



Queensland

Building and Other Legislation Amendment Act 2009

Act No. 51 of 2009



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Building and Other Legislation Amendment Act 2009

Act No. 51 of 2009

An Act to amend the Acquisition of Land Act 1967, Animal Management (Cats and Dogs) Act 2008, Body Corporate and Community Management Act 1997, Building Act 1975, Fire and Rescue Service Act 1990, Land Title Act 1994, Mixed Use Development Act 1993, Plumbing and Drainage Act 2002, Property Agents and Motor Dealers Act 2000, Sustainable Planning Act 2009 and Transport Infrastructure Act 1994 for particular purposes

[Assented to 19 November 2009]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Building and Other Legislation Amendment Act 2009*.

2 Commencement

- (1) The following provisions of this Act commence on a day to fixed by proclamation—
 - section 5(3) to the extent it inserts section 3(9) in the *Building Act 1975*
 - sections 6, 7 and 10
 - section 29 to the extent it inserts chapter 8B in the *Building Act 1975*
 - section 34(2) to the extent it inserts the definitions *railway land*, *road*, *State-controlled road*, *transport chief executive*, *Transport Infrastructure Act* and *transport noise corridor* in the *Building Act 1975*
 - section 34(4)
 - parts 8 and 11
 - the schedule.
- (2) Part 5 commences immediately after the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*, chapter 3, part 4 commences.
- (3) The remaining provisions of this Act, other than parts 3 and 12 and section 78, commence on 1 January 2010.

Part 2 Amendment of Building Act 1975

3 Act amended

This part amends the *Building Act 1975*.

4 Amendment of long title

Long title, after ‘certifiers,’—

insert—

‘and provide for particular matters about sustainable buildings.’.

5 Amendment of s 3 (Simplified outline of main provisions of Act)

(1) Section 3(4)(c), ‘changes’—

omit, insert—

‘or use changes’.

(2) Section 3(8)—

renumber as section 3(10).

(3) Section 3—

insert—

‘(8) Chapter 8A—

(a) provides for matters about sustainability declarations for the sale of class 1a or 2 buildings; and

(b) regulates the effect of particular instruments in relation to stated matters for class 1a, 2 or 10a buildings.

‘(9) Chapter 8B provides for the designation of land as a transport noise corridor for particular building assessment work.’.

[s 6]

6 Amendment of s 20 (Building work that is assessable development for the Planning Act)

Section 20(b), ‘section 21’—

omit, insert—

‘the Planning Act or section 21(2)’.

7 Amendment of s 21 (Building work that is self-assessable for the Planning Act)

(1) Section 21(2), ‘(*self-assessable building work*)’—

omit.

(2) Section 21(2)(b)(i)—

omit, insert—

‘(i) generally—any relevant deemed-to-satisfy provision under the BCA or relevant acceptable solution under the QDC for the building work; or’.

(3) Section 21(2)(b)(ii)(B), ‘the provisions of the BCA and QDC,’—

omit, insert—

‘any relevant deemed-to-satisfy provision under the BCA or relevant acceptable solution under the QDC for the building work.’

(4) Section 21(3)—

renumber as section 21(4).

(5) Section 21—

insert—

‘(3) Building work that is self-assessable development under the Planning Act or subsection (2) is *self-assessable building work*.’.

8 Amendment of s 37 (Provision for changes to building assessment provisions)

Section 37(1)(d)—

omit, insert—

‘(d) planning for carrying out the work started before a building assessment provision is amended and the building certifier for the building development approval certifies in writing that—

- (i) substantial progress was made on the design of the building, or the design was completed, before the amendment; and
- (ii) the design would need to be changed to comply with the amended provision; and
- (iii) the changes needed under subparagraph (ii) are not minor changes, having regard to the amendment and the nature of the building work.

Example of a change to a design that is not a minor change—

the removal of floors from a design to comply with an amended building assessment provision requiring the installation of water tanks in a building’.

9 Amendment of s 61 (Alterations to safe existing work may be approved on basis of earlier building assessment provisions)

(1) Section 61(3)—

renumber as section 61(5).

(2) Section 61—

insert—

‘(3) Subsection (4) applies if the building’s BCA classification as shown on the certificate of classification for the building has changed only because of an amendment to building classifications under the BCA made after the certificate was given.

[s 10]

- ‘(4) Without limiting subsection (2), the building certifier may carry out building assessment work for the application on the basis that the building work is to be carried out under the building assessment provisions applying for the BCA classification shown on the certificate of classification.’.

