A) provides, subject to subsection (1B), that if the building, or any part of the building, for which a certificate of classification is required to be issued, is being used or occupied without the certificate of classification, the building certifier for the building work must take enforcement action against the owner under part 4 of the Act.

New subsection (1B) provides that the building certifier is not required to take enforcement action against the owner if the certifier is satisfied only building work of a minor nature is required to be performed before the certifier must under section 98(2), prepare the certification of classification for the building.

New subsection (1C) provides that if the certifier gives the owner an enforcement notice and the owner does not comply with the notice, the certifier must notify the local government of the fact.

Clause 44(3) is a minor consequential amendment to subsection (2) to provide that section 95 does not apply to occupation of a building under section 96 (Use of government buildings in emergency).

Clause 44(4) is a minor consequential amendment to renumber the subsections of section 95 to provide numerical order.

Amendment of s 98 (Preparation of certificate of classification)

Clause 45(1) amends section 98 to clarify that only class 1a buildings (single detached houses) and not other class 1 buildings (boarding houses and the like) are exempt from the requirement for a certificate of classification to be issued before the building is occupied.

Clause 45(3) amends 98(2)(c) to clarify that a certificate of classification is to be issued upon substantial completion of building work comprising alterations to an existing building. The application of section 98 to existing buildings needs to be made clearer. It has been argued that minor alterations (eg partition layout) are being carried out in a building that is already “substantially completed” and that a further certificate is therefore not required for the alterations. However, the purpose of the provisions is to indicate when a building is safe to occupy including any alterations to a building. There is a maximum penalty of 20 penalty units for subsection (2).

Clause 45(4) inserts subsection (2A) to provide that the building certifier is not required to prepare the certificate until the applicant has given the certifier the documents mentioned in subsection (6).

Clause 45(5) omits section 98(4) concerning owners requesting a certificate of classification to be issued. Currently many owners are failing to request the issue of the certificate before occupying a building and may as a result be occupying an unsafe building. The omission of this section will place the onus on a building certifier to issue a certificate of classification once a building is substantially completed. In combination with the amendments to section 95 requiring a building certifier to take enforcement action if a building is being occupied before a certificate is issued, occupant safety will be ensured.

Clause 45(6) amends section 98(5) to require the certificate to list any performance standards used if the building work uses a performance based solution and state any necessary restriction on the use or occupation of the building if the use of a building solution should restrict the use or occupation of the building.

Clause 45(7) omits from subsection 6 the timing restraint of providing the documents and lists at the time of making the request.

Amendment of s 101 (Certificate of classification for certain buildings built before 1 April 1976 with no previously issued certificate)

Clause 46 is amended to be consistent with amendments to section 98 to clarify that owners of class 1 buildings other than class 1a buildings (single detached houses) may make a written application for the issue of a certificate of classification for a building.

Amendment of s 103 (Issue and inspection of certificates of classification)

Clause 47 amends section 103 to:

- Cross reference IPA chapter 5 part 1, which requires a certificate of classification not to be issued until an infrastructure charge has been paid.
- Require that if a private certifier issues a certificate of classification, the private certifier must give a copy of the certificate to the assessment manager within 5 business days after the certificate is given and keep a copy of the certificate for 5 years for audit purposes.
- Require an assessment manager to keep available for inspection a copy of the certificate of classification until a building or part of a building to which the certificate relates is demolished or removed.
- Prescribe that if a new certificate of classification is issued for a building or part of a building it replaces an existing certificate for the building or part.

Amendment of s 104 (When building referral agencies and fire authority to be advised)

Clause 48 amends section 104 to require all building referral agencies to be given as constructed drawings for the aspects of building work within their referral jurisdiction under schedule 2 of the *Integrated Planning Regulation 1998* other than plans and specifications given to the agency under IPA, section 3.5.15 (5).

Clause 48(3) inserts a maximum penalty of 20 penalty units for subsection (2). Subsection (2) requires the building certifier within 10 business days after issuing the certificate must give the building referral

agency a copy of the certificate, and if the referral agency is the fire authority, a list of fire safety installations installed in the building and drawings showing the location of the fire safety installations.

