

Queensland



BUILDING ACT 1975

**Reprinted as in force on 26 March 1994
(includes amendments up to Act No. 76 of 1993)**

Reprint No. 2

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the Office of the Queensland Parliamentary Counsel
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Information about this reprint

This Act is reprinted as at 26 March 1994. As required by section 5 of the Reprints Act 1992, it—

- shows the law as amended by all amendments that commenced on or before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the Reprints Act 1992, the reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the Reprints Act 1992, to do the following—

- use updated references permitted by Division 3 of that Act;
- use punctuation and expressions consistent with current legislative drafting practice as permitted by sections 27 and 29 of that Act;
- use aspects of format and printing style consistent with current legislative drafting practice as permitted by section 35 of that Act;
- omit provisions that are no longer required as permitted by sections 37, 39 and 40 of that Act;
- make all necessary consequential amendments as permitted by section 7(1)(k) of that Act.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A Table of previous reprints is included in the Endnotes.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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[as amended by all amendments that commenced on or before 26 March 1994²]

An Act to authorise the making of standard laws for local governments about the erection of buildings and other structures, to provide for the powers of local governments in relation to certain buildings and other structures, and for other purposes

PART 1—PRELIMINARY

Citation

1. This Act may be cited as the *Building Act 1975*³⁻⁹.

Commencement of Act

2.(1) Subject to section 7, the Governor may by proclamation—

- (a) appoint a date on which this Act shall come into operation; or
- (b) appoint dates on which the provisions of this Act specified in the proclamation shall come into operation.

(2) Such dates may be appointed in the one or in different proclamations.

(3) This Act or a provision thereof specified in the proclamation shall come into operation on the date appointed by proclamation made under this section for the coming into operation of this Act or, as the case may be, that provision.

Crown to be bound

4.(1) The provisions of this Act save—

- (a) such provisions as relate to the requirement to make application to

a local government for its approval to carry out building work;

- (b) such provisions of the Act, exclusive of the Standard Building Law, as confer on a local government any power, authority or discretion or impose on a local government any function or duty;

extend to and bind the Crown in right of the State, subject to the following provisions of this section.

(2) The carrying out on behalf of the Crown of building work shall not be unlawful by reason only of the absence of an approval by a local government.

(3) In the application to the Crown in right of the State in respect of any building work being or to be carried out by or on behalf of the Crown in right of the State or by or on behalf of a person or body who represents the Crown in right of the State of any provision of the Standard Building Law that confers on a local government any power, authority, or discretion or imposes on a local government any function or duty, such provision shall be read and construed as if in every such case it conferred or imposed on the prescribed Minister or on a person authorised by the prescribed Minister for the purpose that power, authority, discretion, function or duty in place of the local government.

(3A) The prescribed Minister is hereby empowered to authorise, either generally or in a particular case, any person to exercise a power, authority or discretion or to perform a function or duty construed under this subsection to be conferred or imposed on the prescribed Minister.

(4) Where building work is to be carried out by or on behalf of the Crown in right of the State or by or on behalf of a person or body who represents the Crown in right of the State, the local government of the area in which the building work is to be carried out shall be supplied by the prescribed Minister or by a person authorised by the prescribed Minister for the purpose with such information as is prescribed by the Standard Building Law.

(5) For the purposes of this section—

- (a) the following shall be deemed to represent the Crown in right of the State within the limitations provided for in or under this paragraph (a), that is to say—
- (i) the Queensland Electricity Generating Board constituted

under the *Electricity Act 1976*, in respect of the carrying out of building work in relation to an electricity power station and its ancillary works on land declared by the Governor in Council, by order in council, to be land on which the board may erect such station or works in a capacity deemed to be representative of the Crown;

- (ii) a Harbour Board constituted under the *Harbours Act 1955*, the Port of Brisbane Authority constituted under the *Port of Brisbane Authority Act 1976*, in respect of the carrying out of building work not being a building classified in Part A3 of the Building Code of Australia as forming part of the Standard Building Law;
 - (iii) any statutory body declared by the Governor in Council, by order in council, to the extent (if any) expressed in the order.
- (b) the expression “**the prescribed Minister**” means—
- (i) in the case where a department of the Government of the State is responsible for the carrying out of the building work in question—the Minister of the Crown for the time being administering that department; and
 - (ii) in the case where a board or an authority referred to in paragraph (a) or a statutory body specified in an order in council under paragraph (a) is responsible for the carrying out of the building work in question—the Minister of the Crown for the time being administering the Act under which the board, authority or body is constituted.

Use of Crown buildings in emergency

4A.(1) In so far as the provisions of this Act as relate to the classification of buildings under the Standard Building Law regulate the use to be made of such buildings, those provisions do not extend to and bind the Crown in right of the State where the use in question is authorised by the prescribed Minister.

(2) The prescribed Minister is not to authorise the use of a building for a purpose that is contrary to the provisions referred to in subsection (1) unless the prescribed Minister is of the opinion that an emergency situation exists

or is likely to exist such as justifies that use and the building is structurally adequate and reasonably suitable for that use.

(3) For the purposes of this section a board, authority or statutory body that is deemed to represent the Crown in right of the State for the purposes of section 4 is deemed to represent the Crown in right of the State for the purposes of this section.

(4) For the purposes of this section—

“prescribed Minister” means—

- (a) in the case where a department of the Government of the State is responsible for the building in question—the Minister of the Crown for the time being administering that department; and
- (b) in the case where a board, authority or statutory body that represents the Crown in right of the State is responsible for the building in question—the Minister of the Crown for the time being administering the Act under which the board, authority or body is constituted.

Interpretation

5. In this Act—

“building” means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building;

“building tribunal” means a building tribunal constituted under Part 3;

“building work” means work in the nature of—

- (a) the erection, construction, underpinning, removal, repair, placing, alteration of, addition to, or demolition of, any building or other structure; and
- (b) the making of any excavation or filling for, or incidental to, the erection, construction, underpinning, removal, repair, placing, alteration of, addition to, or demolition of, any building or other structure; and
- (c) the making of any excavation or filling—
 - (i) for the purpose of facilitating the construction or erection of

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any building or other structure (whether now or at some future time) if the excavation may adversely affect the stability of, or the filling is likely to encroach upon, any land adjoining the allotment on which the excavation is made or the filling occurs; or

- (ii) that may adversely affect the stability of any building or other structure on the allotment on which the excavation is made or the filling occurs or on any land adjoining that allotment;

but does not include work declared by the Standard Building Law not to be building work;

“Commissioner of Fire Service” means the corporation sole constituted under section 15 of the *Fire Service Act 1990*;

“committee” means the Building Advisory Committee constituted under Part 4;

“Director” means the chief executive of the department;

“erect” includes—

- (a) erect or commence or continue to erect; and
- (b) do or commence or continue to do work in the course of or for the purpose of erecting; and
- (c) perform any structural work or make or do any alteration, addition or rebuilding; and
- (d) move from one position on an allotment to another position on the same allotment or on another allotment or partly on the same and partly on another allotment; and
- (e) re-erect, with or without alteration, on or partly on the same or another allotment; and
- (f) where a building or other structure is located on more than one allotment—
 - (i) move to another position on the same allotments or any of them or on another allotment or other allotments or partly on the same allotments or any of them and partly on another allotment or other allotments; and

- (ii) re-erect with or without alteration on another position on the same allotments or any of them or on another allotment or other allotments or partly on the same allotments or any of them and partly on another allotment or other allotments;

“interim development control provisions” has the meaning given by the *Local Government (Planning and Environment) Act 1990*;

“owner”, in relation to any land, building or other structure, includes any person having an estate or interest therein, or the occupier thereof, or any person who is a registered mortgagee or registered encumbrancee in respect thereof;

“planning application” means an application for—

- (a) the rezoning of land the subject of an application for approval—
 - (i) to carry out building work to permit the use of the land; or
 - (ii) to erect or use buildings or other structures on the land;for the purpose for which the application was made; or
- (b) the approval, consent or permission of a local government to permit the use of land the subject of an application for approval—
 - (i) to carry out building work; or
 - (ii) to erect or use buildings or other structures on the land;for the purpose for which the application was made;

“planning scheme” has the meaning given by the *Local Government (Planning and Environment) Act 1990*;

“planning scheme area” has the meaning given by the *Local Government (Planning and Environment) Act 1990*;

“registrar” means the registrar of building tribunals appointed under section 20;

“Standard Building Law” means the regulations in force under section 6;

“structure” includes a wall or fence and anything that is affixed to or projecting from a building, wall, fence or other structure;

“underpinning” means the provision of support (whether permanent or temporary and including vertical or lateral support) for any land, building or other structure.

PART 2—STANDARD BUILDING LAW

Standard Building Law

6.(1) A regulation may made provision with respect to the carrying out of building work.

(2) The Standard Building Law—

- (a) applies to the areas of all local governments; and
- (b) is to be administered by local governments; and
- (c) except as provided in this Act—is a complete code for carrying out of the building work.

Variation of Standard Building Law

12B.(1) Where building work is proposed to be carried out, is being carried out or has been carried out and that building work does not comply in all respects with the Standard Building Law, application may be made to have the Standard Building Law varied by a building tribunal in its application to that building work in the particular or particulars specified in the application.

(2) The Crown in right of the State or a board, authority or statutory body deemed to represent the Crown in right of the State for the purposes of section 4 may make application in the manner prescribed by subsection (4)(a) for variation of the Standard Building Law as provided for by subsection (1).

(3) An application shall not be made under subsection (1) for a variation in any particular that, under the Standard Building Law, lies within the power of a local government to approve.

(4) An application under subsection (1) shall be made by—

- (a) lodging a duly completed notice of application in the prescribed form, together with the prescribed fee, with the registrar; and
- (b) giving a copy of the notice of application to the local government of the area in which the building work to which the application relates is proposed to be carried out, is being carried out or has been carried out.

Constitution of building tribunal

12BA.(1) Upon receipt by the registrar of a duly completed application under section 12B, the registrar shall refer the matter of the application to the Director who shall thereupon constitute a building tribunal to determine the application.

(2) The registrar—

- (a) shall give to the member composing, or the chairperson of, the building tribunal the writing constituting the tribunal and the application or, if the application is not readily available, a copy of the application; and
- (b) shall give to each of them, the applicant and the local government to which a copy of the application is to be given under section 12B(4)(b), a copy of the writing constituting the building tribunal that is to determine the application.

Determination of application to vary

12C.(1) A building tribunal—

- (a) after considering an application made under section 12B; and
- (b) in the case of an application made under section 12B(1)—after consulting upon the application with the local government of the area in which the building work to which the application relates is proposed to be carried out, is being carried out or has been carried out;

may—

- (c) approve the application; or
- (d) approve the application subject to conditions; or
- (e) refuse the application.

(2) The registrar shall, in writing, notify the building tribunal's decision on an application to the applicant and, in the case of an application made under section 12B(1), to the local government of the area in which the building work to which the application relates is proposed to be carried out, is being carried out or has been carried out.

(3) Such notification or notifications shall be given within 7 days from

the date on which the building tribunal made its decision.

Effect of variation

12D. Where a building tribunal has approved an application made under section 12B(1) or (2), with or without conditions—

- (a) the Standard Building Law shall, subject to the result of any appeal brought in respect of the application, be construed to apply in relation to the building work to which the application relates, and to no further extent, as if it had been amended in accordance with the building tribunal's decision and, if that decision is subject to conditions, shall be so construed only if those conditions are satisfied; and
- (b) it shall not be competent to a local government to refuse an application for its approval to carrying out of building work to which the building tribunal's decision relates on the ground that the building work does not comply with the Standard Building Law in the particular or particulars in which the Standard Building Law is to be construed as if they had been amended.

Appeal from building tribunal's decision

12E.(1) An applicant dissatisfied with a decision of a building tribunal under section 12C may appeal against that decision to the Building Advisory Committee.

(2) Every such appeal shall be instituted within 30 days after notification of the building tribunal's decision is given to the applicant by the registrar, and not later, by lodging with the secretary to the committee a duly completed notice of appeal accompanied by the prescribed fee.

(3) A notice of appeal—

- (a) shall be in or to the effect of the prescribed form; and
- (b) shall specify the grounds of appeal and the facts and circumstances relied on by the appellant in support of those grounds.

(4) If the secretary to the committee is of the opinion that an appeal, in respect of which a notice of appeal has been lodged, has not been instituted

within the time prescribed by this section, the secretary shall as soon as practicable advise the Director of that fact and of the grounds for the secretary's opinion and if the Director is also of that opinion the secretary shall direct that no further action be taken in respect of that notice.

(5) Where the Director so directs, the secretary shall notify the appellant and, in the case of an application under section 12B(1), the local government of the area in which the building work to which the application relates is proposed to be carried out, is being carried out or has been carried out.

Procedure on appeal

12F.(1) Subject to this Act, as soon as is practicable after receipt of a notice of appeal, the secretary to the committee shall, after consulting with the chairperson of the committee, appoint a time and place when and where the committee will consider the matter of the appeal and shall notify the appellant of the time and place in writing.

(2) If at the time and place so appointed a quorum of the committee is present, including at least 4 members of the committee of whom none was a member of the building tribunal against whose decision the appeal in question is brought, the committee—

- (a) shall enter upon consideration of the matter of the appeal; and
- (b) shall receive such representations on the matter of the appeal as are made to it by or on behalf of the appellant.

(3) If at the time and place so appointed or at any time and place to which the appeal is adjourned there is no appearance by or on behalf of the appellant (as permitted by section 49), it shall be taken that the appellant does not wish to make any representations or, as the case may be, further representations on the matter of the appeal and the committee may proceed to decide the appeal without further reference to the appellant.

(4) Upon its entering upon consideration of an appeal, the committee—

- (a) may adjourn the proceeding to such time and place certain as it considers necessary to a proper consideration and decision of the appeal; and
- (b) shall be competent to give its decision on the appeal notwithstanding that a change or vacancy in its membership has

occurred since the time of its entering upon such consideration; and

- (c) in respect of the decision appealed against—
 - (i) may confirm it; or
 - (ii) may vary it in such manner and to such extent as the committee thinks fit; or
 - (iii) may quash it.

(4A) The power of the committee to vary the decision appealed against includes the power to revoke that decision and approve the application in respect of which the decision was made, with or without conditions.

(5) The secretary to the committee shall, in writing, notify the committee's decision on an appeal to the appellant, the registrar and, except in the case of an appeal lodged by the Crown in right of the State or by a board, authority or statutory body deemed to represent the Crown in right of the State for the purposes of section 4, where the decision has the effect of approving, with or without conditions, an application made under section 12B(1), the secretary shall also, in writing, notify the local government of the area in which the building work to which the application relates is proposed to be carried out, is being carried out, or has been carried out.

Effect of committee's decision

12G.(1) The decision of the committee upon an appeal against a decision of a building tribunal under section 12C—

- (a) shall, subject to the right of appeal conferred by this Act, be final and binding; and
- (b) shall be deemed to be the building tribunal's decision on the application in respect of which it made its decision appealed against; and
- (c) where it has the effect of approving such application, with or without conditions—shall have the effect prescribed by section 12D for a variation approved by a building tribunal.

(2) Where the decision of the committee referred to in subsection (1) is not appealed under this Act, that decision takes effect upon the expiration of

the period within which any such appeal could have been duly instituted.

(3) An appeal duly instituted under this Act against a decision of the committee referred to in subsection (1) acts as a stay of that decision until the appeal is disposed of or struck out.

Transitional provisions

13.(1) Building work that was lawfully carried out before the coming into operation of the Standard Building By-laws shall not cease to be lawfully carried out by reason of its not conforming in any respect with any provision of those by-laws.

(2) Where—

- (a) the lawful carrying out of building work had commenced before the coming into operation of the Standard Building By-laws; or
- (b) approval of a local authority to the carrying out of building work had been granted before the coming into operation of the Standard Building By-laws, but such building work had not commenced before such coming into operation; or
- (c) approval of a local authority to the carrying out of building work had been duly sought before the coming into operation of the Standard Building By-laws, but the application for such approval had not been disposed of before such coming into operation; or
- (d) planning for the carrying out of building work had commenced before the coming into operation of the Standard Building By-laws and the local authority having jurisdiction in the area where the building work is to be carried out is of the opinion that to require the building work to be replanned so as to conform with those by-laws would cause hardship to the person for whom the building work is to be carried out having regard to—
 - (i) the stage the planning has reached; or
 - (ii) the nature of the building work; or
 - (iii) the means and circumstances of that person;or any 1 or more of such matters;

it shall be lawful for the building work to be carried out or completed or for

the approval of the local authority to be granted as the case may be, subject to and in accordance with the law in force and applicable in the area in question in respect of the carrying out of the building work in question at the material time before the coming into operation of those by-laws.

(3) The carrying out of building work comprising the erection of an alteration of or addition to a building or other structure that was erected before the coming into operation of the Standard Building By-laws shall conform with the provisions of those by-laws save where, in the opinion of the local authority having jurisdiction in the area in which the building or structure is located, the general safety and structural standards of the building or structure would not be impaired by the erection of the building or structure otherwise in which case it shall be lawful for the approval of the local authority to be granted otherwise than in accordance with those by-laws and for the building work to be carried out in accordance with such approval but otherwise than in conformity with those by-laws.

(4) Where approval of a local authority is sought to the carrying out of building work comprising the erection of an alteration of or addition to a building or other structure that was erected before the coming into operation of the Standard Building By-laws and in the opinion of the local authority the building or structure is unsafe or structurally unsound the local authority may require, as a condition of its approval of the erection, that the whole building or structure be brought into conformity with those by-laws or (if the local authority thinks fit) with such of the provisions of those by-laws as will ensure that the building or structure is made safe and structurally sound.