10 Amendment of s 65 (Land subject to registered easement or statutory covenant)

- (1) Section 65(3)—

renumber as section 65(4).

- (2) Section 65—

insert—

- ‘(3) However, subsection (2) does not apply to a building development application for a class 1, 2, 3 or 4 building on land subject to a noise covenant if a building assessment provision is expressed to apply specifically for the reduction in a class 1, 2, 3 or 4 building of noise coming from outside the building.’.

- (3) Section 65(4), as renumbered under this section—

insert—

‘**noise covenant** means a registered statutory covenant—

- (a) for which the registered holder of the covenant is the State; and
(b) for the reduction in a class 1, 2, 3 or 4 building of noise coming from outside the building.’.

11 Replacement of s 88 (When applicant is to be given the approval documents)

Section 88—

omit insert—

‘88 Giving approval documents to applicant

- ‘(1) This section applies only if the private certifier approves the application.
- ‘(2) The private certifier must not give the applicant any approval documents for the application unless the certifier has complied with section 86(1).

Maximum penalty—50 penalty units.

- ‘(3) Subsection (4) applies if the private certifier—
 - (a) receives an acknowledgement under section 87 from the local government for the application; and
 - (b) has not given the approval documents to the applicant.
- ‘(4) The private certifier must give the approval documents to the applicant within 5 business days after receiving the acknowledgement.

Note—

See also section 132 (Effect of building certifier not complying with Act if no penalty provided).

- ‘(5) Subsection (6) applies if the private certifier—
 - (a) gives the approval documents to the applicant; and
 - (b) has not received an acknowledgement under section 87 from the local government for the application.
- ‘(6) The private certifier must, for at least 5 years after giving the approval documents, keep written evidence that the fee mentioned in section 86(1)(c) for the application was paid to the local government.

Maximum penalty for subsection (6)—20 penalty units.’

12 Amendment of s 103 (Certificate requirements)

- (1) Section 103(c) to (e)—
renumber as section 103(d) to (f).
- (2) Section 103(b)—

[s 13]

omit, insert—

- ‘(b) state the building’s classification, having regard to—
- (i) the class of the building stated in the decision notice for the development; and
 - (ii) the use for which the building was designed, built or adapted; and
- ‘(c) briefly describe the type of building or the use for which the building was designed, built or adapted, having regard to—
- (i) any particular categories of uses under the classification; and
 - (ii) restrictions about the use of the building under the BCA or QDC; and

Examples of descriptions for paragraph (c)—

- retail showroom for sale of goods
- manufacturing – plastic goods production, not to be used for hazardous processes under the BCA
- motel – sole occupancy units

Example of restriction about the use of a building under the QDC—

a requirement under the QDC for a floating building to be permanently moored and not used for navigational purposes’.

- (3) Section 103(e), as renumbered under this section, after ‘BCA’—

insert—

‘or QDC’.

13 Amendment of ch 5, pt 3 hdg (Changes to BCA classification)

Chapter 5, part 3, heading, after ‘classification’—

insert—

‘or use within classification’.

14 Amendment of s 109 (What is a *BCA classification change to a building*)

- (1) Section 109, '*BCA classification change*'—

omit, insert—

'BCA classification or use change'.

- (2) Section 109(a)—

omit, insert—

'(a) a change to the use for which the building was designed, built or adapted to be used if—

(i) the change of use alters its BCA classification; or

(ii) the change of use does not alter its BCA classification but the new use requires building work to be carried out for the building to comply with any relevant building assessment provisions applying to the new use; or

Example of BCA classification or use change for paragraph (a)(ii)—

a change in the use of a class 7b warehouse to an occupancy of excessive hazard by storing combustible cartons above 4m in height or more than 1000m³ of combustible cartons'.

- (3) Section 109(b), 'section 103(d)'—

omit, insert—

'section 103(e)'.

- (4) Section 109(b), example—

omit, insert—

'Example of BCA classification or use change for paragraph (b)—

a change in the nature or quantity of materials displayed, stored or used in a building that increases the risk to life or safety, requiring building work to be carried out to comply with the BCA'.

- (5) Section 109—

insert—

[s 15]

- ‘(2) However, a **BCA classification or use change** does not include a change of use that alters a building’s BCA classification if the alteration happens only because of an amendment to building classifications under the BCA made after—
- (a) if there is a certificate of classification for the building—the certificate was given; or
 - (b) otherwise—the building was first used or occupied.’.