Amendment of s 109 (New certificate)

Clause 49 clarifies that if a building certifier approves a change of classification for a building, any new certificate issued for a building or part of a building replaces an existing certificate for the building or part of the building. Subsection (2) has been replaced to provide that if a private certifier issues a certificate of classification under subsection (1), the private certifier must give the assessment manager a copy of the certificate within 5 business days after the certificate is issued.

Replacement of pt 11, hdg and divs 1–6

Clause 50 replaces part 11, heading and divisions 1 to 6 to improve the scrutiny and transparency in licensing building certifiers. The key changes include:

- Establishing minimum regulatory competencies for building certifiers who issue development permits;
- Introducing a more objective suitability test for determining the suitability of applicants for licensing as building certifiers;
- Providing for a new code of conduct to regulate the behaviour of building certifiers;
- Revising the scope of functions building surveying technicians may perform.
- Requiring the BSA to provide a building certifier an opportunity to show cause why action to cancel, suspend or make other changes to a certifiers licence should not be taken; and
- Providing for an appeal against the BSA's decision on a license application to a Tribunal established under the *Commercial and Consumer Tribunal Act 2003*.
- Clarifying the roles and responsibilities of an accreditation standards body and the BSA in accrediting and licensing building certifiers.

- Removing inoperative provisions under section 114 regarding interim accreditation of building certifiers. These were a back stop to allow the State Assessment Committee of AIBS to recommend interim accreditation for persons unintentionally excluded from seeking national accreditation from AIBS. These interim provisions are no longer necessary.

PART 11— LICENSING BUILDING CERTIFIERS

Division 1—Preliminary

New section 111 (Definitions for pt 11)

Section 111 provides definitions for terms used in part 11 including:

- a new definition for another Act meaning that another act could be:
 - an Act regulating building certifiers; or
 - the *Queensland Building Services Act 1991*; or
 - the *Building and Construction Industry (Portable Long Service Leave) Act 1991*; or
 - a law of another State or New Zealand that provides for the same matter as the Act;
- a new definition for conviction meaning that certain spent convictions are excluded from the definition of a conviction including:
 - an offence under any Act including those involving fraud or dishonesty; or
 - an offence against a Commonwealth or State law that happens in Queensland; or
 - an offence committed anywhere in Australia before this section commenced that would have been an offence as mentioned in the previous two points;

- a new definition for licence meaning that a licence refers to a licence as a building certifier that is in force under part 11;
- a new definition for show cause notice for part 11 which refers to section 121G(1);
- a new definition for show cause period for part 11 which refers to section 121G(2);
- a new definition for spent conviction meaning that it is a conviction for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired and that is not revived as prescribed by section 11 of that Act; and
- a new definition for suitable person meaning that the BSA will decide who is a suitable person to hold a licence under division 3.

Division 2— Accreditation standards body

New section 112 (Authorisation of accreditation standards body—Act, s 28)

Section 112 authorises the Australian Institute of Building Surveyors to be an accreditation standards body for accrediting building certifiers. The accreditation and licensing of building certifiers is a two-stage, co-regulatory process involving an accreditation standards body and the BSA. To improve the clarity of the accreditation and licensing process, the *Building Act 1975* (amended by the *Plumbing and Drainage Act 2002*) provides for an accreditation standards body, for example, the AIBS, to assess an applicant's qualifications and experience to determine the particular level at which the applicant can be accredited. Accredited Building certifiers apply to the BSA to be licensed to perform particular building certifying functions. Consequential amendments to part 11 are necessary to refer to a license issued by the BSA instead of an accreditation issued by the accreditation body.

Division 3— Suitability of applicants and licensees

New section 113 (Suitability of applicants and licensees)

Section 113 provides criteria by which the BSA will decide an applicant as unsuitable to hold a licence.

New section 114 (Decision on suitability)

Section 114 requires the BSA, when deciding whether a person is a suitable person to be licensed as a building certifier, to consider the following—

- (a) whether the applicant has a conviction under a relevant Act;
- (b) whether the applicant has previously been refused a licence or accreditation, or has had a licence or accreditation suspended or cancelled under the Act or another Act;
- (c) whether the person has, under this Act or another Act, been disqualified from holding a licence;
- (d) dealings in which the person has been involved and the standard of honesty and integrity demonstrated in the dealings;
- (e) any failure to carry out statutory obligations and the reasons for the failure;
- (f) whether the accreditation standards body has issued accreditation to the person; and
- (g) all other relevant circumstances.