Provisions to effectuate s 13

14.(1) For the purpose of effectually applying the provisions of section 13(2) and (3), by-laws in force in an area immediately before the coming into operation in that area of the Standard Building By-laws shall be deemed to continue to be operative notwithstanding their inconsistency in any respect with a provision of the Standard Building By-laws.

(2) The provisions of section 13 apply not only in relation to the initial coming into operation of the Standard Building By-laws within an area but also in relation to the coming into operation of—

- (a) the Standard Building By-laws substituted by the *Building Act Amendment Act 1991* in respect of that area; and

- (b) the Standard Building By-laws as duly amended or as duly modified in respect of that area from time to time;

and for that purpose the expression “**the coming into operation of the Standard Building By-laws**” is to be construed to include reference to the coming into operation of—

- (c) the Standard Building By-laws referred to in paragraph (a); and
(d) the Standard Building By-laws as so duly amended or modified at the material time.

(3) In this section—

“**by-law**” of a local authority includes an ordinance of the Brisbane City Council.

PART 3—REFEREES AND BUILDING TRIBUNALS

Appointment of referees

15.(1) The Minister may, by notification published in the Gazette, appoint such number of persons (qualified as prescribed) as the Minister thinks necessary to be referees for the purposes of this Act.

(2) A referee may be appointed in respect of the whole of the State or in respect of any portion of the State and the extent of the referee’s appointment shall be specified in the notification of the referee’s appointment.

(3) The jurisdiction of a referee as a member of a building tribunal may be exercised by the referee within the State or within the portion of the State specified in such notification, according to the terms of the referee’s appointment.

Qualification of referee

16.(1) A person is qualified to be a referee if the person is—

- (a) an architect registered in accordance with the *Architects Act 1985*; or

- (b) a professional engineer registered in accordance with the *Professional Engineers Act 1988*; or
- (d) registered under the *Builders' Registration and Home-owners' Protection Act 1979* as both a registered house builder and a registered general builder neither of which registration is subject to any condition or restriction and who after—
 - (i) completion of the person's apprenticeship; or
 - (ii) a date determined by the committee;has had not less than 8 years' experience in building construction; or
- (e) considered by the Minister to have a knowledge of this Act or of matters relating to fire safety such as would enable the person to adequately discharge the functions of a referee.

(2) An officer of the public service may be appointed as a referee, if the officer is otherwise qualified as prescribed, and may hold that appointment in conjunction with any other appointment the officer holds in the public service.

Term of referee's appointment

17.(1) A person may be appointed as referee for any term not exceeding 3 years as the Minister thinks fit.

(1A) The term of appointment shall be specified in the notification of appointment.

(1B) A referee, if the referee remains qualified as prescribed, is eligible for re-appointment.

(2) A referee may at any time—

- (a) resign the referee's appointment as such by writing under the referee's hand given to the Minister;
- (b) be removed from the referee's appointment as such by writing under the hand of the Minister given to the referee.

Remuneration of referee

18.(1) A referee, as a member of a building tribunal, shall be paid such remuneration as the Governor in Council from time to time determines.

(2) A referee who is an officer of the public service of the State shall not be paid any remuneration on account of acting as a member of a building tribunal during the referee's ordinary hours of duty as such an officer but shall be entitled to expenses necessarily incurred by him or her in so acting.

Referee to make declaration

19.(1) A person appointed as a referee shall make and subscribe before a justice of the peace a declaration in the prescribed form, before the person first sits as a member of a building tribunal.

(2) A referee, having made such declaration, shall forthwith send the same to the Director.

Building tribunals

19A.(1) There shall be constituted from time to time for the purposes of this Act 1 or more tribunals each to be known as a building tribunal.

(2) Subject to this Act a building tribunal shall determine any matters arising for its determination with all reasonable despatch.

(3) A building tribunal has jurisdiction to determine any matter referred to it under this Act.

Membership of building tribunal

19B.(1) A building tribunal may consist of 1 but shall consist of not more than 3 referees nominated in writing by the Director having regard to the matter or matters with which the building tribunal is to deal.

(2) A building tribunal that is to consider an application for a variation of the Standard Building Law under section 12B made by the Crown in right of the State or a board, authority or statutory body deemed to represent the Crown in right of the State for the purposes of section 4 shall—

- (a) where the tribunal is to consist of 1 referee only—have as its member a referee employed by the Crown in right of the State; or

- (b) where the tribunal is to consist of 2 or more referees—have at least 1 member who is a referee employed by the Crown in right of the State.

(3) In respect of a building tribunal that is to consist of 2 or more referees, the Director shall—

- (a) consult with a representative of the Local Government Association of Queensland in respect of the nomination of at least 1 of the referees; and
- (b) in the writing nominating the referees as members of the tribunal, appoint 1 of their number as chairperson of the tribunal.

Procedure of building tribunal

19C.(1) A building tribunal shall meet at such times and places as it determines and conduct its business in the manner prescribed or, in so far as the manner is not prescribed, as it thinks fit.

(2) A matter arising for determination by a building tribunal consisting of 2 or more members shall be determined by majority vote of its members present at a meeting.

(3) The chairperson of a building tribunal shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

(4) An act or determination of a building tribunal shall not be invalid by reason only of a defect or irregularity in the nomination of a member of the tribunal or the appointment of a referee who is such a member.

Constitution of building tribunal

19D.(1) A building tribunal constituted to determine an objection or application must continue to be composed of the same persons.

(2) If a building tribunal is unable to enter upon or complete the determination of an objection or application, the Director may constitute another building tribunal to deal with the matter de novo.

Referee not to act as member of building tribunal in certain cases

19E.(1) A referee shall not act as a member of a building tribunal in respect of an objection or application—

- (a) that concerns any building or other structure of which he or she is the owner or for which he or she is the architect, engineer, planner or builder, or in which he or she has directly or indirectly a specific interest; or
- (b) that concerns any building or other structure that is to be situated or is situated in the area of a local government of which he or she is an officer or councillor.

(2) A referee who is employed by the Crown in right of the State or by a board, authority or statutory body deemed to represent the Crown in right of the State for the purposes of section 4 shall not act as a member of a building tribunal in respect of an application under section 12B if the referee—

- (a) is employed in the department of the Government of the State making the application or responsible for carrying out the building work to which the application relates; or
- (b) is employed by the board, authority or statutory body making the application.

Appointment of registrar and other officers

20.(1) The Governor in Council may, from time to time, by notification published in the Gazette appoint a registrar of building tribunals and such other officers as the Governor in Council thinks necessary for the effectual discharge of the functions of building tribunals.

(2) An officer of the public service of the State may be appointed under subsection (1) or may be assigned by the Director to perform duties to assist building tribunals and may hold such appointment or perform such duties in conjunction with any other appointment the officer holds in the public service.

PART 4—BUILDING ADVISORY COMMITTEE

Constitution of committee

21. There shall be constituted from time to time, for the purposes of this Act, a committee to be called the Building Advisory Committee.

Membership of committee

22. The committee shall consist of the following members—

- (a) 2 representatives of the Department of Housing and Local Government (1 of whom shall be chairperson) nominated by the Minister of the Crown who for the time being is responsible for that department; and
- (c) a representative of the Department of Administrative Services nominated by the Minister of the Crown who for the time being is responsible for that department; and
- (d) a representative of the Minister of the Crown for the time being charged with the administration of the *Fire Service Act 1990*; and
- (e) a representative of local authorities nominated by the executive committee of the Local Government Association of Queensland; and
- (f) a representative of Brisbane City Council nominated by that council; and
- (g) a representative of the Royal Australian Institute of Architects (Queensland Chapter) nominated by that chapter; and
- (h) a representative of the Queensland Master Builders Association nominated by that association; and
- (i) a representative of the Institution of Engineers, Australia (Queensland Division) nominated by that division; and
- (j) a representative of the Building Industry Specialist Contractors Organisation of Australia nominated by that organisation; and
- (k) a representative of the Housing Industry Association (Queensland Division) nominated by that division.

Appointment of members of committee

23.(1) Every member of the committee shall be appointed by the Governor in Council by notification published in the Gazette.

(1A) In the notification appointing the members referred to in section 22(a) the Governor in Council shall appoint 1 of them to be chairperson of the committee.

(2) An officer of the public service of the State may be appointed as a member of the committee and may hold that appointment in conjunction with any other appointment the officer holds in the public service.

(3) At least 1 month before the date when the committee is to be constituted or re-constituted the Minister shall cause notice in writing to be given to each person (other than the Minister) or body that is entitled, under section 22, to nominate a person to be a member of the committee and shall in the notice specify a date and shall require such person or body to furnish the Minister, before the specified date, with a nomination of a person to be appointed as a member of the committee.

(3A) If, by the specified date, 1 or more of the persons and bodies entitled to do so has not furnished the Minister with a nomination for appointment, the members of the committee may nevertheless be appointed from persons who have been duly nominated and, in addition, the Governor in Council may appoint any person as if the person had been nominated by a person or body entitled to make a nomination and who has failed to duly so do, and the committee so constituted shall be taken to have been duly constituted or reconstituted, as the case may be.

(4) The committee shall be taken to be constituted upon the publication in the Gazette of notification of the appointment of its members.

Term of appointment of committee member

24.(1) A person may be appointed as a member of the committee for any term not exceeding 3 years as the Governor in Council thinks fit.

(1A) The term of appointment shall be specified in the notification of appointment.

(1B) A member of the committee shall be eligible for re-appointment.

(2) A member of the committee may at any time—

- (a) resign the member's appointment as such by writing under the member's hand given to the Minister;
- (b) be removed from the member's appointment as such by writing under the hand of the Minister given to the member at the direction of the Governor in Council.

Casual vacancies

25.(1) When a vacancy occurs in the office of a member of the committee before the expiration of the member's term of appointment the Governor in Council may, by notification published in the Gazette, appoint another person (duly nominated) to the committee.

(1AA) Unless a person sooner resigns or is removed from the person's office as prescribed, a person appointed to fill such a casual vacancy shall hold office until the time when the person's predecessor's term of appointment would have expired.

(1A) Where the vacancy is in the office of the member who was chairperson of the committee, the Governor in Council, by notification published in the Gazette, may appoint 1 of the members referred to in section 22(a) to be chairperson.

(2) Where the vacancy has occurred in the office of a member nominated by a person or body other than the Minister, the Minister (if the vacancy is to be filled) shall cause notice to be given to the person or body who nominated the member in whose office the vacancy has occurred and shall in the notice specify a date and shall require such person or body to furnish the Minister, before the specified date, with a nomination of a person to be appointed to fill the vacancy.

(3) If such person or body fails to comply with the Minister's requisition before the specified date, the Governor in Council may appoint any person as representative of that person or body as if the person had been duly nominated.

Nomination of deputy members

26.(1) A person or body who or which is entitled, under section 22, to nominate a person to be a member of the committee may from time to time nominate another person as the deputy of the member nominated by that

person or body.

(2) Where under section 23(3) a person or body is required to nominate a person to be a member of the committee and that person or body fails to duly do so, the person appointed a member of the committee under that subsection is, for the purposes of subsection (1), taken to have been nominated by that person or body.

(3) Notification in writing of the nomination of a deputy member, otherwise than by the Minister, is to be given to the Minister as soon as practicable after that nomination.

(4) The Governor in Council may by notification published in the Gazette appoint the nominee as a deputy member of the committee.

(5) For as long as a deputy member's appointment as such continues, the deputy member is entitled to attend meetings of the committee in the absence of the member for whom that deputy member is deputising and is taken to be a member of the committee.

(6) The deputy of the member who is chairperson of the committee is, while attending any meeting in the absence of the chairperson, taken to be the chairperson of the committee.

(7) The appointment of a person as a deputy member terminates and is of no further effect—

- (a) in the case of an appointment expressed to be for the purpose of any meeting or meetings of the committee—upon the conclusion of that meeting or, as the case may be, the last of those meetings; and
- (b) in the case of an appointment expressed to be for a period—upon the expiration of that period; and
- (c) if the member for whom the deputy member is deputising dies or otherwise vacates the office of member.

Functions of committee

27. The committee—

- (a) shall consider and decide appeals brought under section 12E or 37; and

- (b) shall consider and advise the Minister on such matters as the Minister may refer to it from time to time; and
- (c) may initiate and refer to the Minister recommendations for amendment or modification of the Standard Building Law; and
- (d) may initiate consideration of and inform the Minister on matters touching the administration of this Act.

Remuneration of members

28.(1) A member of the committee or of any subcommittee appointed under section 28A shall be paid such remuneration as the Governor in Council from time to time determines.

(2) A member of the committee or of a subcommittee who is an officer of the public service of the State shall not be paid any remuneration on account of the member's attendance at meetings of the committee or subcommittee during the member's ordinary hours of duty as such an officer but the member shall be entitled to expenses necessarily incurred by the member in so attending.

Advisory and technical subcommittees

28A.(1) The committee may appoint such advisory subcommittees and technical subcommittees as it thinks fit to advise it on such matters within the scope of its functions as are referred to those subcommittees by the committee.

(2) A person may be appointed to be a member of a subcommittee whether or not the person is a member of the committee.

(3) An officer of the public service of the State may be appointed as a member of a subcommittee and may hold that appointment in conjunction with any other appointment the officer holds in the public service.

Proceedings of committee

29.(1) All business of the committee shall be conducted by a quorum at the least, which shall consist of 5 members.

(2) The committee shall meet at such times and places as it determines

and shall conduct its business in such manner as is prescribed or, in so far as it is not prescribed, as it determines from time to time.

(3) The chairperson of the committee shall preside at all meetings of the committee at which the chairperson is present and, in the chairperson's absence from any meeting, the members present shall elect from their number a member who shall preside at that meeting.

(4) The person who presides at a meeting of the committee shall have a deliberative vote and, in the event of an equality of votes on any matter on which more than 3 members have voted, shall have a casting vote.

(5) A proceeding of the committee shall not be invalidated by reason of a defect in the appointment of a member or a deputy member or by reason of a vacancy in the membership of the committee.

Appointment of officers to assist committee

30.(1) The Governor in Council may, from time to time, by notification published in the Gazette, appoint a secretary to the committee and such other officers as the Governor in Council thinks necessary for the effectual discharge of the committee's functions.

(2) An officer of the public service of the State may be appointed under subsection (1) or may be assigned by the Director to perform duties on behalf of the committee and may hold such appointment or perform such duties in conjunction with any other appointment the officer holds in the public service.

(3) The secretary and other officers appointed or assigned as such under this section shall be paid such remuneration as may be prescribed but, in the case of an officer of the public service who holds the appointment or assignment in conjunction with any other appointment the officer holds in the public service, only upon the recommendation of the Director.

PART 4A—APPROVAL OF LOCAL GOVERNMENTS

Approval to be obtained

30A.(1) A person shall not carry out or cause to be carried out building work in respect of which the Standard Building Law requires the approval of the local government unless such approval has first been obtained.

(2) An application to the local government for approval referred to in subsection (1)—

- (a) shall be in or to the effect of the form prescribed for the application in the Standard Building Law; and
- (b) shall be accompanied by the plans, specifications, information and details prescribed from time to time in the Standard Building Law; and
- (c) shall be accompanied by the written consent, to the making of the application, of the owner of the land on which the building work is to be carried out if the applicant is not the owner.

(2A) An application is not duly made to the local government unless subsection (2) is complied with.

(3) A person shall not, in, or in connection with, an application to a local government for approval to the carrying out of building work make a statement that is false or misleading in a material particular knowing it to be false or misleading.

Action by local government in respect of application

30B.(1) A local government to which is made an application for approval to the carrying out of building work—

- (a) shall obtain a report from the appropriate building officer as to whether the building work complies with the Standard Building Law; and
- (b) shall forward to the Commissioner of Fire Service the information required to be furnished by it under the Standard Building Law;

and, after considering the building officer's report and any report received by it in respect of the building work from the Commissioner of Fire Service, the local government shall determine—

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- (c) whether the building work complies with the relevant provisions of the Standard Building Law, having regard to any variation of the application made under section 12C or 12F; and
- (d) if the building work does not so comply—the particulars in which it does not so comply.

(1A) In subsection (1)—

“appropriate building officer”, in relation to a report, means the principal building surveyor, deputy principal building surveyor, building surveyor or restricted building surveyor appointed by or under the Standard Building Law who having regard to the building work to which the application relates is, under the Standard Building Law, competent to make that report.

(2) Following its making the determination required by subsection (1) and within the time required by this Act, a local government shall decide on the application and in so doing may—

- (a) approve the application; or
- (b) approve the application subject to reasonable conditions as to matters to which this Act and the Standard Building Law are relevant; or
- (c) refuse the application.

(2A) In approving an application under subsection (2)(b) a local government shall not subject the approval to conditions relevant to the effect of the building work on the amenity or likely amenity of the building work’s neighbourhood or to the aesthetics of the building work.

(3) The chief executive officer of a local government shall, in writing, notify the local authority’s decision on an application to the applicant and, where the decision has been made as the result of a direction of a building tribunal given under section 35, the chief executive officer shall also, in writing, notify the registrar.

(3A) Such notification or notifications shall be given within 7 days from the date on which the local government makes its decision.

(4) A notification given under subsection (3) shall—

- (a) identify the provisions of the Standard Building Law with which the building work does not comply (if any); and

- (b) state the grounds for the imposition of any conditions to which a local authority's decision on an application has been made subject; and
- (c) state the reasons for the refusal of an application by a local government.