15 Amendment of s 110 (Restriction on making BCA classification change)

Section 110, ‘BCA classification change’—
omit, insert—
‘BCA classification or use change’.

16 Amendment of s 111 (Provision for applying to local government to obtain approval for BCA classification change)

Section 111, ‘BCA classification change’—
omit, insert—
‘BCA classification or use change’.

17 Amendment of s 112 (Concessional approval for particular existing buildings)

- (1) Section 112(2), ‘BCA classification change’—
omit, insert—
‘BCA classification or use change’.
- (2) Section 112(3)(a), ‘the new BCA classification’—
omit, insert—
‘any new BCA classification or use’.

18 Amendment of s 113 (Obligation of building certifier approving BCA classification change to give new certificate of classification)

Section 113, 'BCA classification change'—

omit, insert—

'BCA classification or use change'.

19 Amendment of s 114A (Owner's obligation to comply with certificate of classification)

Section 114A(1)(b), from 'section 103(d)'—

omit, insert—

'section 103(e) or a requirement of a type mentioned in section 103(f).'

20 Amendment of s 115 (Occupation and use of building must comply with relevant BCA and QDC provisions)

(1) Section 115, heading—

omit, insert—

'115 Compliance with relevant BCA and QDC provisions for occupation and use of building'

(2) Section 115(1), 'use or occupation'—

omit, insert—

'occupation or use'.

(3) Section 115(2) to (4)—

renumber as section 115(4) to (6).

(4) Section 115—

insert—

'(2) Subsection (3) applies if, under a performance requirement for a building under any relevant BCA provisions for its class of building or any relevant QDC provisions for the building, a

[s 21]

person must carry out work to maintain the building for occupation and use.

- ‘(3) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—165 penalty units.’.

- (5) Section 115(4), as renumbered under this section, ‘subsection (1)’—

omit, insert—

‘subsections (1) and (2)’.

- (6) Section 115(6), as renumbered under this section, ‘subsection (1) applies’—

omit, insert—

‘subsections (1) and (2) apply’.

- (7) Section 115(6), as renumbered under this section, ‘subsection (1).’—

omit, insert—

‘the subsections.’.

21 Amendment of s 116 (Exception for use of government buildings for emergency)

Section 116(2), from ‘For’ to ‘occupation’—

omit, insert—

‘For sections 114 and 115, the occupation or use’.

22 Amendment of s 124 (Building certifier’s obligation to give information notice about particular decisions)

Section 124(1)(d) and (e), ‘BCA classification change’—

omit, insert—

‘BCA classification or use change’.

23 Insertion of new s 133A

Chapter 6, part 1, division 3, after section 133—

insert—

‘133A Building certifier to have regard to particular guidelines

‘In performing a function under this Act, including, for example, a building certifying function, a building certifier must have regard to the guidelines made under section 258 that are relevant to performing the function.’

24 Replacement of s 154 (Role of building surveying technician)

Section 154—

omit, insert—

‘154 Role of building surveying technician

‘A building surveying technician may only perform building certifying functions on class 1 buildings or class 10 buildings or structures if the building surveying technician has at least 1 years experience as a building surveying technician employed by a local government or under the supervision of a private certifier.’

25 Amendment of s 155 (Who may apply)

Section 155, from ‘only’—

omit, insert—

‘only if—

- (a) for a licence at the level of building surveyor or assistant building surveyor—the individual holds a current accreditation issued by an accreditation standards body; or
- (b) for a licence at the level of building surveying technician, the individual—

[s 26]

- (i) holds a current accreditation issued by an accreditation standards body; and
- (ii) has at least 1 years experience as a building surveying technician employed by a local government or under the supervision of a private certifier.’.

26 Amendment of s 163 (Restrictions on making endorsement)

(1) Section 163(2)—

renumber as section 163(3).

(2) Section 163(1)—

omit, insert—

- ‘(1) A private certification endorsement may be made only if the applicant has the insurance for private certification prescribed under a regulation.
- ‘(2) Also, a private certification endorsement may be made for a building surveying technician only if the building surveying technician may, under section 154, perform building certifying functions on class 1 buildings or class 10 buildings or structures.’.