This provision provides a more objective and relevant criteria for determining whether an applicant is suitable to be licensed as a building certifier. “Conviction” is defined in section 111 and is consistent with similar licensing legislation.

The NCP Review of the Building Act and its subordinate legislation acknowledges the current requirement for a building certifier to pass a “fit and proper person” test, results in a benefit to the public and should therefore remain part of the legislation. However, the report recommends the legislation needs to be more objective and not allow broad discretion by the BSA. A requirement that applicants must pass a subjective test as to

their suitability has the potential to unfairly exclude persons from practising despite possessing the necessary qualifications.

New Section 115 (Requirement to give BSA information or material about suitability)

Section 115 provides for BSA to require an applicant, by written notice, to provide information or material the BSA reasonably considers is needed to establish the applicant's suitability to be licensed. The written notice must include a stated reasonable period within which the applicant must comply.

Division 4—Applications for licences and renewing licences

New section 116 (Application for licence—Act, s 29A)

Section 116 provides that an application for a building certifier's licence is to be in the approved form accompanied by the appropriate fees, evidence of the applicant's identity and a copy of the applicant's certificate of accreditation.

New section 117 (Decision on application for licence)

Section 117 provides that BSA must consider the application and decide to—

- (a) license the applicant as a building certifier for the particular level for which the applicant applied only if BSA is satisfied the applicant is a suitable person under division 3, to be licensed as a building certifier for that level; or
- (b) refuse to license the applicant.

The option of BSA to licence the applicant at a level that differs from that applied for has been omitted. The policy intent is to provide the applicant, whose licence application for a particular level has been refused, the choice of applying for a licence at a different level, following the same application procedures.

If BSA refuses to licence the applicant, BSA must give the applicant written notice, stating the reasons for the decision and the applicant's rights for a review of the decision under section 121K.

New section 118 (Duration of licence)

Section 118 states that the licence remains in force for 1 year unless earlier cancelled or surrendered.

Division 5—Renewing licences

New section 119 (Notice of expiry of licence)

Section 119 requires BSA to give a building certifier a notice of the expiry of the building certifier's licence at least 20 business days before the license expires. The notice must state the day the current licence will expire and the requirements for making an application to renew the licence.

New section 120 (Application for renewal)

Section 120 makes provision for renewal of a licence by application on or before the licence expires. The application must be made in the approved form, accompanied by the licence fee prescribed under the *Building Regulation 2003*, evidence of maintenance of compliance with the prescribed qualifications and, if the applicant's licence is endorsed as a private certifier and the applicant is applying to continue the endorsement, the insurance coverage mentioned in section 129.

New section 121 (Existing licence taken to be in force while application is considered)

Section 121(1) provides that if a licensee makes a renewal application under section 120, the licensee's licence is taken to continue in force from the day that it would have expired, until the licensee's application is decided under section 121A. Subsection 91) does not apply if the licence is earlier cancelled, suspended or surrendered.

New section 121A (Decision on application for renewal of licence)

Section 121A requires BSA to consider the renewal application and decide to—

- (a) renew the licence for the particular level for which the licensee applied only if BSA is satisfied the licensee is a suitable person

under division 3, to continue to be licensed as a building certifier for that level; or

(b) refuse to renew the licence.

The option for BSA to renew the licence at a level that differs from that applied for has been omitted. The policy intent is to provide the licensee, whose licence renewal application for a particular level has been refused, the choice of applying for a licence at a different level, following the same application procedures.

If BSA refuses to licence the applicant, BSA must give the applicant written notice, stating the reasons for the decision and the applicant's rights for a review of the decision under section 121K.

BSA may renew the applicant's licence only if BSA is satisfied the applicant is a suitable person, under division 3, to be licensed as a building certifier for the level.

BSA must give an applicant written notice of the decision, the reasons for the decision and the applicant's rights for a review of the decision.

Division 6—Endorsing licences

New section 121B (Endorsement of licence for building certifier to issue development permits)

Section 121B enables a building certifier to apply to BSA for endorsement of the building certifier's licence to issue development permits for building work. The BSA may endorse the licence only if the building certifier has the competencies listed in schedule 8.