(5) An approval to the carrying out of any building work shall lapse and be of no further force or effect if the building work is not commenced or having commenced is not substantially completed within the time prescribed for that purpose in the Standard Building Law.

(6) In carrying out building work under the approval of a local government a person shall comply—

- (a) with the Standard Building Law; and
- (b) the terms of the approval and the conditions (if any) to which the approval is subject.

Local government to tell applicant of planning law requirements

30BA.(1) This section applies if—

- (a) an application for approval to carry out building work is made under this Act to a local government; and
- (b) a planning scheme applies, or interim development control provisions apply, to the land to which the application relates.

(2) The local government must consider the purpose of the application and must decide whether, because of the planning scheme or the interim development control provisions, the building work may be lawfully carried out only if—

- (a) the land is rezoned; or
- (b) the local government's approval, consent or permission is obtained; or
- (c) the land is rezoned and the local government's approval, consent or permission is obtained.

(3) If the local government decides the building work may be lawfully carried out only if subsection (2)(a), (b) or (c) is satisfied, it must give the applicant written notice of its decision.

(4) The local government must comply with subsections (2) and (3) within 14 days of receiving the application.

(5) However, the local government does not have to give the written notice mentioned in subsection (3) if, within 14 days after receiving the application, it receives the necessary planning application.

(6) If the applicant is dissatisfied with the decision of the local government in a notice given under subsection (3), the applicant may appeal to the Planning and Environment Court.

(7) The Planning and Environment Court may allow an appeal under subsection (6) in whole or in part or may dismiss the appeal.

(8) An appeal under subsection (6) must be started within 30 days after the applicant is given written notice of the local government's decision under subsection (3).

Times within which applications for approval to the carrying out of building work to be decided

30BB.(1) Subject to section 30BC(2), where an application for approval to the carrying out of building work, and the necessary planning application or planning applications in respect of building work, are made to a local government it shall decide on the application for approval to the carrying out of building work within—

- (a) where only 1 planning application is required to be made—14 days after the planning application has been finally disposed of; or
- (b) where more than 1 planning application is required to be made—14 days after the last planning application has been finally disposed of;

or within 40 days after the date on which the application for approval to the carrying out of building work is received by the local government whichever period is the last to expire.

(1A) Provided that where the application for approval to the carrying out of building work relates only to a building of Class 1 or 10 as classified by the Standard Building Law, the numeral '40' referred to in subsection (1) shall be construed as the numeral '30' and this subsection shall apply accordingly.

(2) For the purposes of this section and section 30BC, a planning application shall not be taken to have been finally disposed of until—

- (a) where the application is required by law to be decided by the Governor in Council—when the Governor in Council decides the application and such decision is communicated to the local authority; or
- (b) where rights of appeal are conferred by law in respect of the application—
 - (i) subject to subparagraph (ii), when such rights have been exhausted and the result of the last appeal (if any) has been communicated to the local government or the time limited by law within which those rights are to be exercised has expired without those rights having been exercised; or
 - (ii) in respect of rights of appeal conferred on objectors under the *Local Government (Planning and Environment) Act 1990*—when such rights have been exhausted, or the time limited by law within which those rights are to be exercised has expired without those rights having been exercised, and the local government has made its decision in respect of the application.

(3) Where an application for approval to the carrying out of building work is made under this Act to a local government and—

- (a) a written notice is not given to the applicant under section 30BA(3) because no planning application is necessary; or
- (b) a written notice is given to the applicant under section 30BA(6) and upon appeal by the applicant under section 30BA(6) in respect of the decision contained in the written notice the Planning and Environment Court determines that no planning application is necessary;

the local government shall—

- (c) in the case referred to in paragraph (a)—decide the application within 40 days after the date on which the application is received by it except where the application relates only to a building of Class 1 or 10 as classified by the Standard Building Law in which case it shall decide the application within 30 days after the date on

which the application is received by it; and

- (d) in the case referred to in paragraph (b)—decide the application within 14 days after the determination of the Planning and Environment Court is communicated to the local government.

(3A) Where the Commissioner of Fire Service objects under section 36J and the objection relates to an application for approval to the carrying out of building work, the time within which the application is required to be determined is that provided for in the preceding provisions of this section, or 7 days after the date on which the local government receives written notice of the determination of the objection or of its having been withdrawn, whichever is the later to occur.

(4) A local government may, with the prior approval of the Minister, by notice served on the applicant for approval to the carrying out of building work before the expiration of the period within which it would otherwise be required to decide the application under the preceding provisions of this section or, if that period has been extended under an approval or approvals previously given under this subsection, before the expiration of the period as so extended, extend or further extend the period.

When application for approval to the carrying out of building work to be refused

30BC.(1) Where an application for approval to the carrying out of building work is made under this Act to a local government and a written notice is given to the applicant under section 30BA(3), the local government shall forthwith refuse the application if the applicant fails to make the necessary planning application or planning applications—

- (a) where no appeal is instituted by the applicant under section 30BA(6) in respect of the decision contained in the written notice—within 90 days after the date on which the written notice is given; or
- (b) where, upon appeal by the applicant under section 30BA(6) in respect of the decision contained in the written notice, the appeal is terminated or the Planning and Environment Court determines that a planning application or planning applications is or are necessary—within 90 days after the date on which notice that the appeal has been terminated or determined is communicated to the

local government;

or within such longer period as the local government, with the prior approval of the Minister, allows.

(2) Where an application for approval to the carrying out of building work is made under this Act to a local government and—

- (a) for the purposes of the application, the necessary planning application is or has been made or, as the case may be, the necessary planning applications are or have been made; and
- (b) that planning application or, as the case may be, any of those planning applications, upon being finally disposed of (within the meaning of that expression as defined in section 30BB(2)), is or are not approved;

the local government shall refuse the application for approval to the carrying out of building work within 14 days after that planning application or, as the case may be, the last of those planning applications is finally disposed of.

No right of objection under s 31

30BD. There shall not be a right of objection to a building tribunal under section 31 in respect of the refusal by a local government of an application for approval to the carrying out of building work under section 30BC.

Application of ss 30BA, 30BB and 30BC

30BF. Sections 30BA, 30BB and 30BC do not apply in respect of an application for approval to the carrying out of building work made to a local government where the application was received by the local government prior to the commencement of this section.

Local government to consider amenity and aesthetics on applications to erect certain buildings

30BG.(1) Despite the provisions of section 11, where an application for approval for the erection of a single detached Class 1 building or a Class 10 building as classified by the Standard Building Law is made under this Act to a local government, the local government, in addition to making a

decision under section 30BA(2), shall forthwith also decide—

- (a) whether, in its opinion, the building when erected will have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; and
- (b) whether, in its opinion, the aesthetics of the building when erected will be in extreme conflict with the character of the building's neighbourhood.

(2) Where under subsection (1), a local government decides that—

- (a) a building when erected will have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; or
- (b) the aesthetics of the building when erected will be in extreme conflict with the character of the building's neighbourhood;

it shall notify the applicant in writing of that decision and the reasons for the decision within 14 days of its receipt of the application or within such longer period as the Minister, before the expiration of the period of 14 days, allows.

(2A) If the Minister allows a longer period than 14 days, the local government as soon as practicable thereafter shall advise the applicant of the expiry date of that longer period.

(3) If a local government does not notify the applicant within the time prescribed by subsections (2) and (2A), the application for approval shall be dealt with in accordance with the preceding provisions of this Part.

(4) Where a local government gives a notification to an applicant under subsection (2) and the applicant does not object against the decision in question, or does object and the objection is dismissed, the local government shall refuse the application.

(5) Where a local government gives a notification to an applicant under subsection (2) and the applicant objects against the decision and the objection is allowed or the application is varied, the local government shall make a determination under section 30B in respect of the application within 7 days after the determination made under section 36H(2) is communicated to it.

(6) An application referred to in subsection (5) shall be decided in accordance with the preceding provisions of this Part as if the local

government were of the opinion that—

- (a) the building when erected will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; and
- (b) the aesthetics of the building when erected will not be in extreme conflict with the character of the building's neighbourhood.

(7) Where a local government in accordance with the requirement of subsection (4) refuses an application, the decision of the local government shall be final and binding on the applicant.

Provision of security in certain cases

30BH.(1) Where an application for a local authority's approval to the carrying out of building work relates to the removal and re-erection or removal or re-erection of a building or other structure, the local government may, as a condition precedent to its approving the application or as a condition of the approval, require the applicant to deposit with it security in such amount and form as is determined by it by resolution.

(1A) The amount of the security required by the local government shall be commensurate with the value of the building work to be carried out and in respect of which the Standard Building Law requires the approval of the local government.

(2) If a local government approves the carrying out of building work and a condition of the approval requires the deposit of security under subsection (1), a person shall not carry out the building work or cause it to be carried out until the condition is complied with.

(3) If a local government approves the carrying out of building work such as is referred to in subsection (1) and that approval lapses under section 30B(5) because the building work has not been substantially completed within the time prescribed for that purpose in the Standard Building Law, the local government may, itself, cause such steps to be taken and such things to be done as it considers necessary so as to have that building work completed in accordance with the approval and for that purpose may utilise the whole or any part of the security lodged in respect of that building work.

(4) If a local government approves the carrying out of building work

such as is referred to in subsection (1) and there is lodged, under that subsection, a security in respect of that building work, the local government—

- (a) may, having regard to the progress being made in carrying out that building work, from time to time refund part of that security to the person who gave it; and
- (b) shall, where that building work has been completed in accordance with that approval (otherwise than under subsection (3)), refund that security or, as the case may be, the balance of the security to the person who gave it.

Application for preliminary decision

30C.(1) Before a person makes an application under section 30A to a local government for approval to the carrying out of building work the person may make application to the local government for its decision—

- (a) as to the application of the Standard Building Law to any aspect of the design or method of construction of the building work; and
- (b) where the building work involves the erection of a single detached Class 1 building or a Class 10 building as classified by the Standard Building Law, as to whether, in its opinion—
 - (i) the building when erected will have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; or
 - (ii) the aesthetics of the building when erected will be in extreme conflict with the character of the building's neighbourhood.

(2) An application under subsection (1) shall—

- (a) be in or to the effect of the form prescribed for the application in the Standard Building Law; and
- (b) contain information which accurately identifies the aspect of the design and the method of construction of the building work to which the application relates; and
- (c) be accompanied by such other information (including drawings drawn to a scale that is reasonable in the circumstances) as will assist the local government in deciding the application.

(2AA) The local government may, in writing, request an applicant to provide it with such additional information as to it seems necessary to enable it to decide the application.

(2A) The local government shall decide an application duly made to it under subsection (1)—

- (a) where subsection (1)(b) only is relevant to the application—within 14 days after it receives the application; or
- (b) where the application relates to a building of Class 1 or 10 as classified by the Standard Building Law and subsection (1)(b) is not relevant—within 30 days after its receipt of the application; or
- (c) in any other case—within 40 days after its receipt of the application.

(2AB) Where the local government requests additional information under subsection (2) within the time within which it would otherwise be required to decide the application, the application is taken not to have been duly made until the information is received by the local government.

(2B) A local government may, with the prior approval of the Minister, by notice served on the applicant before the expiration of the period of 14 days, 30 days or, as the case may be, 40 days mentioned in subsection (2A) or, if that period has been extended under an approval or approvals previously given under this subsection, before the expiration of the period as so extended, extend or further extend the period.

(3) The chief executive officer of a local government shall, in writing, notify the local authority's decision on an application under subsection (1) to the applicant within 7 days from the date on which the local government makes its decision.

(4) Where a local government has given a decision on an application made under subsection (1) it shall subject to any alteration or reversal of the decision upon a reference or appeal under this Act be bound by that decision for the purposes of an application made to it under section 30A in relation to the building work to which the first application related.

Application of Act etc. to offshore building work

30D.(1) A person shall not, on foreshore abutting upon the area of a local

government or in or over the waters superadjacent or adjacent to such foreshore, carry out building work in respect of which the Standard Building Law would require the approval of the local government were the building work within the area, unless the approval of that local government has first been obtained.

(2) A local government may exercise in respect of an application for approval to the carrying out of building work on foreshore or in or over the waters referred to in subsection (1) and in respect of building work being carried out at such a site and in respect of the person for whom the building work is being carried out at such a site, all or any of the powers conferred on it by this Act or the Standard Building Law as if such site were within its area.

PART 4B—SWIMMING POOL FENCING

Meaning of terms

30E.(1) In this Part—

“**dividing fence**” has the meaning given by the *Dividing Fences Act 1953*;

“**existing building**” means a class 1 or 2 building for which approval to construct was obtained under this Act before 1 April 1992;

“**existing swimming pool**” means an outdoor swimming pool—

- (a) the construction or installation of which started before 1 February 1991; or
- (b) for which approval to construct or install was given under this Act before 1 February 1991;

“**indoor swimming pool**” means a swimming pool—

- (a) wholly enclosed by the walls of a building; or
- (b) on a building;

“**new swimming pool**” means an outdoor swimming pool other than an existing swimming pool;

“outdoor swimming pool” means a swimming pool other than an indoor swimming pool;

“residential land” means land on which is constructed, or for which local government approval is given to construct, a class 1 or 2 building under the Standard Building Law and includes land that—

- (a) is adjacent to residential land; and
- (b) is in the same ownership as the residential land; and
- (c) is used in association with the residential land;

“swimming pool” has the meaning given by the Standard Building Law;

“tourist resort complex” means a development that operates as a single integrated facility providing all or substantially all the recreational and personal needs of guests resident at the complex and visitors at the complex;

“watercourse” means—

- (a) a canal, creek, river or stream in which water flows permanently or intermittently; or
- (b) a lake or other natural collection of water (whether permanent or intermittent).

(2) A reference in this Part to a building as a class of building is a reference to a building of that class as classified under the Standard Building Law.

Control of swimming pool fencing

30F. The jurisdiction of a local government includes control and regulation of swimming pool fencing and related issues.

Local law for fencing of swimming pools

30G.(1) A local government may make a local law—

- (a) requiring the construction of fencing around swimming pools; and
- (b) requiring doors, windows and other openings giving access to swimming pools to comply with specified requirements.

(2) Subsection (1) has effect—

- (a) only if the local law can or could reasonably be characterised as being directed to inhibiting the access of young children to swimming pools; and
- (b) subject to subsections (3) to (6).

(3) A local government does not have power to make a local law requiring the construction of fencing around swimming pools on land used, or to be used, for a tourist resort complex, if the land is specified under a regulation.

(4) A local government does not have power to make a local law requiring the construction of fencing around outdoor swimming pools on residential land to a standard less effective than section 30H requires.

(5) A by-law made under the *Local Government Act 1936*, or an ordinance made under the *City of Brisbane Act 1924*, continues to be inoperative if—

- (a) it was declared under section 49H of the *Local Government Act 1936* to be inoperative; and
- (b) it requires the construction of fencing around swimming pools on residential land to a standard less effective than section 30H requires.

(6) A local law mentioned in subsection (1) does not limit the discretion of a Magistrates Court under the *Dividing Fences Act 1953*.

Outdoor swimming pools to be fenced

30H.(1) The owner of residential land on which there is an outdoor swimming pool must construct fencing around the swimming pool so that—

- (a) the swimming pool is isolated from—
 - (i) adjoining lands; and
 - (ii) watercourses wholly or partially forming the boundary of the residential land; and
- (b) access by young children to the swimming pool from buildings (other than class 10 buildings completely enclosed by the fencing)

is inhibited.

Maximum penalty—85 penalty units.

- (2) The design, construction and performance of the fencing—
- (a) if the fencing was constructed before 1 February 1991 and complied with the standards prescribed under this Act—must continue to comply with the standards; and
 - (b) if paragraph (a) does not apply—must comply with the standards prescribed under this Act that apply to fencing after 1 February 1991.
- (3) The owner must keep the fencing—
- (a) in good condition; and
 - (b) so it complies with the standards prescribed under subsection (2) for the fencing.

Maximum penalty—85 penalty units.

(4) Despite subsection (3)(b), if fencing ceases to comply with the standards prescribed in subsection (2) because the owner or occupier of adjoining land has constructed or placed something on the adjoining land, the owner of the land with the swimming pool on it is not required to construct additional fencing or change existing fencing to comply with the standards prescribed in subsection (2).

(5) Subsection (1) is subject to sections 30I to 30R.

Fencing of above-ground outdoor swimming pools

30I. An owner does not have to construct fencing around a part of the swimming pool if the walls of the swimming pool or associated structure adjacent to the swimming pool comply with the standards prescribed under the Standard Building Law.

Incorporation of buildings as part of fencing—existing swimming pools

30J. An owner does not have to construct fencing around a part of an existing swimming pool if the part is enclosed by—

- (a) the exterior wall of an existing building and—
 - (i) there is no opening in the wall giving access from the building to the swimming pool; or
 - (ii) each opening in the wall giving access from the building to the swimming pool complies, and is kept so it complies, with the standards prescribed under the Standard Building Law; or
- (b) the exterior wall of a class 10 building if each opening in the wall merely gives access from the building to the swimming pool; or
- (c) the exterior wall of another building if—
 - (i) there is no opening in the wall giving access from the building to the swimming pool; or
 - (ii) each opening in the wall giving access from the building to the swimming pool complies, and is kept so it complies, with the standards prescribed under the Standard Building Law.