27 Amendment of s 185 (Function of accreditation standards body)

(1) Section 185(2)(a) and (b)—

omit, insert—

- ‘(a) for each level of licensing as a building certifier, set educational and experiential standards approved by the chief executive; and
- (b) if the standards are within the scope of the national accreditation framework for building certifiers—ensure the standards comply with the framework; and’.

(2) Section 185(3)—

omit.

- (3) Section 185(4)—
renumber as section 185(3).

28 Amendment of s 220 (Owner must ensure building conforms with fire safety standard)

Section 220—

insert—

Note—

The building assessment provisions, other than the fire safety standard, apply in relation to a budget accommodation building to which this part does not apply. See the fire safety standard and section 30 (Relevant laws and other documents for assessment of building work).’.

29 Insertion of new chs 8A and 8B

After section 246—

insert—

‘Chapter 8A Sustainability declarations and provisions to support sustainable housing

‘Part 1 Sustainability declarations for sale of class 1a and 2 buildings

‘Division 1 Preliminary

‘246A Definitions for pt 1

‘In this part—

current sustainability declaration, for a class 1a or 2 building, means—

[s 29]

- (a) the sustainability declaration for the building prepared under section 246C; or
- (b) if the declaration mentioned in paragraph (a) is amended or replaced under section 246D—the amended or replaced declaration.

publish includes—

- (a) publish on the internet; and
- (b) cause to be published.

relevant advertisement means an advertisement in any form or medium, other than—

- (a) an advertisement published in a newspaper or magazine; or
- (b) a sign advertising the sale of a building, if the sign was not prepared specifically to advertise the sale of the particular building.

seller, of a class 1a or 2 building, means a person who—

- (a) has a legal or equitable interest in the building that the person is entitled to sell; or
- (b) is authorised under a power of attorney or other statutory power to sell a legal or equitable interest in the building.

sustainability declaration means a sustainability declaration under section 246B.

‘246B Form and content of sustainability declaration

- ‘(1) A sustainability declaration for a class 1a or 2 building must be in the approved form.
- ‘(2) The approved form may only make provision for information about features of a class 1a or 2 building, or an enclosed class 10a building attached to a class 1a or 2 building or class 10b structure associated with a class 1a or 2 building, that support or enhance—

-
- (a) the building's or structure's sustainable energy or water use; or
 - (b) the amenity or safety of persons using the building or structure.

Example of information for the sustainability declaration—

information about how lighting in a building compares to standards under the building assessment provisions or a regulation about sustainable energy use

'Division 2 Preparing, amending and replacing sustainability declarations

'246C Requirement to have sustainability declaration

- '(1) This section applies if a seller of a class 1a or 2 building proposes to—
 - (a) sell, or invite an offer to buy, the building; or
 - (b) engage another person to sell, or invite an offer to buy, the building.
- '(2) The seller must, before the building is offered for sale or an invitation to buy the building is made by the seller or another person engaged by the seller—
 - (a) prepare or have another person prepare a sustainability declaration for the building; and
 - (b) sign the declaration.

Maximum penalty—20 penalty units.

- '(3) For subsection (2), the requirement to prepare a sustainability declaration is taken to be satisfied if a person completes the declaration to the best of the person's ability and knowledge.

Example—

The requirement might be satisfied even if a person does not include information about a feature of a building stated in the declaration if the person can not reasonably find out the information or has no technical knowledge about the feature.

[s 29]

‘(4) Subsection (3) applies despite the *Acts Interpretation Act 1954*, section 49(2)(b).

‘246D Amending or replacing sustainability declaration

‘(1) This section applies if, in the relevant period for a class 1a or 2 building, the seller of the building becomes aware that information about a feature of the building included in the sustainability declaration prepared under section 246C for the building is not correct.

‘(2) The seller must as soon as practicable after becoming aware the information is not correct—

- (a) amend the sustainability declaration, or have another person amend it, to ensure the information is correct; or
- (b) prepare, or have another person prepare, a new sustainability declaration for the building (the *replacement declaration*) and sign the replacement declaration.

Maximum penalty—20 penalty units.

‘(3) Section 246C(3) and (4) apply to the preparation of the replacement declaration—

- (a) as if the reference in section 246C(3) to subsection (2) were a reference to subsection (2)(b); and
- (b) as if the reference in section 246C(3) to a sustainability declaration were a reference to the replacement declaration.