Building certifiers issuing building approvals that do not comply with town planning requirements are the primary source of complaint by councils. Investigations by the Department confirm the contributing factors for non-compliance are the complexity of planning schemes and inadequacies in the competencies of the building certifier profession.

Amendments to the *Building Act 1975* made by the *Plumbing and Drainage Act 2002* require building certifiers to obtain competencies in the necessary regulatory skills in order to issue development approvals.

These competencies will include regulatory skills in interpreting local planning instruments and the Integrated Development Assessment System.

A transitional period will be provided before the Regulation is commenced enabling all building certifiers who issue development approvals to complete the prescribed competencies.

A training package is to be designed to provide essential competencies for all building certifiers who issue development approvals. While most certifiers have experience working with various aspects of the legislation, the program will be designed to provide a comprehensive understanding of the detailed provisions of the Acts, regulations and related requirements.

Alternatively, the BA provides for building certifiers who do not have the endorsement to issue development permits may issue a certificate of compliance with the SBR. This means a building certifier may issue a certificate of compliance but must not issue a development permit. A local government, or another building certifier with the necessary regulatory skills (competencies), may rely on this certificate without further checking when issuing a development permit.

New section 121C (Endorsement of licence to act as private certifier)

Section 121C enables a building certifier to apply to BSA for endorsement of licence as a private certifier.

The BSA may endorse the licence only if the building certifier is covered by the insurance mentioned in section 129 and is licensed as either a building surveyor or an assistant building surveyor.

If BSA decides not to endorse the building certifier's licence, BSA must give the applicant written notice stating the decision, the reasons for the decision, and the applicant's rights for a review of the decision by the Commercial and Consumer Tribunal.

Division 6A—Cancellation and suspension of, and other changes to, licences and cancellation of endorsements

New section 121D (Cancellation and suspension of licence or change of level of licensing)

Section 121D enables BSA to cancel or suspend at any time a building certifier's licence if BSA is satisfied the certifier is not a suitable person, under division 3, to hold a licence. In addition, BSA may suspend or cancel

a building certifier's licence or change the level of licensing if the certifier has not complied with the prescribed qualifications.

New Section 121E (Cancellation of endorsement of licence to act as private certifier)

BSA must cancel a building certifier's endorsement as a private certifier, if the BSA is satisfied a building certifier who has endorsement as a private certifier does not have the insurance coverage mentioned in section 129.

Division 6B—Show cause notices

New section 121F (Show cause notice)

Section 121F provides for the BSA to give a building certifier a show cause notice if BSA believes grounds exist to act under division 6A (Cancellation and suspension of, and other changes to, licences and cancellation of endorsements).

The show cause notice must state the grounds for proposing to act, outline the facts and circumstances forming the basis for the grounds, and invite the certifier to show within a period ending at least 20 business days after the show cause notice is given, why the action should not be taken.

New section 121G (Representations about show cause notice)

Section 121G provides for the building certifier to make representations about the show cause notice to BSA in the show cause period and BSA must consider the representations.

New section 121H (BSA must decide action to take)

Section 121H provides that BSA, after considering the representations for the show cause notice, must decide to take no further action or take action under division 6A.

New section 121I (BSA must advise licensee of its decision)

Section 121I(1) provides that if BSA decides to take no further action against the building certifier, BSA must give the building certifier notice of the fact.

Section 121I(2) provides that if BSA decides to act under division 6A BSA must give the certifier written notice stating the decision, the reasons for the decision and the certifier's rights for a review of the decision under division 6C (review of BSA's decisions)

New section 121J (When decision takes effect)

Section 121J provides that if BSA decides to act under division 6A, the decision takes effect from the day the written notice mentioned in section 121I(2) is given to the certifier.

Division 6C—Review of BSA's decisions

New section 121K (Review of BSA's decision about licence, particular level, and endorsement)

Section 121K provides that if an applicant is dissatisfied with BSA's decision under section 117 (Decision for application for licence), 121A (Decision on application for renewal of licence), 121B (Endorsement of licence for building certifier to issue development permits), 121C (Endorsement of licence to act as private certifier) or division 6A (Cancellation and suspension of, and other changes to, licences and cancellation of endorsement), the applicant may apply to the Commercial and Consumer Tribunal for a review of the decision.