Incorporation of buildings as part of fencing—new swimming pools

30K. An owner does not have to construct fencing around a part of a new swimming pool if the part is enclosed by—

- (a) the exterior wall of an existing building and there is no opening in the wall giving access from the building to the swimming pool; or
- (b) the exterior wall of an existing building and—
 - (i) each window in the wall giving access from the building to the swimming pool complies, and is kept so it complies, with the standards prescribed under the Standard Building Law; and
 - (ii) there are no other openings in the wall giving access from the building to the swimming pool; or
- (c) the exterior wall of an existing building and—
 - (i) there is a door in the wall giving access from the building to the swimming pool; and

- (ii) the local government decides it is physically impracticable to construct fencing inhibiting access from the building to the swimming pool; and
- (iii) each opening in the wall giving access from the building to the swimming pool complies, and is kept so it complies, with the standards prescribed under the Standard Building Law; or
- (d) the exterior wall of a class 10 building and each opening in the wall merely gives access from the building to the swimming pool; or
- (e) the exterior wall of a class 1 or 2 building (other than an existing building) and—
 - (i) there is no opening in the wall giving access from the building to the swimming pool; or
 - (ii) each window in the wall giving access from the building to the swimming pool complies, and is kept so it complies, with the standards prescribed under the Standard Building Law, and there are no other openings in the wall giving access from the building to the swimming pool; or
- (f) the exterior wall of another building and—
 - (i) there is no opening in the wall giving access from the building to the swimming pool; or
 - (ii) each opening in the wall giving access from the building to the swimming pool complies, and is kept so it complies, with the standards prescribed under the Standard Building Law.

Further provision about incorporation of class 10 building as part of fencing

30L.(1) An owner does not have to construct fencing around a part of a swimming pool enclosed by the exterior wall of a class 10 building if the class 10 building has a protected opening or protected openings giving access from a class 1 or 2 building to the swimming pool.

(2) In subsection (1)—

“protected opening” means—

- (a) a door—
 - (i) fitted with a self-closing and self-latching device complying with the standards prescribed under the Standard Building Law; and
 - (ii) kept so it complies with the standards prescribed under the Standard Building Law; or
- (b) a window—
 - (i) enclosed, fixed and located in a way complying with the standards prescribed under the Standard Building Law; and
 - (ii) kept so it complies with the standards prescribed under the Standard Building Law.

Variations

30M.(1) A local government may vary the requirements of section 30H (Outdoor swimming pools to be fenced) for a swimming pool on land on which there is an existing building if it is satisfied that—

- (a) it is inappropriate or impracticable to comply with the requirements because of—
 - (i) the physical nature or location of the land; or
 - (ii) the design or construction of the swimming pool or fencing; or
 - (iii) the location of the swimming pool or fencing; and
- (b) reasonable provision exists for inhibiting access by young children to the swimming pool.

(2) A variation may be made without conditions or subject to conditions the local government considers appropriate to ensure reasonable provision is made for inhibiting access by young children to the swimming pool.

Exemptions—general

30N.(1) A local government may, on the written application of an owner, decide that section 30H (Outdoor swimming pools to be fenced) does not

apply for a swimming pool, if it is satisfied that it is unlikely a young child would gain access to the swimming pool because of—

- (a) the physical nature or location of the land concerned; or
- (b) the design or construction of the swimming pool or fencing; or
- (c) the location of the swimming pool or fencing.

(2) A local government may, on written application made by the owners of adjoining parcels of land on which there are constructed or installed outdoor swimming pools, decide that the owners are not required to construct fencing to inhibit access by young children from a swimming pool to the other swimming pool if the owners have otherwise complied with this Part.

(3) A decision may be made without conditions or subject to the conditions the local government considers appropriate to ensure effective provision is made for inhibiting access by young children to the swimming pool.

Exemptions—waterfront land

30O.(1) The owner of land—

- (a) adjoining a watercourse; and
- (b) where there is an existing swimming pool or a new swimming pool is constructed or installed;

is required to construct fencing to isolate the swimming pool from the watercourse only if the local government decides the fencing is necessary to inhibit access by young children to the swimming pool.

(2) If the local government makes a decision under subsection (1), it must give written notice to the owner of the reasons for the decision and of the day by which the owner is required to construct the fencing.

Exemptions—land over 4 000 m²

30P.(1) A local government may, on written application made by the owner of land—

- (a) that is more than 4 000 m² in area; and

(b) where—

- (i) there is an existing swimming pool; or
- (ii) there is an existing building and a new swimming pool is or is to be constructed or installed;

decide that section 30H (Outdoor swimming pools to be fenced) does not apply to the swimming pool if it is satisfied it is unlikely a young child would gain access to the swimming pool.

(2) A decision under subsection (1) may be made without conditions or subject to the conditions the local government considers appropriate to ensure reasonable provision is made for inhibiting access by young children to the swimming pool.

Exemptions—fencing enclosing swimming pool and existing building

30Q.(1) A local government may, on written application made by the owner of land where—

- (a) there is an existing building; and
- (b) there is an existing swimming pool, or a new swimming pool is or is to be constructed or installed;

decide that section 30H(1)(a) does not apply to the swimming pool.

(2) The local government may make a decision only if—

- (a) each opening in the building complies, and the local government is satisfied that it is likely to be maintained so that it complies, with the standards prescribed under the Standard Building Law; and
- (b) subsection (3) or (4) is complied with.

(3) If the swimming pool is an existing swimming pool, the building and the swimming pool must be fully enclosed by fencing that—

- (a) if the fencing was constructed before 1 February 1991—complies with the standards mentioned in section 30H(2)(a); or
- (b) if paragraph (a) does not apply—complies with the standards mentioned in section 30H(2)(b).

(4) If the swimming pool is a new swimming pool—

- (a) the building and the swimming pool must be, or will be when the swimming pool is constructed or installed, fully enclosed by fencing that complies with the standards mentioned in section 30H(2)(b); and
- (b) the local government decides it is physically impracticable to construct fencing to inhibit access by young children from the building to the swimming pool.

(5) A decision may be made without conditions or subject to the conditions the local government considers appropriate to ensure effective provision is made for inhibiting access by young children to the swimming pool.

Effect of variation or exemption subject to conditions

30R. If—

- (a) under this Part, a local government varies section 30H (Outdoor swimming pools to be fenced) or decides that the section or any provision of it does not apply; and
- (b) the variation or decision is made subject to conditions;

the variation or decision has effect only if the conditions are complied with.

Revocation of variations and determinations

30S.(1) A local government may, by written notice served on the owner of the land concerned—

- (a) revoke a variation under section 30M (Variations), if—
 - (i) the variation was based on a false or misleading particular given by the owner; or
 - (ii) a significant change happens so that reasonable provision no longer exists for inhibiting access by young children to the swimming pool; or
 - (iii) if a variation is subject to conditions—the owner contravenes a condition; or
- (b) revoke a decision made under section 30N

(Exemptions—general), 30O (Exemptions—waterfront land) or 30P (Exemptions—land over 4 000 m²), if—

- (i) a significant change happens so a young child may gain access to the swimming pool; or
- (ii) if the decision was made subject to conditions—the owner contravenes a condition.

Examples of significant change in paragraphs (a)(ii) and (b)(i)—

1. The erection, alteration or demolition of a structure or natural barrier.
2. The carrying out of building work.

(2) If a local government serves a notice on an owner under subsection (1), the notice must specify what must be done to comply with section 30H (Outdoor swimming pools to be fenced) and the day by which the owner is required to comply with the section.

(3) Before a local government gives a notice under subsection (1), it must give the owner an opportunity to show cause why the notice should not be given.

(4) To give the owner an opportunity to show cause, it must give the owner written notice of a day (not earlier than 30 days after the owner is given the notice under this subsection), time and place when and where the owner may show cause to the local government why the notice under subsection (1) should not be given.

(5) An owner may attempt to show cause—

- (a) by appearing at the day, time and place notified; or
- (b) in writing, given to the chief executive officer of the local government, at any time before the time notified.

Time for compliance

30T. The owner of land on which a new swimming pool is to be constructed or installed must comply with section 30H (Outdoor swimming pools to be fenced)—

- (a) within 30 days after the swimming pool is filled with water to a depth of 300 mm or more; or
- (b) within the shorter time after the swimming pool is filled with

water to a depth of 300 mm or more, that the local government may decide as a condition of the approval to perform the building work for the swimming pool.

Advice as to compliance

30U.(1) The owner of land where there is an existing swimming pool may apply in writing to the local government for written advice as to whether the swimming pool fencing concerned complies with section 30H.

(2) If an application is made under subsection (1), the local government must decide if the swimming pool fencing complies with section 30H and advise the owner of its decision.

(3) If the local government decides the swimming pool fencing does not comply with section 30H, the local government must include in the written advice given under subsections (1) and (2) the reasons why the fencing does not comply and what must be done to make it comply.

Access to outdoor swimming pools to be kept secure

30V. The occupier of residential land on which there is an outdoor swimming pool must ensure that a gate or door providing access to the swimming pool is kept securely closed at all times when the gate or door is not in actual use.

Maximum penalty—85 penalty units.

Apportionment of cost of constructing dividing fence

30W.(1) The cost of constructing, altering, repairing, replacing and maintaining a swimming pool fence consisting of the whole or part of a dividing fence is, to the extent it is attributable to work done to comply with section 30H (Outdoor swimming pools to be fenced), to be borne—

- (a) by the owner of the residential land on which the swimming pool is constructed or installed; or
- (b) if the work or part of the work is done to comply with this Part in relation to more than 1 parcel of residential land—by the owners of the parcels of land where the swimming pools are constructed

or installed, equally.

(2) Subsection (1) applies despite the *Dividing Fences Act 1953*.

Objections and appeals

30X.(1) An owner of residential land where there is an existing swimming pool, or where a new swimming pool is or is to be constructed or installed, who is dissatisfied with a decision of a local government under this Part has the same rights of objection and appeal under this Act as if the owner were an applicant for approval to the carrying out of building work.

(2) If a difficulty arises in the application of subsection (1) in or for a particular objection or appeal, the building tribunal, committee or court exercising jurisdiction in the objection or appeal may, on the application of a party to the objection or appeal or on the initiative of the building tribunal, committee or court, give directions and make orders appropriate to resolve the difficulty.

Liability of State for offences

30Y.(1) Nothing in this Part makes the State liable to be prosecuted for an offence.

(2) However, subsection (1) does not prevent the prosecution of an officer, employee or agent of the State for an offence.

Offences

30Z.(1) A person must not—

- (a) contravene a condition of a variation under section 30M or a decision under section 30N, 30P or 30Q; or
- (c) contravene a notice served on the person under section 30O or 30S.

Maximum penalty—85 penalty units.

(2) A person convicted of an offence mentioned in subsection (1), who continues to contravene the condition or notice commits a continuing offence.

Maximum penalty—8 penalty units for each day on which the offence is continued.

PART 5—OBJECTIONS AND APPEALS AGAINST LOCAL GOVERNMENTS' DECISIONS

Division 1—Objections against local governments' decisions

Objection to decision

31.(1) Subject to this Act, an applicant, or a person on whose behalf an application is made, to a local government for—

- (a) approval to the carrying out of building work; or
- (b) a statement or certificate of classification of a building or other structure; or
- (c) a change of the classification of an existing building or other structure; or
- (d) a decision on an application under section 30C;

who is dissatisfied with the local authority's decision on the application may object against the decision to a building tribunal except where the decision is one referred to in subsection 30BG(2) or 30C(1)(b), in which case the applicant or other person may object to a panel constituted under section 36F.

(1A) If, after approving the carrying out of any building work, a local government makes a decision in respect of that work with which the applicant for the approval, or other person on whose behalf the application was made, is dissatisfied, the applicant or other person may object against the decision to a building tribunal.

Institution of objection

32.(1) An objection under section 31 shall be instituted within 30 days, except in the case of an objection against a decision referred to in

section 30BG(2) or 30C(1)(b), in which case it shall be instituted within 21 days after the notification given to the applicant by the chief executive officer of the local government informing the applicant of the decision against which the objection is to be made, and not later, by—

- (a) lodging a notice of objection, duly completed, together with the prescribed fee, with the registrar ; and
- (b) giving a copy of the notice of objection to the chief executive officer of the local government to whose decision the objection relates.

(2) A notice of objection—

- (a) shall specify the grounds on which the objector is dissatisfied with the decision to which it relates and the facts and circumstances relied on by the objector in support of those grounds; and
- (b) if a form of notice of objection is prescribed—shall be in or to the effect of that form.

Constitution of building tribunal or panel

33.(1) Upon receipt by the registrar of a notice of objection the registrar shall refer the matter of the objection to the Director who shall—

- (a) in a case to which paragraph (b) does not apply—constitute a building tribunal to determine the objection;
- (b) in the case of an objection against a decision referred to in section 30BG(2) or 30C(1)(b)—cause a panel to be constituted under section 36F.

(2) The registrar —

- (a) shall give to the member composing, or the chairperson of, the building tribunal the writing constituting the tribunal and the notice of objection or, if the notice is not readily available, a copy of the notice; and
- (b) shall give to each of them, the objector and the chief executive officer of the local government against whose decision the objection is made, a copy of the writing constituting the building tribunal that is to determine the objection.

(3) If the registrar is of the opinion that an objection in respect of which a notice of objection has been lodged has not been instituted within the time prescribed by section 32, the registrar shall as soon as practicable advise the Director of that fact and of the grounds of the registrar's opinion and, if the Director is also of that opinion the Director shall direct that no further action be taken in respect of that notice.

(4) Where the Director so directs, the registrar shall notify the objector and the chief executive officer of the local government to whose decision the objection relates.

Duty of building tribunal

34.(1) As soon as is practicable after receipt by the member or, as the case may be, chairperson of a building tribunal of the writing constituting the building tribunal to be that which is to determine an objection and of the relevant notice of objection, or copy of the notice, the building tribunal shall appoint a time and place when and where it proposes to enter upon the determination and shall cause notice in writing of such time and place to be given to each of them, the objector and the chief executive officer of the local government against whose decision the objection is made.

(2) Before it determines any objection the building tribunal shall receive such representations on the objection as are made to it, in accordance with this Act, by or on behalf of the objector and the local government.

(3) If at the time and place appointed by the building tribunal under subsection (1) or at any time and place to which it adjourns a proceeding under section 35 there is no appearance by or on behalf of the objector or the local government (as permitted by section 49), it shall be taken that the party who does not so appear does not wish to make any representations on the matter of the objection and the building tribunal may proceed to determine the objection without further reference to that party.

Powers of building tribunal

35.(1) Upon its entering upon the determination of an objection a building tribunal—

- (a) may adjourn the proceeding to such time and place certain as it thinks necessary to a proper consideration and determination of

the objection; or

- (b) may reverse the local authority's decision or vary the same in such manner and to such extent as it thinks fit; or
- (c) may dismiss the objection.

(2) Where an objection relates to an application for approval to carry out building work in respect of which the local government to whom it was made has refused the application without making the determination referred to in section 30B(1)(d), the building tribunal may, either before or after entering upon the determination, direct the local government, in writing, to decide the application in accordance with section 30B within a time limited in the direction by the building tribunal and, if it does so, shall notify the objector accordingly.

(2A) The building tribunal may from time to time by notice in writing to the local government extend the time within which the local government is to comply with a direction issued by it to the local government, then—

- (a) the direction shall be construed as if the time as last so extended were limited in the extension in lieu of the time actually limited in the direction; and
- (b) the building tribunal shall notify the objector accordingly.

(3) Where a building tribunal has exercised the power conferred on it by subsection (2), it shall, upon receipt by it of notification by the chief executive officer of the local government concerned under section 30B(3), enter upon or continue with its determination of the relevant objection (in its amended form, where the objector has exercised the objector's entitlement conferred by section 35A) in accordance with section 34 and this section.

Amendment of notice of objection

35A. Where a building tribunal has exercised the power conferred on it by section 35(2), the objector is entitled to amend or add to the grounds of the objector's objection, having regard to the decision of the local government on the objector's application, before the building tribunal enters upon or continues with its determination of the objection under section 35(3).

Determination of building tribunal

36.(1) Upon a building tribunal determining an objection, the registrar shall give written notification of the determination—

- (a) to the objector; and
- (b) to the chief executive officer of the local government against whose decision the objection was made.

(2) If by its determination of an objection a building tribunal reverses or varies the decision of a local government against which the objection was made, the determination shall take effect upon the expiration of the period allowed by this Act within which an appeal against it may be duly instituted as if it were the decision of the local government in respect of the application to which that decision relates and, subject to the right of appeal conferred by this Act, shall be final and binding on the objector and the local government.

(3) Where an appeal against the Building Tribunal's determination is duly instituted the effect of the determination shall abide the outcome of the appeal.

Division 1A—Objections against failure by local governments to decide applications

Objection to building tribunal

36A.(1) Where an application referred to in section 31(1)(a) is made to a local government and the local government—

- (a) fails to make its decision on the application within the prescribed time; or
- (b) fails to inform the applicant of its decision (whenever made);

the applicant, or a person on whose behalf the application was made, may, at any time after the expiration of the prescribed time, make an objection in respect of that failure to a building tribunal.

(2) Every such objection shall be instituted by lodging with the registrar a duly completed notice of objection accompanied by the prescribed fee.

(3) A notice of objection shall be in or to the effect of the prescribed form.

Constitution of building tribunal

36AA. Upon receipt by the registrar of a notice of objection the registrar shall refer the matter of the objection to the Director who shall thereupon constitute a building tribunal to determine the objection.

Procedure on objection

36B.(1) As soon as is practicable after receipt by the registrar of a notice of objection, the registrar shall, in writing, inform the chief executive officer of the local government to which the application in respect of which the objection was lodged relates, of the receipt of the objection and require the chief executive officer to furnish to the registrar, within a period of 14 days—

- (a) all relevant documentation (including plans and specifications) relating to the application in question; and
- (b) a statement setting out in detail the reasons why the local government or its delegate had not decided the application in question within the prescribed time; and
- (c) any additional information which the registrar may request.