Division 6D—Register

New section 121L (Register—Act, s 30B)

Section 121L provides that for section 30B (Keeping of Register), of the *Building Act 1975* (as amended by the *Plumbing and Drainage Act 2002*), the register must contain for each building certifier's licence, the licence number, the day of issue and the day of expiry, any endorsements on the licence and the level of licensing for the licence.

In Addition section 29(g) of the *Building Act 1975* provides that a function of BSA is to keep a register of building certifiers and section 30B provides that the register may be kept in the way BSA considers appropriate. The register must contain the building certifier's name and contact details, details of the building certifier's eligibility for licensing, details of decisions after investigations or audits, and details of any orders about a building certifier.

Division 6E—General provisions about licences

New section 121M (Automatic expiry on failure to apply for renewal)

Section 121M provides that if a building certifiers does not apply to renew the licence on or before the day the licence expires, the licence expires at the end of the day.

New section 121N (Surrendering licence)

Section 121N provides additional flexibility for a building certifier to surrender the licence by written notice to BSA. The surrender takes effect on the day the notice is given to BSA or on a later day as stated in the notice. It is an offence for the certifier not to return the licence, unless the certifier has a reasonable excuse, to BSA within 10 business days after the surrender takes effect.

New section 121O (Replacing licence)

Section 121O provides for a building certifier to apply to BSA in the approved application form for the replacement of the certifier's licence if it has been lost, stolen, destroyed or damaged. The BSA must, if satisfied the licence has been lost, stolen, destroyed or damaged replace the licence.

New section 121P (Notice of change in circumstances)

Section 121P provides that it is an offence for a licensee not to give BSA written notice of a change of address, a suspended or cancelled interstate or New Zealand building certifier's licence, is convicted of an offence against the Act or another Act or an offence involving fraud or dishonesty, within 20 business days after the change.

New section 121Q (Notice of certain events to interstate licensing authorities and other entities)

Section 121Q provides that BSA must as soon as practicable after a building certifier's licence is cancelled or suspended; or conditions are imposed on a building certifier's licence; or conditions on a building certifier's licence are removed, give notice about the event to each interstate or the New Zealand licensing authority with which BSA is aware the certifier is licensed as a building certifier, each accreditation standards body, an employer of the certifier or another entity BSA reasonably believes needs to know about the event.

Amendment of s 123 (Employment of cadet building certifier to assist building certifying functions)

Clause 51 amends section 123 to refer to the licensing of a building certifier instead of accreditation as a building certifier.

Amendment of s 124 (Role of building certifiers and cadet building certifiers)

Clause 52 amends section 124 to:

- refer to licensed instead of accredited building certifiers;
- allow only building surveying technicians employed by councils other than those mentioned in schedule 7 to approve building work; and
- clarify that the limitations on the role of building certifiers in respect of floor area and height of buildings applies to structures also.

Currently section 124 reserves certain areas of practice to building certifiers depending on their level of license and whether they are employed by a local government or not. Building certifiers licensed at the level of building surveying technicians employed by local governments can approve building work of the most common sizes of buildings (buildings have a rise of not more than 2 storeys and a total floor area not more than 500 m²). Private sector building surveying technicians cannot approve any building work. They can only assist in assessing and inspecting building work.

A grandfather clause (refer clause 58 new section 139) provides for a seven year period to allow accredited building surveying technicians currently employed by local governments to continue to perform building certifying functions as currently prescribed in the regulation. After the expiration of the grandfather period, only building surveying technicians employed by local governments other than those listed in schedule 7 will be able to approve building work.

Insertion of new s 127 (Code of conduct—Act, s 32)

Clause 53 inserts new section 127 declaring the code of conduct made by the chief executive on 20 October 2003 is approved.

Currently, a code of conduct published by the BSA regulates the behaviour of building certifiers. However, there is a need to separate policy and regulatory aspects of the building certification system.

Amendments to the *Building Act 1975* made by the *Plumbing and Drainage Act 2002* provides for the code of conduct to be a document published by the Chief Executive of the Department of Local Government and Planning and approved under a regulation. The amendment will also enable the Department to respond more effectively to emerging professional practice issues. The code will have the legal status of a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

Amendment of s 128 (Certifiers not to be engaged if there is a conflict of interest)

Clause 54 amends section 128 to clarify certifiers may manage on the behalf of clients development applications (ie lodge applications on behalf of the applicant for other aspects of the development) without being in conflict of interest. The current provisions of the section 128 could be interpreted to make such actions a conflict of interest.

Amendment of s129 (Liability insurance and insurance bonds for private certifiers)

Clause 55 amends section 129 to refer to a licensed private certifier instead of accredited private certifier.

Omission of pt 13 (Local government fees)

Clause 56 omits part 13 section 130. The setting of fees by local government for regulatory functions is now provided for under section 1071A of the *Local Government Act 1993*.

Insertion of new pt 14, div 1 hdg

Clause 57 inserts new division 1 heading to part 14 to clarify the transitional provisions for the *Standard Building Amendment Regulation (No. 1) 2003*.

Insertion of new part 14, div 2

Clause 58 inserts new division 2, sections 131 to 139 to provide for transitional provisions of the *Building Legislation Amendment Regulation (No. 1) 2003*.

New division 2 heading (*Division 2—Transitional provisions for Building Legislation Amendment Regulation (No. 1) 2003*)

New Section 133 (Definitions for pt 14, div 2)

Section 133 provides the following transitional definitions:

- “accrediting body” means the accrediting body established under the unamended Act.
- “amending regulation” means the *Building Legislation Amendment Regulation (No. 1) 2003*.
- “commencement” means the day the amending regulation, section 58 commences.
- “unamended regulation” means this regulation as in force immediately before the commencement.

New Section 134 (Existing accreditations)

Section 134 deems a person, who held an accreditation as a building certifier immediately before the commencement of the amending

regulation, is taken to be a suitable person to hold a licence as a building certifier; and the holder of a licence as a building certifier.

Any endorsement restriction or condition on an accreditation held by a person immediately before the commencement of the amending regulation, is taken to be an endorsement restriction or condition on the licence the person is taken to hold

New Section 135 (Existing applications for accreditations)

Section 135 requires an application for the issue or renewal of an accreditation made, but not decided, before the commencement of the amending regulation is taken to be an application for licensing and must be decided under this regulation.

The provisions of this regulation about issuing or renewing licenses apply to the application. The provisions of the unamended regulation dealing with making the application in the approved form and paying the application fee and licence fee apply to the application. This allows an application to be processed under the new rules. However, the person need not redo the application in the new approved form and may pay the 'old' accreditation fees.

New Section 136 (Existing applications for endorsement of licence to act as private certifier)

Section 136 provides that an application for endorsement of a building certifier's accreditation as a private certifier made under the unamended regulation and not decided before the commencement, is taken to be an application for endorsement as a private certifier and must be decided under the this regulation.

New Section 137 (Appeals to court against accrediting body's decision)

Section 137 provides if a person has appealed to the court against a decision of the accrediting body and the appeal has not been decided before the commencement the court may decide the appeal as if the unamended regulation had not been amended by the amending regulation.

However, if a person could have appealed to the court against a decision of the accrediting body; and the person had not appealed before the commencement; the person may appeal to the Commercial and Consumer

Tribunal for a review of the decision under section 121K as if the decision of the accrediting body were a decision of BSA.

New Section 138 (BSA taken to be the accrediting body)

Section 138 declares a reference in an Act or document to the accrediting body must, if the context permits, be taken to be a reference to BSA.

New section 139 (Local government building surveying technicians)

Section 139 provides a grandfather clause for a seven year period to allow accredited building surveying technicians currently employed by local governments to continue to perform building certifying functions as currently prescribed by the regulation. After the expiration of the grandfather period, only building surveying technicians employed by local governments other than those listed in schedule 7 will be able to approve building work.

This provision expires 7 years after commencement.

Amendment of sch 5 (Development)

Clause 59 amends schedule 5 to prescribe as self assessable development the following building work—

- installing a fireplace, a free standing heating appliance, a chimney or a flue in a building,
- erecting a sign that is detached from a building, no higher than 2 m and no wider than 1 200 mm.
- repairs, maintenance or alterations that do not involve structural components or fire safety systems and do not affect more than 20% of the floor area of a sole-occupancy unit or the floor area another part of a storey of a building.
- attaching minor attachments to an existing building.