(2) The chief executive officer of a local government shall duly comply with the tenor of a requisition addressed to the chief executive officer by the registrar, under subsection (1).

Reference to building tribunal

36C. Upon receipt of the material furnished to the registrar by the chief executive officer of the local government under section 36B(1), the registrar shall refer that material together with the notice of objection lodged, to the appropriate building tribunal for its consideration.

Powers of building tribunal

36D.(1) Upon its entering upon consideration of a reference under section 36C, the building tribunal may where it considers such action appropriate, by notice in writing, direct the local government to decide the application to which the objection relates in accordance with section 30B

within a time specified in such notice and, if it does so, shall notify the objector accordingly.

(1A) Any such notice may include such other lawful directions (not being directions in respect of matters subject to determination by the local government under the Standard Building Law) as the building tribunal sees fit.

(2) The building tribunal may, from time to time by notice in writing to the local government, extend the time within which the local government is to comply with a direction issued by the building tribunal to the local government, then—

- (a) the direction shall be construed as if the time as last extended were limited in the direction in lieu of the time actually limited in the direction; and
- (b) the building tribunal shall notify the objector accordingly.

(3) The local government shall comply with the tenor of a direction issued upon it by the building tribunal under subsection (1).

Division 1B—Objections against decisions by local governments on amenity and aesthetics

Constitution of panel

36F.(1) A panel constituted for the purpose of hearing an objection against a decision referred to in section 30BG(2) or 30C(1)(b) shall consist of 3 members of whom—

- (a) 1 shall be the chairperson of the Building Advisory Committee, or the chairperson's nominee (who shall be an architect), who shall be the chairperson of the panel; and
- (b) 1 shall be a person, not being a member or employee of the local government whose decision is the subject of the objection, nominated by the Director after consultation with the Local Government Association of Queensland; and
- (c) 1 shall be a person nominated by the Director after consultation with the Master Builders' Association of Queensland and the Housing Industry Association (Queensland Division).

(1A) If a panel is unable to enter upon or complete the determination of an objection another, panel may be constituted to deal with the matter de novo.

(2) Members of a panel shall be entitled to such fees and expenses for attendance at meetings of a panel as are approved by the Governor in Council save that a member of a panel who is an officer of the public service of the State shall not receive fees or remuneration for attendance at a meeting of a panel during the officer's ordinary hours of duty.

(3) The registrar is empowered to undertake such duties as are necessary for the effectual discharge of a panel's functions.

Duty of panel

36G.(1) As soon as is practicable after a panel is constituted under section 36F to determine an objection, the registrar, after consultation with the chairperson of the panel, shall appoint a time and place when and where the panel will consider the objection and shall give notice in writing of such time and place to the objector and the chief executive officer of the local government against whose decision the objection is made.

(2) At the time and place so appointed the panel shall enter upon consideration of the matter of the objection and, before it determines the objection shall receive such representations on the objection as are made to it, in accordance with this Act, by or on behalf of the objector and the local government.

(3) If at the time and place appointed under subsection (1), or at any time and place to which consideration of the objection is adjourned under section 36H(1), there is no appearance by or on behalf of the objector or the local government it shall be taken that the party who does not so appear does not wish to make any representations on the matter of the objection and the panel may proceed to determine the objection without further reference to that party.

Powers of panel

36H.(1) A panel may make such inspections and may adjourn consideration of an objection to such time and place certain as it considers necessary to a proper consideration and determination of the objection.

(2) A panel may—

- (a) allow an objection; or
- (b) dismiss an objection; or
- (c) with the consent of the objector vary the application in question so that in the opinion of the panel—
 - (i) the building when erected will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood; and
 - (ii) the aesthetics of the building when erected will not be in extreme conflict with the character of the building's neighbourhood.

Decision of panel

36I. When a panel has determined an objection the registrar shall give written notification of the determination—

- (a) to the objector; and
- (b) to the chief executive officer of the local government against whose decision the objection in question was made.

Division 1C—Objection by the Commissioner of Fire Service

Objection to decision

36J. Where the Commissioner of Fire Service has under the Standard Building Law advised a local government that any special fire services proposed to be included or included in a building do or do not comply with the requirements of the Standard Building Law and the local government has, under the Standard Building Law, advised the Commissioner of Fire Service that it disagrees with that advice, the Commissioner of Fire Service may object in respect of that disagreement to a building tribunal.

Institution of objection

36K.(1) An objection under section 36J shall be instituted within 7 days

after the Commissioner of Fire Service is advised of the disagreement in respect of which it wishes to object, and not later, by—

- (a) lodging a notice of objection, duly completed, with the registrar; and
- (b) giving a copy of the notice of objection to the chief executive officer of the local government concerned.

(2) A notice of objection—

- (a) shall specify the grounds of the objection and the facts and circumstances relied on to support those grounds; and
- (b) if a form is prescribed—shall be in or to the effect of that form.

(3) The registrar shall give a copy of the notice of objection to—

- (a) where the disagreement relates to advice given in respect of an application for approval to the carrying out of building work—the applicant for that approval; or
- (b) where the disagreement relates to advice given in respect of a certificate of classification of a building—the applicant for that certificate.

Constitution of building tribunal

36L.(1) Upon receipt by the registrar of a notice of objection under section 36K, the registrar shall refer the matter of the objection to the Director who shall constitute a building tribunal to determine the objection.

(2) The registrar —

- (a) shall give the member composing, or the chairperson of, the building tribunal the writing constituting the tribunal and the notice of objection or, if the notice is not readily available, a copy of the objection; and
- (b) shall give to each of them, the Commissioner of Fire Service, the chief executive officer of the local government concerned and the applicant to whom a copy of the notice of objection was given under section 36K(3), a copy of the writing constituting the building tribunal that is to determine the objection.

Duty of building tribunal

36M.(1) As soon as practicable after receipt by the member composing, or chairperson of, the building tribunal of the material referred to in section 36L(2)(a), the building tribunal shall appoint a time and place when and where it proposes to enter upon the determination and shall cause notice in writing of such time and place to be given to each of them, the Commissioner of Fire Service, the chief executive officer of the local government concerned and the applicant to whom a copy of the notice of objection was given under section 36K(3).

(2) Before it determines any objection made under section 36J, the building tribunal shall receive such representations on the objection as are made to it, in accordance with this Act, by or on behalf of the Commissioner of Fire Service, the local government and the applicant to whom a copy of the notice of objection was given under section 36K(3).

(3) The applicant is a party to the proceedings before the building tribunal.

Powers of building tribunal

36N.(1) Upon its entering upon the determination of an objection made under section 36J, a building tribunal—

- (a) may adjourn the proceeding to such time and place certain as it thinks necessary to a proper consideration and determination of that objection; and
- (b) may determine whether the special fire services concerned do or do not comply with the requirements of the Standard Building Law.

(2) The determination by a building tribunal of an objection made under section 36J—

- (a) is final and, despite section 37, an appeal does not lie against that determination to the committee; and
- (b) shall be given effect by the parties to the objection.

Notice of determination to be given to parties

360. Upon a building tribunal determining an objection, the registrar shall give written notification of the determination to each party to the proceedings before the tribunal.

Division 2—Appeals against building tribunals' determinations

Appeal to committee against building tribunal's determination

37. Subject to this Act, an objector who or a local government that is dissatisfied with the determination of a building tribunal on an objection made under section 31 may appeal against such determination to the committee.

Institution of appeal

38.(1) An appeal under section 37 shall be instituted within 30 days after notification of the building tribunal's determination against which the appeal is to be brought is given by the registrar to the appellant, and not later, by—

- (a) lodging a notice of appeal, duly completed, together with the prescribed fee, with the secretary to the committee; and
- (b) giving a copy of the notice of appeal—
 - (i) in the case of an appeal instituted by an objector, to the chief executive officer of the local government against whose decision was made the objection that has led to such appeal; or
 - (ii) in the case of an appeal instituted by or on behalf of a local government, to the objector.

(2) A notice of appeal—

- (a) shall specify the grounds of appeal and the facts and circumstances relied on by the appellant in support of those grounds; and
- (b) if a form of notice of appeal is prescribed—shall be in or to the effect of that form.

(3) If the secretary to the committee is of the opinion that an appeal in respect of which a notice of appeal has been lodged has not been instituted

within the time prescribed by this section, the secretary shall as soon as practicable advise the Director of that fact and of the grounds for the secretary's opinion and if the Director is also of that opinion the Director shall direct that no further action be taken upon that notice.

(4) Where the Director so directs, the secretary to the committee shall notify—

- (a) in the case of an appeal instituted by an objector—the chief executive officer of the local government against whose decision was made the objection that has led to such appeal; and
- (b) in the case of an appeal instituted by or on behalf of a local government—the objector.

Duty of committee

39.(1) As soon as is practicable after receipt by the secretary to the committee of a notice of appeal, the secretary to the committee, after consultation with the chairperson of the committee, shall appoint a time and place when and where the committee will consider the matter of the appeal and shall give notice in writing of such time and place to the appellant and to any other person or body, as the case may be, who was party to the proceeding before the building tribunal against whose determination the appeal is brought.

(2) If at the time and place so appointed a quorum of the committee is present, including at least 4 members of the committee of whom none was a member of the building tribunal against whose decision the appeal in question is brought, the committee shall enter upon consideration of the matter of the appeal and, before it decides such appeal, shall receive such representations on the matter of the appeal as are made to it, in accordance with this Act, by or on behalf of the appellant and such party.

(3) If at the time and place appointed under subsection (1) or at any time and place to which the appeal is adjourned under section 40 there is no appearance by or on behalf of the appellant or such party (as permitted by section 49), it shall be taken that the party who does not so appear does not wish to make any representations on the matter of the appeal and the committee may proceed to decide the appeal without further reference to that party.

Powers of committee

40.(1) Upon its entering upon consideration of an appeal, the committee—

- (a) may adjourn the proceeding to such time and place certain as it considers necessary to a proper consideration and decision of the appeal; and
- (b) shall be competent to give its decision on the appeal even though—
 - (i) a change or vacancy in its membership has occurred since the time of its entering upon such consideration; or
 - (ii) no more than 3 of its members have attended at all times when the matter of the appeal has been considered; and
- (c) may confirm, or vary in such manner and to such extent as it thinks fit, the determination against which the appeal is brought; and
- (d) may quash the determination against which the appeal is brought.

(2) The power of the committee to vary the determination appealed against includes the power to revoke that determination and substitute for the determination its own determination which may include the imposition of conditions.

Decision of committee

41.(1) When the committee has decided an appeal the secretary to the committee shall give written notification of the decision—

- (a) to the appellant; and
- (b) to any person or body, as the case may be, who was party to the proceeding before the building tribunal against whose determination the appeal was brought.

(2) The decision of the committee on an appeal brought against a determination of a building tribunal on an objection shall take effect upon the expiration of the period allowed by this Act within which an appeal against it may be duly instituted and, subject to the right of appeal conferred by this Act, shall be final and binding on the objector and the local

government against whose decision the objection in question was made and on any other person who is affected by the decision.

(2A) Where an appeal against the committee's decision is duly instituted, the effect of the decision shall abide the outcome of the appeal and any further decision of the committee made as a result of the appeal.

(3) Where, because of the Planning and Environment Court's remission of any matter to the committee under section 45, the committee makes a further decision on an appeal brought against a determination of a building tribunal on an objection, that further decision shall take effect as the committee's decision instead of any decision of the committee previously made on that appeal.

(4) If, by a decision of the committee, the determination of a building tribunal upon an objection is varied, the determination as so varied shall be deemed to be the determination of the building tribunal and shall take effect accordingly as prescribed.

Division 3—Appeals against committee's decisions

Appeal to Planning and Environment Court

42.(1) Subject to this Act, any person who or local government that is aggrieved by a decision of the committee on an appeal brought against the decision of a building tribunal on an application made to it under section 12B or the determination of a building tribunal on an objection may appeal against the decision to the Planning and Environment Court.

(1A) An appeal brought under subsection (1) shall be limited to the ground of—

- (a) want of jurisdiction in the committee; or
- (b) mistake or error of law by the committee.

Procedure on appeals to Planning and Environment Court

43.(1) Subject to this Act, an appeal under section 42 shall be instituted within the time prescribed by this Act but in all other respects shall be brought, heard and determined and any order made in the appeal shall be

enforced in accordance with the practice and procedure of the Planning and Environment Court.

Institution of appeal

44. An appeal under section 42 shall be instituted within 30 days after notification of the committee's decision is given by the secretary to the committee to the appellant and not later.

Powers of Court on appeal

45.(1) Upon the determination of an appeal duly brought under section 42 the Planning and Environment Court—

- (a) may quash the decision of the committee, in whole or part, as the case requires, where the appeal is on the ground of want of jurisdiction; or
- (b) may declare the law and remit the matter, the subject of the appeal, to the committee with a direction that it make its decision according to law, where the appeal is on the ground of mistake or error of law; or
- (c) may dismiss the appeal.

(2) Upon the application of a person or local government affected by delay in prosecuting an appeal brought under section 42, or of its own motion, the Planning and Environment Court may strike out the appeal and make such order as to the costs of the appeal as it thinks fit.

Appeal from decision of court

46. No appeal shall lie from a decision of the Planning and Environment Court upon an appeal brought under section 42 save as prescribed with respect to decisions of that Court by the *Local Government (Planning and Environment) Act 1990* and the rules of that Court and, subject thereto, every such decision shall be final and binding on the parties to the appeal and, where the case requires it, shall be given effect to by the committee.

Decisions and determinations reviewed only under Act

47. Save as is prescribed by this Act, no appeal lies from a local authority's decision of a kind referred to in section 31, or from a referee's, building tribunal's or panel's determination on an objection brought against such a decision, or from a building tribunal's decision under section 12C, or from a decision of the committee or the Planning and Environment Court made in relation thereto or in connection therewith nor shall any such decision or determination be impeached for any informality or want of form or be reviewed, quashed or in any way called in question in any court.

Building tribunal, panel and committee control own proceeding

48. A building tribunal, panel or the committee shall not be bound by rules of evidence or of procedure or by any practice in relation thereto in the discharge of its function under this Act but may inform itself and may conduct proceedings in such manner as it considers sufficient to allow a proper discharge of that function and, in particular, may refer to a person considered by it to be an expert any question that appears to it to be of a technical nature or otherwise to require expert opinion by way of assistance to it and may accept the written report of that person as evidence in the proceeding.

Representation of parties

49.(1) Subject to subsection (3), a party to any proceeding before a building tribunal or a panel or the committee—

- (a) being a local government or other incorporated person—may appear in that proceeding by its agent duly notified as prescribed; or
- (b) being a person other than one described in provision (a)—may appear in that proceeding in person or by the person's agent duly notified as prescribed.

(2) Where any person proposes to appear in any proceeding by an agent, the person shall, at least 3 days before the date appointed for the commencement of the hearing, notify in writing the name, address and occupation of the agent—

- (a) in the case of a proceeding that is to determine an objection made

under section 31—to the building tribunal or, as the case may be, panel constituted to determine the objection; or

- (b) in the case of a proceeding that is an appeal brought under section 37—to the secretary to the committee.

(3) In no case shall any person be represented before a building tribunal or a panel or the committee by an agent who has a legal qualification under the laws of this State or of any other place.

(4) Where an agent appears on behalf of any party to a proceeding before a building tribunal or a panel or the committee, it shall be conclusively presumed that the agent has sufficient authority to bind the agent's principal in all matters concerned in or arising out of the proceeding.

(5) Contravention of any provision of this section shall not invalidate the taking of the proceeding in which or in relation to which the contravention occurs, or any determination or decision made therein.

PART 6—REGULATORY POWERS OF LOCAL GOVERNMENT

Notice to cease erection without approval

50.(1) If it comes to the knowledge of a local government that building work or any part of building work is being carried out—

- (a) without an approval required by the Standard Building Law having been obtained in respect of the work; or
- (b) otherwise than in accordance with plans and specifications approved, and conditions (if any) imposed, by the local government in connection with an application made for the purposes of the Standard Building Law;

the local government may, by notice in writing, require the person to whom such notice is given to cease the carrying out of that building work or part.

(2) A notice given under subsection (1) shall be given to the owner of the land on which the building work in question is being carried out and to any person engaged in carrying out the building work in question.

(3) A person to whom a notice referred to in subsection (1) is given who fails to comply with the notice commits an offence against this Act.

(4) A notice under this section must state that the person to whom it is given has a right of objection under section 57.

Lawful to perform emergency work

51.(1) Where, because of an emergency that endangers the life or health of any person, or the structural safety of any building or other structure, it becomes necessary to carry out building work without an approval required by the Standard Building Law having been obtained in respect of the work, a person shall not be liable as for an offence on account of the person's performing or procuring to be performed such work if the person who performs such work gives to the local government notice in writing of its commencement as soon as is practicable after its commencement.

(2) Subsection (1) does not apply in relation to the carrying out of building work in respect of which there exists a notice given under section 50.

(3) A person who, being required under the condition expressed in subsection (1) to give notice of the commencement of building work, fails to give such notice as prescribed commits an offence against this Act.