The definition of building work now includes work regulated by the SBR, which would include heating appliances regulated under Part G2 of BCA Volume 1 and Part 3.7.3 of BCA Volume 2. Traditionally, however, heating appliances have not required development approval. It is appropriate therefore to include the installation of a heating appliance as self-assessable development.

Item 7 of schedule 5 inappropriately prescribes as exempt development minor attachments affixed to existing buildings. These attachments should be constructed in accordance with applicable codes but not subject to development approval. It is also irrelevant as to whether the attachments are affixed to a new or existing building.

Amendment of sch 6 (Building work requiring local government approval or decision)

Clause 60 consequentially amends schedule 6 to be compatible with—

- the repeal of part 3, divisions 1 to 3 relating to siting of detached houses. Items 7 and 8 relate to section 36 and together take account of whether the precise standard that has not been complied with by proposed development is in the alternative provisions in a planning scheme (referred to as a ‘quantifiable standard’) or in part 11 or 12 of the QDC (referred to as an ‘acceptable solution’).

Both items in turn refer to a ‘qualitative statement’ in the alternative provisions and a ‘performance criterion’ in part 11 or 12 of the QDC, as either may contain the relevant statement of what the precise standard is intended to achieve which the local government will consider in determining compliance.

- the insertion of new sections 13B and 13C.

Replacement of sch 7 (Local Governments)

Clause 61 lists council in schedule 7 to provide for those building surveying technicians employed by councils other than those listed will, after a grandfather period of 7 years, continue to be able to approve building work.

Omission of schedules 8–12

Clause 62 omits schedule 8 to 12.

Insertion of new schedule 8 (Competencies)

Clause 63 inserts new schedule 8 to detail the units of competencies building certifiers will be required to obtain for endorsement of their

licences to issue development permits for building work under new section 121B is inserted.

Insertion of new schedule 13 (Queensland Development Code)

Clause 64 inserts new schedule 13 consequential to amendment of section 6A listing the parts and the publication dates of the parts of the QDC in force under the Regulation. Any subsequent amendments to the code will need amendment of schedule 13 to refer to parts of the codes published at a future date.

PART 5—AMENDMENT OF STATE PENALTIES ENFORCEMENT REGULATION 2000

Regulation amended in pt 5

Clause 65 declares this part amends the *State Penalties Enforcement Regulation 2000*.

The State Penalties Enforcement Registry (SPER) establishes a whole of government on-the-spot fine enforcement and collection system. SPER provides an alternative to pursuing alleged offenders directly through a Court. This will improve the effectiveness of enforcement action by reducing the cost of fine enforcement, maximising the amount of fines paid before court action is taken, and minimising the number of fine defaulters.

Amendments to the *Building Act 1975* made by the *Plumbing and Drainage Act 2002* and this Regulation provides for several new offence provisions regulating the behaviour of building certifiers. The *State Penalties Enforcement Regulation 2000* is amended to allow the BSA to issue Prescribed Infringement Notices of up to 8 penalty units (ie, up to \$600) for these new offences.

Amendment of sch 5 (Other legislation)

Clause 66 amends schedule 5 of the *State Penalties Enforcement Regulation 2000* to list the Prescribed Infringement Notices the BSA will be able to issue.

A criticism of the current legislation by a range of stakeholders is that the disciplinary processes are ineffective, thereby not providing sufficient incentives for building certifiers to be accountable. The BSA is currently able to prosecute a limited number of offences by building certifiers in the Magistrates Court. However, pursuing action through the Court can involve significant costs and there is clearly a need to improve the effectiveness of enforcement action by reducing the cost of fine enforcement.

Clause 66 addresses this issue by making it an offence to breach certain provisions within the legislation and attaching on-the-spot fines under the *State Penalties Enforcement Regulation 2000*. The on-the-spot fines will be imposed by the BSA through the State Penalties Enforcement Register.

The attached Schedule lists the on the spot fines proposed to be introduced under the regulation.