Buildings erected unlawfully

52.(1) If it comes to the knowledge of a local government that any building or other structure has been erected—

- (a) without an approval required by the Standard Building Law having been obtained in respect of the building or other structure; or
- (b) otherwise than in accordance with plans and specifications approved, and conditions (if any) imposed, by the local government in connection with an application made for the purposes of the Standard Building Law;

the local government may, subject to section 54, by notice in writing, require the owner of the building or structure to perform such work on the building or structure as is necessary to bring the same into conformity with

the Standard Building Law or, if in its opinion formed on reasonable grounds it is practically impossible to bring the same into such conformity, to demolish or remove the same, in any case within the time specified in such notice.

(2) If the owner of a building or other structure to which a notice given under subsection (1) relates fails to comply with such notice then—

- (a) the local government may, itself, cause the building or structure to be demolished; and
- (b) the owner commits an offence against this Act.

(3) A notice under this section must state that the person to whom it is given has a right of objection under section 57.

Approval to be sought where building erected without approval

52A.(1) If it comes to the knowledge of a local government that any building or other structure is being or has been erected without an approval required by the Standard Building Law having been obtained in respect of the building or structure, the local government may, by notice in writing, require the owner of the building or structure to apply to the local government for that approval within a specified time.

(2) If an owner of a building or other structure to which a notice given to the owner under subsection (1) relates fails to comply with the notice the owner commits an offence against this Act.

(3) It is not competent to a person who, under a notice under subsection (1), applies for an approval required by the Standard Building Law, to withdraw the application.

(4) A person who, under a notice under subsection (1), applies to a local government for an approval required by the Standard Building Law, shall comply with all written requisitions given to the person by the local government for the supply of plans, specifications, drawings, certificates or other information relating to the building or other structure to which the application relates.

(5) An application of a type referred to in a notice under subsection (1), made in respect of the building or other structure to which the notice relates by or on behalf of the person to whom the notice was given shall be deemed

to have been made under the notice.

(6) The other provisions of this Act which apply to or in respect of an application for the local authority's approval to the carrying out of building work apply, with such adaptations and modifications as may be necessary, to and in respect of an application made under a notice under subsection (1) except that section 30A(2)(c) does not apply to any such last application.

Building etc. dangerous, neglected or unfit for use or occupation

53.(1) If in the opinion of a local government formed on reasonable grounds any building or other structure or any part of a building or other structure is dangerous, the local government may, subject to section 54, by notice in writing, require the owner of the building or structure to do any 1 or more of the following—

- (a) shore-up or otherwise secure such building or structure or part;
- (b) erect a proper hoarding or fence for the protection of persons using any road, path or way upon which the building or structure or part abuts;
- (c) demolish or take down the building or structure or part;
- (d) repair the building or structure or part;
- (e) remove the building or structure or part;

as the local government directs within the time specified in the notice.

(2) If in the opinion of a local government formed on reasonable grounds any building or other structure or any part of a building or other structure is a ruin or so far dilapidated as to be unfit for use or occupation or is, from neglect or other cause, in a structural condition prejudicial to the inhabitants of or to property in the neighbourhood, the local government may, subject to section 54, by notice in writing, require the owner of the building or structure to do any 1 or more of the following—

- (a) demolish the building or structure or part;
- (b) repair the building or structure or part;
- (c) remove the building or structure or part;
- (d) fence the land on which the building or structure or part stands;

- (e) repair any fence that encloses or is on that land;
- (f) secure the building or structure or part;

within the time specified in the notice.

(3) If in the opinion of a local government formed on reasonable grounds any building or other structure or any part of a building or other structure is in a filthy or dilapidated condition, or is infected with disease, or is infested with lice, bugs, rats or other vermin, or is improperly constructed, or from any other cause is unfit to be used or occupied, the local government may, subject to section 54, by notice in writing, require the owner of the building or structure to do any 1 or more of the following—

- (a) demolish the building or structure or part;
- (b) cleanse, purify and disinfect the building or structure or part so as to make it fit to be used or occupied;
- (c) repair the building or structure or part so as to make it fit to be used or occupied;
- (d) alter the building or structure or part so as to make it fit to be used or occupied;
- (e) remove the building or structure or part;

within the time specified in the notice.

(4) If an owner of a building or other structure to which a notice given to the owner under any provision of this section relates fails to comply with such notice, then—

- (a) the local government may itself cause such steps to be taken and such things to be done as it has, by the notice, required the owner of the building or structure to take or do; and
- (b) the owner commits an offence against this Act.

(5) A notice under this section must state that the person to whom it is given has a right of objection under section 57.

Local government to give owner opportunity to show cause

54.(1) Before it gives a notice, which it is empowered to give under section 52 or 53, a local government shall afford to the owner of the

building or other structure in question an opportunity to show cause why the notice should not be given, by notifying the owner in writing of a day (being not earlier than 30 days after the giving of the notification), a time and place when and where the owner may show cause why the notice, which it is proposed to issue, should not be issued.

(1A) Provided that it shall not be necessary for a local government to afford an owner an opportunity to show cause where it is proposed to give a notice under section 52 or section 53 in respect of the performance of work on a building or other structure which work in the opinion of the local government is of a minor nature.

(2) Any person to whom a notification is given under subsection (1)—

- (a) may appear at the day, time and place so notified and take such steps as are calculated to show the prescribed cause; or
- (b) may endeavour to show the prescribed cause by writing furnished to the chief executive officer of the local government concerned at any time before the time so notified.

Register of notices given

55.(1) A local government shall make and keep a register of—

- (a) all notices given by it under section 39(5) or (6) of the *Local Government Act 1936* before the commencement of this section, which are not complied with at such commencement; and
- (b) all notices given by it under sections 50, 52, 52A, 53, 54 and 56.

(2) The register shall show, in respect of every such notice—

- (a) the purport of the notice; and
- (b) the date on which the notice is given; and
- (c) the real property office description and postal address of the land on which is the building or other structure to which the notice relates; and
- (d) the name and address of the owner to whom the notice is given; and
- (e) the extent (if any) to which the notice has been complied with.

(3) The register shall be open to inspection by the public.

Building etc. made dangerous by act of nature or other calamity

56.(1) If in the opinion of a local government found on reasonable grounds any building or other structure or any part of a building or other structure is, because of fire, flood, tempest or other act of nature, explosion, vehicle impact or other calamity, a danger to users of any road, path or way upon which the building or structure abuts or to which it is adjacent or to users of adjacent land, the local government—

- (a) may, by notice in writing, require the owner of the building or other structure to do any 1 or more of the following—
 - (i) shore-up or otherwise secure such building or structure or part and erect a proper hoarding or fence for the protection of persons using any such road, path or way;
 - (ii) demolish or take down the building or structure or part;
 - (iii) secure the building or structure or part;
 - (iv) repair the building or structure or part;
 - (v) remove the building or structure or part;within the time specified in such notice; or
- (b) may, itself, cause such steps to be taken and such things to be done as it could have required the owner of such building or structure to take and do by notice given under paragraph (a).

(2) A notice given under subsection (1)(a) may specify different times within which the several requirements of the notice are to be complied with.

(3) If an owner of a building or other structure to which a notice given to the owner under subsection (1) relates fails to comply with such notice, then—

- (a) the local government may, itself, cause such steps to be taken and such things to be done as it has, by the notice, required the owner of the building or structure to take or do; and
- (b) the owner commits an offence against this Act.

(4) A notice under this section must state that the person to whom it is

given has a right of objection under section 57.

Objection against local government's notice

57.(1) A person to whom a notice is given under section 50, 52, 53 or 56 may object to the giving of the notice or to any requirement of the notice.

(2) An objection under subsection (1) shall be made—

- (a) in respect of a notice given pursuant to section 56—within 7 days;
- (b) in respect of any other notice—within 30 days;

after the giving of the notice and no later.

(3) An objection under subsection (1) shall be made to and be heard and determined by a building tribunal as if it were an objection made under section 31 and such building tribunal shall have and may exercise in respect of such an objection the jurisdiction conferred on it by Division 1 of Part 5 of this Act.

(4) Part 5, Divisions 2, 3 and 4 shall apply in respect of a determination of a building tribunal on an objection made under this section and in respect of a decision of the committee on an appeal brought in respect of such a determination as if the determination were a determination on an objection made under section 31 or, as the case may be, the decision were a decision on an appeal brought under section 37.

Effect of building tribunal's determination

58. Where, by its determination on an objection under section 57(1), a building tribunal—

- (a) allows the objection (being one made against the giving of a notice) in whole, the notice to which the objection relates shall thereupon be of no further effect;
- (b) allows the objection and varies any requirement of the notice to which the objection relates, the notice shall have effect as if the requirement as so varied were contained in the notice instead of the requirement actually specified in the notice by the local government.

Disposal of building material and recovery of costs by local government

59.(1) Where a local government takes any step which it may lawfully take to secure compliance with a notice given by it under section 52, 53 or 56, it may—

- (a) take possession of any building material or any other property resulting from the taking of such step; and
- (b) dispose of such material and property by public auction or by public tender.

(2) A local government that sells material or other property under subsection (1) shall appropriate the proceeds of such sale as follows—

- (a) firstly, in payment of the expenses of such sale; and
- (b) secondly, in payment of its costs and expenses duly incurred in or with a view to securing compliance with the notice given by it under section 52, 53 or 56 and whereby it became possessed of the material or other property sold; and
- (c) thirdly, in payment of all rates and charges due, at the time of such appropriation, to the local government by the owner of the building or other structure to which the notice given under section 52, 53 or 56 related together with all interest payable on such rates and charges; and
- (d) fourthly, in payment of all moneys due, at the time of such appropriation, to the Crown or to any Crown instrumentality by the owner of the building or other structure to which the notice given under section 52, 53 or 56 related and of which the local government, at that time has notice together with all interest payable on such moneys; and
- (e) lastly, in payment to the owner of the building or other structure to which the notice given under section 52, 53 or 56 related of all such proceeds remaining unappropriated in the hands of the local government.

(3) If the proceeds of a sale of materials or other property referred to in subsection (1) are insufficient to cover the costs and expenses referred to in subsection (2)(a) and (b) or if for any other reason the costs and expenses incurred by a local government in or with a view to securing compliance

with a notice given by it under section 52, 53 or 56 are not reimbursed to the local government the local government may recover from the owner of the building or other structure to which the notice given under section 52, 53 or 56 related such costs and expenses, or, as the case may be, such part thereof as have not been reimbursed to the local government, by way of action in a court of competent jurisdiction for a debt due and owing by the owner to the local government.

(4) If a local government that has taken steps to secure compliance with a notice given under section 52, 53 or 56 has made demand on the owner of the building or other structure to which the notice related for payment of its costs and expenses incurred in or with a view to securing such compliance or of any part of its costs and expenses and such demand remains unsatisfied for a period of 3 years from the date of its being made, the local government may realise the amount outstanding, by sale of the land on which stood the building or other structure as provided by the *Local Government Act 1993* with respect to the sale of land for arrears of rates (with such adaptations of the provisions of that Act as the case may require) and shall deal with the proceeds of any such sale—

- (a) firstly, in payment of the expenses of such sale; and
- (b) secondly, in satisfaction of the demand;

and then in accordance with the directions and priorities prescribed by subsection (2)(c), (d) and (e).

(5) No claim shall be brought against a local government or any of its officers or agents on account of damage to or loss of building material or other property suffered while such building material or other property is in the possession of the local government, officer or agent in the circumstances referred to in subsection (1), save where such damage or loss is due to any wrongful act or negligence of the local government, its officer or agent.

Removal of persons in buildings to be demolished

60.(1) If it is necessary or expedient to remove any person from a building or other structure, which is to be demolished, in whole or in part, by a local government under any provision of this Act it shall be the duty of every police officer—

- (a) to comply with a request made on behalf of the local government

to remove such person; and

- (b) to act in aid of an officer of the local government in removing such person.

(2) For the purpose of removing any person from a building or other structure referred to in subsection (1)—

- (a) any officer of the local government concerned who is authorised in writing in that behalf by the chief executive officer of the local government and any police officer acting on a request of the local government in that behalf may, without other authority than this Act, enter upon such building or other structure and all parts of the building or structure and upon the land on which it stands; and
- (b) any such officer and any such police officer may remove from such building or other structure all persons found in the building or structure, using such force as is reasonably necessary for the purpose.

Erection on impregnated land prohibited

61.(1) A person shall not carry out building work comprising the erection of a building or other structure on land that has been filled with matter impregnated with faecal, animal or vegetable matter, or on land upon which matter so impregnated has been deposited, unless such matter has been effectively removed or has been rendered or has become innocuous.

(2) If after the expiration of 30 days from the person's conviction of the offence defined in subsection (1) a person suffers the building or other structure to remain erected in circumstances such that its erection in those circumstances would be a contravention of subsection (1) the person commits an offence against this Act which shall be taken to be a continuing offence and is liable to a daily penalty for each day during which the building or other structure remains so erected and the person may be prosecuted in respect of such continuing offence from time to time for as long as the offence continues but the person shall not be punished more than once in respect of the same period.

Right of entry to remedy offence

62. Where a person who has carried out building work comprising the erection of a building or other structure on land in contravention of section 61 is not the owner of such land, the person shall, nevertheless, be entitled without other authority than this Act to enter upon such land, together with all necessary assistants and equipment, for the purpose of effectively removing all matter impregnated as prescribed by that section or of rendering the same innocuous.

Act extends to premises of gas supplier

63. Despite the provisions of any other Act, the expression “**building or other structure**” used in this Act includes any building or other structure owned, occupied or used by a person or body for the purpose of making, storing or supplying gas in any area or for any purpose in connection with that purpose and every local government has and may exercise in respect of such building or other structure the powers and authorities which it could exercise under this Act were such building or other structure owned, occupied or used for any other purpose.

Notice given to body corporate taken to be given to proprietors

63A.(1) A notice referred to in this Part that is given to the body corporate constituted by the registration of a building units plan or a group titles plan is taken to have also been given to the proprietor of each lot affected by the notice and shown on that plan.

(2) In this section the expressions “**building units plan**”, “**group titles plan**”, “**lot**” and “**proprietor**” have the meanings assigned to them respectively by the *Building Units and Group Titles Act 1980*.

PART 7—GENERAL PROVISIONS**Provisions concerning notices under Act**

64.(1) Any notice in writing required or permitted by this Act to be given

by a local government may be given without the seal of the local government and shall be signed by the chief executive officer or other duly authorised officer of the local government.

(3) Any notification or other document whatsoever required to be given by a building tribunal or by the registrar or by the secretary to the committee or by the chief executive of the department in which the *Local Government Act 1993* is administered for the purposes of this Act may be given or delivered to or served upon any person—

- (a) by delivering the same to that person personally; or
- (b) by leaving the same at the usual place of business or address of such person or at the person's last known place of business or address; or
- (c) by forwarding the same by post in a prepaid letter addressed to such person at the person's usual place of business or address, or at the person's last known place of business or address.

(4) Any such notification or document forwarded by post shall be deemed to have been given at the last moment of the day on which the same ought to be delivered at its destination in the ordinary course of post and in proving service it shall be sufficient to prove that the same was properly stamped and addressed and put in the post.

Restriction on local government's power to delegate

64A. A local government may not delegate a power under section 52 or 53 to cause a building or structure to be demolished or taken down.

Chief executive's power to delegate

64B. The chief executive may delegate the chief executive's powers under this Act to an officer of the department.

Offences generally and penalty

64C.(1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

- (2) Save where a specific penalty is otherwise prescribed, a person

convicted of an offence against this Act is liable—

- (a) in a case to which paragraph (b) does not apply—to a maximum penalty of 200 penalty units or, if the offence is a continuing offence, a maximum daily penalty of 20 penalty units; or
- (b) where the offence relates to—
 - (i) a building or other structure of Class 1 or 10 as classified by the Standard Building Law; or
 - (ii) the carrying out of building work in relation to such a building; or
 - (iii) a failure to comply with a notice under this Act that relates to such a building or building work;

to a maximum penalty of 20 penalty units or, if the offence is a continuing offence, a maximum daily penalty of 2 penalty units.

Continuing offences

64D.(1) If after a person's conviction of an offence that consists of a failure to comply with a notice given to that person under this Act that person continues to fail to comply with that notice, that person commits an offence against this Act which is taken to be a continuing offence and is liable to a daily penalty for each day during which the failure has continued.

(2) In respect of a continuing offence, a complaint may be laid from time to time alleging the commission of that offence over a period, but the offender shall not be punished more than once in respect of any period.

Owner liable for offences under Standard Building Law

64E. Where the Standard Building Law require that an act be done or not done but do not state who is to do, or not to do, the act, and the act is not done or, as the case may be, done in breach of that Law, the owner of the building or other structure in respect of which the breach occurs is taken to be guilty of the offence occasioned by the breach and may be proceeded against accordingly.

Prosecution of offences

65.(1) A prosecution in respect of an offence against this Act (including any offence that consists of a breach of the Standard Building Law as duly modified in relation to any area) shall be by way of summary proceeding under the *Justices Act 1886* upon complaint laid within 12 months after the commission of the offence or within 6 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.

(2) A person who may lay a complaint in respect of an offence against this Act is a local government or a person authorised in that behalf by a local government.

(3) It shall not be necessary to prove the authority of the complainant in any proceeding in respect of an offence against this Act.

Liability for corporation's default

66. Where an offence against this Act is committed by a body corporate each member of the governing body of that body corporate shall be taken to have committed the offence and may be punished for the offence accordingly, in addition to the body corporate, unless the member proves that the member had no knowledge of the commission of the offence or could not have prevented its commission by the exercise of reasonable diligence.

Application for approval where building work commenced

66A.(1) It is competent to a person to make and for a local government to decide on an application for approval to the carrying out of building work even though the building work to which the application relates has been commenced or completed.

(2) Subsection (1) must not be construed as affecting the operation of section 30A(1).

Certain applications not made unless fees paid

66B. An application made to a local government under section 30A or 30C is taken not to have been duly made unless and until the fees required to be paid in respect thereof under the Standard Building Law had been paid

as required by the Standard Building Law.

Regulation making power

67.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may make provision with respect to—

- (a) the payment of remuneration to referees, members of the committee and subcommittees; and
- (b) the fees payable under the Act; and
- (c) flammable and combustible liquids; and
- (d) fixing a penalty for an offence against a regulation (including different penalties for successive offences against a regulation) of a fine of not more than 20 penalty units.

PART 8—SAVINGS AND TRANSITIONAL PROVISIONS

Fire zones

71.(2) Land that immediately before the commencement of this Part comprises a first-class section under a declaration made under section 39(5) of the *Local Government Act 1936* shall, upon the commencement of this Part—

- (a) where the land meets the requirements of section 5.8 of the Standard Building Law, be a primary fire zone;
- (b) where the land meets the requirements of section 5.9 of the Standard Building Law, be a secondary fire zone,

and, in either case, Part 5 of the Standard Building Law shall apply accordingly.

(3) The Minister may, if requested by the local government of an area that contains a fire zone referred to in subsection (2), by notification published in the Gazette declare a part of the area, defined in the notification,

to be excluded from the fire zone constituted by it or of which it forms a part, and thereupon the defined part shall cease to constitute or to form part of that fire zone.

Ordinance 801 of City of Brisbane Ordinances inoperative. Fire zones

75.(1) Ordinance 801 of the City of Brisbane Ordinances published in Government Gazette dated 1 January 1972 at pages 1 to 180, both inclusive, shall cease to be of any force or effect on and from the commencement of this Part.

(2) Land that immediately before the commencement of this Part comprises a first-class section under a declaration made under Ordinance 801 aforesaid shall, upon the commencement of this Part—

- (a) where the land meets the requirements of section 5.8 of the Standard Building Law, be a primary fire zone;
- (b) where the land meets the requirements of section 5.9 of the Standard Building Law, be a secondary fire zone,

and, in either case, Part 5 of the Standard Building Law shall apply accordingly.

(3) The Minister may, in respect of land that is or is in a fire zone under subsection (2) if requested by Brisbane City Council, by notification published in the Gazette declare that land or part thereof, in either case defined in the notification, to be excluded from the fire zone, and thereupon the defined land shall cease to constitute or form part of that fire zone.

Swimming pool fencing compliance—hardship

76.(1) This section applies if—

- (a) before the commencement of this section, a local authority, under section 49H(11)(b) of the *Local Government Act 1936*, extended the time for an owner to comply with section 49H(4) of the Act; and
- (b) immediately before the commencement of this section, the extension was still in force.

(2) The extension continues, in accordance with its terms, as an extension

of time for the owner to comply with section 30H (Outdoor swimming pools to be fenced).

(3) The local government concerned may at any time, and subject to the reasonable conditions it considers appropriate, extend the time for the owner to comply with section 30H if—

- (a) the owner files a written application for an extension with the local government while a previously given extension is still in force; and
- (b) the local government is satisfied that compliance within the time provided for in the previously given extension would cause the owner financial hardship.

References to Standard Building By-laws 1991 etc.

78. A reference in an Act or document to the *Standard Building By-laws 1991* or the Standard Building By-laws (however described) is a reference to the Standard Building Law.

Example—

A reference to the Standard Building By-laws as ‘those by-laws’ is a reference to the Standard Building Law.

ENDNOTES

1 Index to Endnotes

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the Reprints Act 1992. Accordingly, this reprint includes all amendments that commenced operation on or before 26 March 1994. Future amendments of the Building Act 1975 may be made in accordance with this reprint because of section 49 of the Reprints Act 1992.

3 Table of previous reprints

Reprint No.	Amendments included	Reprint date
1	to Act No. 52 of 1991 and SL No. 181 of 1991	1 June 1992

4 List of legislation

Building Act 1975 No. 11

date of assent 15 May 1975

Parts 5, 6 and 8 and Schedule thereto commenced 1 April 1976 (proc pubd Gaz
6 March 1976 p 886)

remaining provisions commenced 31 May 1975 (proc pubd Gaz 31 May 1975
p 748)

as amended by—

Building Act Amendment Act 1978 No. 47

date of assent 12 June 1978

commenced 21 September 1978 (proc pubd Gaz 23 September 1978 p 245)

Builders' Registration and Home-owners' Protection Act 1979 No. 69 s 4(2), (3)

date of assent 21 December 1979

commenced 19 May 1980 (proc pubd Gaz 12 April 1980 p 1344)

Building Act Amendment Act 1981 No. 53

date of assent 12 June 1981

ss 1, 2 commenced on date of assent

remaining provisions commenced 29 June 1981 (proc pubd Gaz 27 June 1981 p 1710)

Building Act Amendment Act 1984 No. 45

date of assent 10 May 1984

ss 1, 2 commenced on date of assent

ss 3, 5(c), 17, 23, 25 and 26 commenced 7 July 1984 (proc pubd Gaz 7 July 1984 p 1608)

remaining provisions commenced 2 June 1984 (proc pubd Gaz 2 June 1984 p 987)

Building Act Amendment Act 1984 (No. 2) No. 114

date of assent 18 December 1984

ss 1, 2 commenced on date of assent

remaining provisions commenced 2 March 1985 (proc pubd Gaz 23 February 1985 p 942)

Building Act Amendment Act 1987 No. 69

date of assent 1 December 1987

ss 1, 2 commenced on date of assent

remaining provisions commenced 28 March 1988 (proc pubd Gaz 26 March 1988 p 1735)

Public Service Management and Employment Act 1988 No. 52 s 44 Sch 3

date of assent 12 May 1988

commenced 18 July 1988 (proc pubd Gaz 16 July 1988 p 2876)

Local Government (Planning and Environment) Act 1990 No. 61 s 8.8 Sch 1, Sch 2

date of assent 18 September 1990

commenced 15 April 1991 (proc pubd Gaz 6 April 1991 p 2009)

Local Government Act and Other Acts Amendment Act 1990 No. 107 Part 4

date of assent 18 December 1990

commenced 1 February 1991 (proc pubd Gaz 19 January 1991 p 144)

Standard Building By-law (Swimming Pool Fencing) Order 1991 SL No. 75

pubd Gaz 14 September 1991 pp 128–133

commenced 14 September 1991 (see s 2)

Building Act Amendment Act 1991 No. 52

date of assent 10 September 1991

ss 1.1, 1.2 commenced on date of assent
 remaining provisions commenced 1 January 1992 (SL No 180 Gaz 21
 December 1991 p 2670)

Standard Building By-laws Amendment Order 1991 SL No. 181

pubd Gaz 21 December 1991 pp 2089–2129
 commenced 1 January 1992 (see s 3)

Local Government Act 1993 No. 70 s 804 Sch (as amended by Act No. 1 of 1994)

date of assent 7 December 1993
 commenced 26 March 1994 (see s 2(5))

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 Sch 1

date of assent 14 December 1993
 commenced on date of assent

5 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Chap	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by
 amendments not included in reprint, are underlined

Long title

sub 1993 No. 70 s 804 Sch

Arrangement of Act

s 3 om 1991 No. 52 s 2.2

Crown to be bound

s 4 sub 1978 No. 47 s 4
 amd 1981 No. 53 s 4; 1984 No. 45 s 4; 1991 No. 52 s 2.3; 1993 No. 70 s
 804 Sch

Use of Crown buildings in emergency

s 4A ins 1991 No. 52 s 2.4

amd 1993 No. 70 s 804 Sch

Interpretation

- s 5**
- def “**area**” om 1993 No. 70 s 804 Sch
 - def “**building**” amd 1991 No. 52 s 2.5
 - def “**Building Tribunal**” ins 1991 No. 52 s 2.5
 - def “**building work**” ins 1984 No. 45 s 5
amd 1991 No. 52 s 2.5; 1993 No. 70 s 804 Sch
 - def “**by-law**” om 1993 No. 70 s 804 Sch
 - def “**Chairman**” ins 1978 No. 47 s 5
 - def “**chairperson**” om 1993 No. 70 s 804 Sch
 - def “**Director**” sub 1993 No. 70 s 804 Sch
 - def “**interim development control provisions**” ins 1993 No. 70 s 804 Sch
 - def “**local authority**” om 1993 No. 76 s 3 Sch 1
 - def “**Minister**” sub 1991 No. 52 s 2.5
om 1993 No. 76 s 3 Sch 1
 - def “**planning application**” ins 1993 No. 70 s 804 Sch
 - def “**planning scheme**” ins 1993 No. 70 s 804 Sch
 - def “**planning scheme area**” ins 1993 No. 70 s 804 Sch
 - def “**Registrar**” ins 1991 No. 52 s 2.5
 - def “**Standard Building Law**” ins 1993 No. 70 s 804 Sch
 - def “**structure**” amd 1984 No. 45 s 5
 - def “**The Commissioner of Fire Service**” ins 1991 No. 52 s 2.5
 - def “**this Act**” ins 1991 No. 52 s 2.5
om 1993 No. 76 s 3 Sch 1
 - def “**Tribunal**” ins 1984 No. 45 s 5
om 1991 No. 52 s 2.5
 - def “**underpinning**” ins 1991 No. 52 s 2.5

PART 2—STANDARD BUILDING LAW

amd 1993 No. 70 s 804 Sch

Standard Building Law

- s 6**
- amd 1984 No. 114 s 5;
 - sub 1993 No. 70 s 804 Sch; 1993 No. 76 s 3 Sch 1;

Postponement of operation of schedule

- s 7**
- om (see RA s 39)

Amendment of Standard Building By-laws

- s 8**
- om 1993 No. 76 s 3 Sch 1

Modification of Standard Building by-laws

- s 9**
- om 1993 No. 76 s 3 Sch 1

Amendments and modifications may be made at any time

- s 10**
- om (see RA s 39)

Standard Building By-laws a complete code

- s 11**
- sub 1978 No. 47 s 6
 - amd 1981 No. 53 s 5; 1984 No. 45 s 6; 1987 No. 69 s 4; 1990 No. 107 s 4.2
 - om 1993 No. 76 s 3 Sch 1

By-laws prescribing requirements as to erection of buildings of Class I and X under Standard Building By-laws

s 11A om 1987 No. 69 s 5

Application of Acts Interpretation Act

s 12 om 1993 No. 76 s 3 Sch 1

By-laws Variation Subcommittee

s 12A om 1991 No. 52 s 2.6

Delegate member of By-laws Variation Subcommittee

s 12AA om 1991 No. 52 s 2.6

Variation of Standard Building Laws 12B sub 1984 No. 45 s 10
amd 1991 No. 52 s 2.7; 1993 No. 70 s 804 Sch**Constitution of building tribunal**s 12BA ins 1991 No. 52 s 2.8
amd 1993 No. 70 s 804 Sch**Determination of application to vary**s 12C sub 1984 No. 45 s 11
amd 1991 No. 52 s 2.9**Effect of variation**s 12D ins 1981 No. 53 s 6
amd 1984 No. 45 s 12; 1991 No. 52 s 2.10; 1993 No. 70 s 804 Sch**Appeal from building tribunal's decision**prov hdg amd 1991 No. 52 s 2.11
s 12E ins 1981 No. 53 s 6
amd 1984 No. 45 s 13; 1991 No. 52 s 2.11; 1993 No. 70 s 804 Sch**Procedure on appeal**s 12F ins 1981 No. 53 s 6
amd 1984 No. 45 s 14; 1991 No. 52 s 2.12**Effect of committee's decision**s 12G ins 1981 No. 53 s 6
amd 1991 No. 52 s 2.13**Transitional provisions**

s 13 amd 1984 No. 45 s 15

Provisions to effectuate s 13

s 14 amd 1991 No. 52 s 2.14; 1993 No. 70 s 804 Sch

PART 2A—PROVISIONS RELATING TO THE HOLDING OF EXPO '88

Pt hdg om 1991 No. 52 s 2.15

Interpretation

s 14A om 1991 No. 52 s 2.15

Modification of Standard Building By-Laws

s 14B om 1991 No. 52 s 2.15

By-laws (Expo '88) Variation Committee

s 14C om 1991 No. 52 s 2.15

Remuneration

s 14D om 1991 No. 52 s 2.15

Quorum

s 14E om 1991 No. 52 s 2.15

Presiding at meetings

s 14F om 1991 No. 52 s 2.15

Application of certain sections

s 14G om 1991 No. 52 s 2.15

PART 3—REFEREES AND BUILDING TRIBUNALS

Pt hdg amd 1991 No. 52 s 2.16

Appointment of referees

s 15 amd 1991 No. 52 s 2.17

Qualification of referee

s 16 amd 1979 No. 69 s 4(2); 1984 No. 45 s 16; 1991 No. 52 s 2.18; 1993 No. 70 s 804 Sch

Remuneration of referee

s 18 amd 1984 No. 114 s 9; 1991 No. 52 s 2.19

Referee to make declaration

s 19 amd 1991 No. 52 s 2.20; 1993 No. 70 s 804 Sch

Building tribunals

s 19A ins 1991 No. 52 s 2.21

Membership of building tribunals 19B ins 1991 No. 52 s 2.21
amd 1993 No. 70 s 804 Sch**Procedure of building tribunal**

s 19C ins 1991 No. 52 s 2.22

Constitution of building tribunal

s 19D ins 1991 No. 52 s 2.22

Referee not to act as member of building tribunal in certain cases

s 19E ins 1991 No. 52 s 2.22

Appointment of registrar and other officers

s 20 sub 1991 No. 52 s 2.23

PART 3A—BUILDING INDUSTRY COMPLAINTS TRIBUNAL

Pt hdg om 1991 No. 52 s 2.24

Building Industry Complaints Tribunal

s 20A om 1991 No. 52 s 2.24

Appointment of members of Tribunal

s 20B om 1991 No. 52 s 2.24

Term of Appointment of Tribunal member

s 20C om 1991 No. 52 s 2.24

Casual vacancies

s 20D om 1991 No. 52 s 2.24

Functions of Tribunal

s 20E om 1991 No. 52 s 2.24

Proceedings of Tribunal

s 20F om 1991 No. 52 s 2.24

Secretary to assist Tribunal

s 20G om 1991 No. 52 s 2.24

Membership of committee

s 22 amd 1978 No. 47 s 7; 1987 No. 69 s 6; 1991 No. 52 s 2.25

Appointment of members of committee

s 23 amd 1991 No. 52 s 2.26

Casual vacancies

s 25 amd 1991 No. 52 s 2.27

Nomination of deputy members

s 26 sub 1991 No. 52 s 2.28

Functions of committee

s 27 amd 1991 No. 52 s 2.29; 1993 No. 70 s 804 Sch

Remuneration of memberss 28 sub 1978 No. 47 s 8
amd 1984 No. 114 s 10**Advisory and technical subcommittees**

s 28A ins 1978 No. 47 s 9

Proceedings of committee

s 29 amd 1991 No. 52 s 2.30

Appointment of officers to assist committee

s 30 amd 1988 No. 52 s 44 Sch 3; 1991 No. 52 s 2.31; 1993 No. 70 s 804 Sch

PART 4A—APPROVAL OF LOCAL GOVERNMENTS

Pt hdg ins 1978 No. 47 s 10

Approval to be obtaineds 30A ins 1978 No. 47 s 10
amd 1984 No. 45 s 18; 1991 No. 52 s 2.32; 1993 No. 70 s 804 Sch**Action by local authority in respect of application**

prov hdg amd 1991 No. 52 s 2.33

s 30B sub 1981 No. 53 s 7

amd 1984 No. 45 s 19; 1984 No. 114 s 11; 1987 No. 69 s 7; 1991 No. 52
s 2.33; 1993 No. 70 s 804 Sch**Local authority to advise applicant where town planning laws are applicable**

s 30BA ins 1984 No. 114 s 12
sub 1993 No. 70 s 804 Sch

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amd 1991 No. 52 s 2.34; 1993 No. 70 s 804 Sch

When application for approval to the carrying out of building work to be refused

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amd 1993 No. 70 s 804 Sch

No right of objection under s 31

s 30BD ins 1984 No. 114 s 12
amd 1991 No. 52 s 2.35

Interpretation

s 30BE ins 1984 No. 114 s 12
om 1993 No. 70 s 804 Sch

Application of ss 30BA, 30BB and 30BC

s 30BF ins 1984 No. 114 s 12
amd 1993 No. 70 s 804 Sch

Local authority to consider amenity and aesthetics on applications to erect certain buildings

prov hdg amd 1991 No. 52 s 2.36
s 30BG ins 1987 No. 69 s 8
amd 1991 No. 52 s 2.36; amd 1993 No. 70 s 804 Sch

Provision of security in certain cases

s 30BH ins 1991 No. 52 s 2.37
amd 1993 No. 70 s 804 Sch

Application for preliminary decision

s 30C ins 1981 No. 53 s 8
amd 1984 No. 45 s 20; 1984 No. 114 s 13; 1991 No. 52 s 2.38; 1993 No. 70 s 804 Sch

Application of Act etc. to offshore building work

prov hdg amd 1984 No. 45 s 21
s 30D ins 1981 No. 53 s 9
amd 1984 No. 45 s 21; 1993 No. 70 s 804 Sch

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prov hdg amd 1987 No. 69 s 9
s 31 amd 1978 No. 47 s 12; 1981 No. 53 s 11; 1984 No. 45 s 22; 1987 No. 69 s 9; 1991 No. 52 s 2.39; 1993 No. 70 s 804 Sch