Section Reference	Proposed on the spot offence	Current maximum penalty	Proposed on the spot penalty
Proposed on-the-spot fines for breaches of specific sections of the <i>Building Act 1975</i>:			
s 30(1)	Conducting building certification functions if not licensed;	\$12,375	\$600
s 36(4)	Failing to produce a document requested by the BSA during an investigation or audit;	\$3,750	\$450
s 39A(1)	Making a false or misleading statement to the BSA during an investigation or audit; and	\$12,375	\$600
s 39B(1)	Providing the BSA with a document that contains false or misleading information.	\$12,375	\$600
Proposed on-the-spot fines for breaches of specific sections of the <i>Integrated Planning Act 1997</i>:			
s. 5.3.4(1)	Approving a development application that is inconsistent with an earlier approval;	\$12,375	\$600
s. 5.3.4(2)	Approving self-assessable development that is inconsistent with a local planning instrument;	\$12,375	\$600
s 5.3.5(4)	Approving an application before relevant other approvals have been obtained;	\$12,375	\$600

s 5.3.5(6)	An offence for a private certifier to fail to provide the assessment manager with copies of the relevant approval or fail to pay the fixed fee to the local government (where applicable).	\$1,500	\$300
s 5.3.5(6B)	An offence for a private certifier, upon approving an application, to give the applicant the decision notice and any other documents prescribed under a regulation, until the private certifier receives an acknowledgment from the local government for the payment of the fee for archiving approval documents.	\$3,000	\$300
s 5.3.5(7)	Failure by private certifier to provide the assessment manager with a copy of a certificate within 5 days of issuing the certificate or failing to pay the fixed fee to the local government;	\$1,500	\$300
s 5.3.9(2)	Failure by private certifier to provide the assessment manager a written notice of engagement or failing to provide the land owner written notice of their name and responsibilities.	\$1,500	\$300
Proposed on-the-spot fines for breaches of specific sections of the <i>Standard Building Regulation 1993</i>:			
Amended s 26(2), (3)	Failure of a private certifier to mark each approved document as approved by the private certifier and relating to the development approval for the building work.	\$1,500	\$150
New s 26A(2)	Failure of a private certifier to keep a copy of the documents provided to the assessment manager and a copy of the development information relied upon for a period of 5 years.	\$1,500	\$150
s 55A(2)	Failure of a private certifier to issue a development permit before relevant approval under the <i>Plumbing and Drainage Act 2002</i> has been obtained for an on site sewerage facility.	\$1,500	\$150

s 56(2)	Failure of a private certifier to approve a development application before relevant approval under the <i>Water Act 2000</i> is obtained to build over a sewer or water main.	\$1,500	\$150
s 58	Failure of a private certifier to approve a development application which involves building work over an easement before the consent of the holders of the registered interest in the easement has been obtained.	\$1,500	\$150
New s 87C(2)	Failure of a private certifier to fail to inspect or accept a certificate of inspection for a stage of building work for which a notice for inspection has been provided.	\$1,500	\$150
New s 87G(2)	Failure of a private certifier to give the assessment manager the inspection documentation.	\$1,500	\$150
New s 87K(2), (3)	Failure of a private certifier to give the owner the inspection documentation and final inspection certificate.	\$1,500	\$150
New s 87L(1), (2)	Failure of a private certifier to give the inspection manager the final inspection certificate and the private certifier fails to keep a copy for 5 years.	\$1,500	\$150
New s 98(2)	Failure of a private certifier to prepare a certificate of classification.	\$1,500	\$150
Amended s 104(2)	Failure of a private certifier to provide a referral agency with a copy of the certificate of classification, a copy of the plans and specifications and (where appropriate) a list of fire safety installation within 10 business days of issuing the certificate of classification.	\$1,500	\$150
New s 121N(3)	Failure of a private certifier to return their licence after the licence has been surrendered.	\$750	\$75
New s 121P(2)(b)	Failure of a private certifier to notify the BSA of a conviction.	\$750	\$75

Proposed on-the-spot fines for breaches of specific sections of the Integrated Planning Regulation 1998:			
s 10(1)	Acting as a building certifier if unlicensed;	\$12,375	\$600
s 10(2)	Acting at a level of certification for which the building certifier is not licensed; and	\$12,375	\$600
s 10(3)	Acting as a private certifier if not endorsed as a private certifier.	\$12,375	\$600

The schedule of the *Building Legislation Amendment Regulation (No. 1) 2003* provides for minor and consequential amendments.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Local Government and Planning.