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s 32 amd 1978 No. 47 s 13; 1984 No. 45 s 23; 1987 No. 69 s 10; 1991 No. 52 s 2.40; 1993 No. 70 s 804 Sch

Constitution of building tribunal or panel

prov hdg sub 1991 No. 52 s 2.41
s 33 amd 1984 No. 45 s 24; 1987 No. 69 s 11; 1991 No. 52 s 2.41; 1993 No. 70 s 804 Sch

Duty of building tribunal

prov hdg amd 1991 No. 52 s 2.42
s 34 amd 1991 No. 52 s 2.42; 1993 No. 70 s 804 Sch

Powers of building tribunal

prov hdg amd 1991 No. 52 s 2.43
s 35 amd 1981 No. 53 s 12; 1984 No. 45 s 25; 1991 No. 52 s 2.43; 1993 No. 70 s 804 Sch

Amendment of notice of objection

s 35A ins 1981 No. 53 s 13
amd 1991 No. 52 s 2.44

Determination of building tribunal

prov hdg amd 1991 No. 52 s 2.45
s 36 amd 1991 No. 52 s 2.45; 1993 No. 70 s 804 Sch

Division 1A—Objections against failure by local authorities to decide applications

Div hdg ins 1984 No. 45 s 26

Objection to building tribunal

prov hdg amd 1991 No. 52 s 2.46
s 36A ins 1984 No. 45 s 26
amd 1991 No. 52 s 2.46

Constitution of building tribunal

s 36AA ins 1991 No. 52 s 2.47

Procedure on objection

s 36B ins 1984 No. 45 s 26
amd 1991 No. 52 s 2.48; 1993 No. 70 s 804 Sch

Reference to building tribunal

s 36C sub 1991 No. 52 s 2.49
amd 1993 No. 70 s 804 Sch

Powers of building tribunal**prov hdg** amd 1991 No. 52 s 2.50**s 36D** ins 1984 No. 45 s 26
amd 1991 No. 52 s 2.50; 1993 No. 70 s 804 Sch**Disability of members of Tribunal****s 36E** om 1991 No. 52 s 2.51**Division 1B—Objections against decisions by local authorities on amenity and aesthetics****Div hdg** ins 1987 No. 69 s 12**Constitution of panel****s 36F** ins 1987 No. 69 s 12
amd 1991 No. 52 s 2.52**Duty of panel****s 36G** ins 1987 No. 69 s 12
amd 1991 No. 52 s 2.53; 1993 No. 70 s 804 Sch**Powers of panel****s 36H** ins 1987 No. 69 s 12**Decision of panel****s 36I** ins 1987 No. 69 s 12
amd 1991 No. 52 s 2.54; 1993 No. 70 s 804 Sch**Division 1C—Objection by the Commissioner of Fire Service****Div hdg** ins 1991 No. 52 s 2.55**Objection to decision****s 36J** ins 1991 No. 52 s 2.55
amd 1993 No. 70 s 804 Sch**Institution of objection****s 36K** ins 1991 No. 52 s 2.55
amd 1993 No. 70 s 804 Sch**Constitution of building tribunal****s 36L** ins 1991 No. 52 s 2.55;
amd 1993 No. 70 s 804 Sch**Duty of building tribunal****s 36M** ins 1991 No. 52 s 2.56
amd 1993 No. 70 s 804 Sch**Powers of building tribunal****s 36N** ins 1991 No. 52 s 2.56
amd 1993 No. 70 s 804 Sch**Notice of determination to be given to parties****s 36O** ins 1991 No. 52 s 2.56**Division 2—Appeals against building tribunals' determinations****Div hdg** amd 1991 No. 52 s 2.57

Appeal to committee against building tribunal's determination**prov hdg** amd 1991 No. 52 s 2.58**s 37** sub 1981 No. 53 s 14
amd 1991 No. 52 s 2.58**Institution of appeal****s 38** amd 1978 No. 47 s 15; 1984 No. 45 s 27; 1991 No. 52 s 2.59; 1993 No. 70 s 804 Sch**Duty of committee****s 39** amd 1991 No. 52 s 2.60**Powers of committee****s 40** amd 1991 No. 52 s 2.61**Decision of committee****s 41** amd 1991 No. 52 s 2.62; amd 1993 No. 70 s 804 Sch**Appeal to Planning and Environment Court****prov hdg** amd 1993 No. 70 s 804 Sch**s 42** amd 1981 No. 53 s 15; 1984 No. 45 s 28; 1987 No. 69 s 13; 1991 No. 52 s 2.63; 1993 No. 70 s 804 Sch**Procedure on appeals to Planning and Environment Court****prov hdg** amd 1993 No. 70 s 804 Sch**s 43** amd 1993 No. 70 s 804 Sch**Institution of appeal****s 44** sub 1978 No. 47 s 16**Powers of court on appeal****s 45** amd 1993 No. 70 s 804 Sch**Appeal from decision of court****s 46** amd 1993 No. 70 s 804 Sch**Division 3A—References to Minister against referee's determination relating to amenity of neighbourhood or aesthetics****Div hdg** om 1981 No. 53 s 16**References to Minister against referee's determination relating to amenity of neighbourhood or aesthetics****s 46A** om 1981 No. 53 s 16**Institution of reference to Minister****s 46B** om 1981 No. 53 s 16**Powers of Minister****s 46C** om 1981 No. 53 s 16**Decisions and determinations reviewed only under Act****s 47** amd 1987 No. 69 s 14; 1991 No. 52 s 2.64; 1993 No. 70 s 804 Sch**Building tribunal, panel and committee control own proceeding****prov hdg** amd 1987 No. 69 s 15; 1991 No. 52 s 2.65**s 48** amd 1987 No. 69 s 15; 1991 No. 52 s 2.65

Representation of parties

s 49 amd 1981 No. 53 s 17; 1987 No. 69 s 16; 1991 No. 52 s 2.66

Notice to cease erection without approval

s 50 amd 1984 No. 45 s 29; 1991 No. 52 s 2.67; 1993 No. 70 s 804 Sch

Lawful to perform emergency work

s 51 amd 1984 No. 45 s 30; 1991 No. 52 s 2.68; 1993 No. 70 s 804 Sch

Buildings erected unlawfully

prov hdg amd 1991 No. 52 s 2.69

s 52 amd 1984 No. 45 s 31; 1991 No. 52 s 2.69; 1993 No. 70 s 804 Sch

Approval to be sought where building erected without approval

s 52A ins 1991 No. 52 s 2.70

 amd 1993 No. 70 s 804 Sch

Building etc. dangerous, neglected or unfit for use or occupation

s 53 sub 1991 No. 52 s 2.71

Local government to give owner opportunity to show cause

s 54 amd 1978 No. 47 s 18; 1993 No. 70 s 804 Sch

Register of notices given

s 55 amd 1978 No. 47 s 19; 1991 No. 52 s 2.72

Building etc. made dangerous by act of nature or other calamity

prov hdg amd 1978 No. 47 s 20; 1991 No. 52 s 2.73

s 56 amd 1978 No. 47 s 20; 1981 No. 53 s 18; 1991 No. 52 s 2.73

Objection against local government's notice

s 57 amd 1978 No. 47 s 21; 1991 No. 52 s 2.74

Effect of building tribunal's determination

prov hdg amd 1991 No. 52 s 2.75

s 58 amd 1991 No. 52 s 2.75

Removal of persons in buildings to be demolished

s 60 amd 1993 No. 70 s 804 Sch

Erection on impregnated land prohibited

s 61 amd 1984 No. 45 s 32; 1991 No. 52 s 2.76

Right of entry to remedy offence

s 62 amd 1984 No. 45 s 33

Notice given to body corporate taken to be given to proprietors

s 63A ins 1991 No. 52 s 2.77

Provisions concerning notices under Act

s 64 sub 1978 No. 47 s 22

 amd 1991 No. 52 s 2.78; 1993 No. 70 s 804 Sch

Power of local government to delegate

prov hdg amd 1991 No. 52 s 2.79; 1984 No. 45 s 34

s 64A ins 1978 No. 47 s 23

 sub 1993 No. 70 s 804 Sch

Power of Director to delegate

s 64B sub 1991 No. 52 s 2.80; 1993 No. 70 s 804 Sch

Offences generally and penalty

s 64C ins 1991 No. 52 s 2.80
amd 1993 No. 70 s 804 Sch

Continuing offences

s 64D ins 1991 No. 52 s 2.80

Owner liable for offences under Standard Building Law

hdg amd 1993 No. 70 s 804 Sch
s 64E ins 1991 No. 52 s 2.80
amd 1993 No. 70 s 804 Sch

Prosecution of offences

s 65 amd 1993 No. 70 s 804 Sch

Application for approval where building work commenced

s 66A ins 1991 No. 52 s 2.81

Certain applications not made unless fees paid

s 66B ins 1991 No. 52 s 2.81
amd 1993 No. 70 s 804 Sch

Regulation making power

s 67 amd 1978 No. 47 s 24; 1984 No. 114 s 14
sub 1993 No. 70 s 804 Sch

PART 8—SAVINGS AND TRANSITIONAL

Pt hdg sub 1993 No. 70 s 804 Sch

Citation of amended Acts

s 68 om (see RA s 40)

Amendment of s 33(16A) of Local Government Act

s 69 om (see RA s 40)

Amendment of s 35 of Local Government Act

s 70 om (see RA s 40)

Fire zones

prov hdg amd 1981 No. 53 s 19; (see RA s 39)
s 71 amd 1981 No. 53 s 19; 1993 No. 70 s 804 Sch
om (see RA s 40)

Repeal of s 50(6) of Local Government Act

s 72 om (see s 40 RA)

Amendment of s 20A of City of Brisbane Town Planning Act

s 73 om 1990 No. 61 s 8.8(1) First Sch

Saving of existing appeals

s 74 om 1990 No. 61 s 8.8(1) First Sch

Ordinance 801 of City of Brisbane Ordinances inoperative. Fire zones

prov hdg amd 1981 No. 53 s 20

s 75 amd 1981 No. 53 s 20

Savings and transitional

s 76 ins 1993 No. 76 s 3 Sch 1
sub 1993 No. 70 s 804 Sch

Standard Building By-laws 1991 is regulation

s 77 ins 1993 No. 70 s 804 Sch
om (see RA s 37)

References to Standard Building By-laws 1991 etc.

s 78 ins 1993 No. 70 s 804 Sch

STANDARD BUILDING BY-LAWS 1991

Sch sub 1991 No. 52 s 2.82
amd SL No. 181 1991
om 1993 No. 76 s 3 Sch 1¹

6 Table of changed titles

TABLE OF CHANGED TITLES
under sections 23 and 23A of the Reprints Act 1992

Old	New	Reference provision
local authority	local government	s 755(1)(a) Local Government Act 1993
member (of a local authority)	councillor (of a local government)	s 755(1)(i) Local Government Act 1993
member (of the police force)	police officer	s 11.1(1)(c) Police Service Administration Act 1990 (see also s 1.4)
Director (of Local Government)	chief executive (of the department in which the Local Government 1993 is administered)	s 755(10)(n) Local Government Act 1993

7 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS

¹ The Standard Building Law was originally the Schedule of this Act. It has remained in force for the purposes of this Act because of s 76 as substituted by the Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 s 3 Sch 1. It will now be subordinate legislation

under sections 21A and 22 of the Reprints Act 1992

Old	New	Reference provision
Local Government Act 1936	Local Government Act 1993	–

8 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS
under section 39 of the Reprints Act 1992

Omitted provision	Provision making omitted provision obsolete/redundant
references to Queensland implied definitions to be read in context	s 35 Acts Interpretation Act 1954 s 32A Acts Interpretation Act 1954

9 Transitional and savings provisions

Part 3 of Act No 52 of 1991 provides—

Principal Act

3.1. In this Part the *Building Act 1975* as amended and in force from time to time before the commencement of this section is referred to as the Principal Act.

Applications for variation of Standard Building By-laws

3.2.(1) Where at the commencement of this section the By-laws Variation Subcommittee has commenced to consider an application, duly made, for a variation of the Standard Building By-laws, that subcommittee may determine that application and for that purpose the provisions of the Principal Act continue to apply to and in respect of that application and determination and that subcommittee despite the commencement of any provision of Part 2 of this Act.

(2) A decision of the By-laws Variation Subcommittee made under subsection (1) may be appealed to the Building Advisory Committee under section 12E of the Principal Act and for the purpose of any such appeal the

provisions of the Principal Act extend and apply accordingly despite the commencement of any provision of Part 2 of this Act.

Objections under s 31 of Principal Act

3.3.(1) Where at the commencement of this section a referee has, under Division 1 of Part 5 of the Principal Act, entered upon the determination of an objection under that Division, the referee may proceed to determine that objection and for that purpose the provisions of the Principal Act continue to apply despite the commencement of any provision of Part 2 of this Act.

(2) The determination of a referee made under subsection (1) may be appealed to the Building Advisory Committee under section 37 of the Principal Act and for the purpose of any such appeal the provisions of the Principal Act as amended by section 2.61 of this Act extend and apply accordingly despite the commencement of any other provision of Part 2 of this Act.

Objections to Building Industry Complaints Tribunal

3.4.(1) Where at the commencement of this section the Building Industry Complaints Tribunal has—

- (a) commenced to consider a reference made under section 36C of the Principal Act, that tribunal may continue with its consideration of that reference and exercise, in respect thereof, its powers to give notice to a local authority under section 36D of the Principal Act; or
- (b) considered a reference made under section 36C of the Principal Act, that tribunal may exercise or, as the case may be, continue to exercise in respect of that reference its powers to give notice to a local authority under section 36D of the Principal Act;

and for any of those purposes the provisions of the Principal Act continue to apply to and in respect of that reference, the exercise of those powers and that tribunal despite the commencement of any provision of Part 2 of this Act.

Objection under s 57

3.5(1) Where at the commencement of this section a referee has, under Division 1 of Part 5 of the Principal Act as applied by section 57 of that Act, entered upon the determination of an objection under that section, the referee may proceed to determine that objection and for that purpose the provisions of the Principal Act as so applied continue to apply despite the commencement of any provision of Part 2 of this Act.

(2) The determination of a referee made under subsection (1) may be appealed to the Building Advisory Committee under section 37 of the Principal Act as applied by section 57 of that Act and for the purpose of any such appeal the provisions of the Principal Act as applied by that section 57 and as amended by section 54 of this Act extend and apply accordingly despite the commencement of any other provision of Part 2 of this Act.

Appeals against Building Advisory Committee's decisions

3.6 A decision of the Building Advisory Committee on an appeal under section 3.2(2), 3.3(2) or 3.5(2) may be appealed under Division 3 of Part 5 of the Principal Act and for the purpose of any such appeal that Division and section 47 of the Principal Act extend and apply accordingly despite the commencement of any provision of Part 2 of this Act.

Continuation of By-laws Variation Subcommittee and Building Industry Complaints Tribunal

3.7(1) For the purposes of this Part the By-laws Variation Subcommittee constituted under section 12A of the Principal Act and the Building Industry Complaints Tribunal established under Part 3A of the Principal Act continue in existence and sections 12A and 12AA and Part 3A of the Principal Act extend and apply according to their tenor notwithstanding the commencement of any provision of Part 2 of this Act until they are dissolved by order in council.

(2) Upon the dissolution of the By-laws Variation Subcommittee or the Building Industry Complaints Tribunal its members go out of office.

Saving of appointments of certain members of Building Advisory Committee

3.8(1) The persons who immediately prior to the commencement of this section were the members of the Building Advisory Committee referred to in section 22(a) and (b) of the Principal Act shall, subject to the *Building Act 1975*, continue in terms of their appointments as the members referred to in section 22(a) of that Act and the one who was chairperson shall continue as chairperson.

(2) A person who immediately prior to the commencement of this section was the member of the Building Advisory Committee referred to in section 22(c), (d) or (j) of the Principal Act shall, subject to the *Building Act 1975*, continue in terms of that person's appointment as the member referred to in section 22(c), (d) or (j) of that Act.

Declaration by referee

3.10 A declaration made by a referee under section 19 of the Principal Act is taken to be sufficient compliance with that section as amended by this Act.

Chairperson of Building Advisory Committee

3.11 The person who immediately before the commencement of this section held the appointment of chairperson of the Building Advisory Committee is, on and from that commencement and in terms of the appointment, the chairperson of the committee.

Resolutions of local authority

3.12 A resolution of a local authority made under the Standard Building By-laws contained in the Schedule to the Principal Act and in force at the commencement of this section is, on and from that commencement, taken to have been made under the Standard Building By-laws substituted by this Act.

Delegations by local authority

3.13 A delegation, under section 64A(1)(a) of the Principal Act, of a

function, authority, power, duty or discretion had by a local authority for the purposes of the Standard Building By-laws contained in the Schedule to that Act that is in force immediately before the commencement of this section is taken, on and from that commencement, to be a delegation of the corresponding function, authority, power, duty or direction had by the local authority under the Standard Building By-laws substituted by this Act.

Certificates of classification

3.14 A certificate of classification issued under the Standard Building By-laws contained in the schedule to the Principal Act and not revoked has effect for the purposes of the Standard Building By-laws substituted by this Act.

Regulations

3.15(1) The Governor in Council may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subsection (1) may, if the regulations so provide, take effect from the commencement of the provision of this Act consequent upon which it is made or a later date.

(3) To the extent to which a provision referred to in subsection (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a)** to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b)** to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision referred to in subsection (1) is, if the regulations so provide, to have effect despite any other provision of this Part.