‘(4) In this section—

feature, of a class 1a or 2 building, includes a feature of an enclosed class 10a building attached to the building or class 10b structure associated with the building.

relevant period, for a class 1a or 2 building, means the period—

- (a) starting when the sustainability declaration for the building is prepared under section 246C; and

-
- (b) ending on the earlier of the following days to happen—
 - (i) the day the building is sold;
 - (ii) the day the building is withdrawn from sale.

‘Division 3 Requirements about advertising sale, and inspection, of buildings

‘246E Application of div 3

- ‘(1) This division applies to the seller of a class 1a or 2 building if—
 - (a) the seller has not engaged another person to sell, or invite an offer to buy, the building; and
 - (b) under section 246C, a sustainability declaration must be prepared for the building.
- ‘(2) However, this division applies to the seller only until the earlier of the following days to happen—
 - (a) the day a contract for the sale of the building settles;
 - (b) the day the building is withdrawn from sale.

‘246F Requirements about advertising sale of building

- ‘(1) The seller must not publish a relevant advertisement for the sale of the building unless the advertisement includes information about where a person may obtain a copy of the building’s current sustainability declaration.

Maximum penalty—20 penalty units.

- ‘(2) The seller must not give a person a document advertising the sale of the building unless—
 - (a) the person has a copy of the building’s current sustainability declaration; or
 - (b) a copy of the declaration accompanies the document.

Maximum penalty—20 penalty units.

[s 29]

- ‘(3) Subsection (2) does not apply to the seller if the document is given to the person at—
- (a) the building; and
 - (b) a time it is generally open to the public for inspection by potential buyers of the building.

‘246G Requirements about inspection of building

- ‘(1) At any time the building is generally open to the public for inspection by potential buyers of the building, the seller must ensure a copy of the building’s current sustainability declaration is conspicuously displayed so anyone entering the building can easily read the declaration.

Maximum penalty—20 penalty units.

- ‘(2) If a person enters the building to inspect it as a potential buyer of the building, other than at a time mentioned in subsection (1), the seller must ensure—
- (a) the person has a copy of the building’s current sustainability declaration before the person enters the building; or
 - (b) a copy of the current sustainability declaration is readily available for inspection by the person before the person enters the building and the person is advised by the seller that a copy is available for inspection; or
 - (c) a copy of the current sustainability declaration is conspicuously displayed at the building so the person can easily read it.

Maximum penalty—20 penalty units.

‘246H Requirement to give copy of sustainability declaration

‘If a person who is a potential buyer of the building asks the seller for a copy of the building’s current sustainability

declaration, the seller must give the person a copy as soon as practicable.

Maximum penalty—20 penalty units.

‘Division 4 Other matters

‘246I Compensation for false or misleading sustainability declaration

- ‘(1) This section applies if—
- (a) a person (the *buyer*) buys a class 1a or 2 building; and
 - (b) a document that is or purports to be a current sustainability declaration for the building is, under division 3 or the *Property Agents and Motor Dealers Act 2000*, chapter 11, part 5, division 2, given or made available to the buyer by a seller of the building or another person; and
 - (c) the declaration is false or misleading in a material particular or is otherwise prepared without the exercise of reasonable skill and care; and
 - (d) the buyer incurs loss or expense because of paragraph (c).
- ‘(2) The seller of the building is liable to compensate the buyer for the loss or expense.
- ‘(3) Payment of compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction.
- ‘(4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘246J No right to terminate contract for publishing or giving sustainability declaration

- ‘(1) This section applies if—

[s 29]

- (a) a seller of a class 1a or 2 building—
 - (i) publishes a relevant advertisement for the sale of the building that includes information about a current sustainability declaration for the building; or
 - (ii) gives or makes available to a person a current sustainability declaration for the building; and
 - (b) the declaration is incomplete or contains information that is false or misleading.
- ‘(2) The buyer under a contract for the sale of the building can not terminate the contract merely because the current sustainability declaration is incomplete or contains information that is false or misleading.

‘246K Breach of obligation does not generally give rise to right or remedy

‘Other than as provided for under section 246I, a breach of an obligation under this part does not of itself give rise to an action for breach of statutory duty or another civil right or remedy.

‘Part 2 Provisions to support sustainable housing

‘Division 1 Preliminary

‘246L Purpose of pt 2

‘The purpose of this part is to regulate the effect of particular instruments on stated activities or measures likely to support sustainable housing.

‘246M Definitions for pt 2

‘In this part—

bathroom includes an ensuite.

energy efficient, in relation to a window in a prescribed building, means the window reduces heat conduction and solar radiation passing through the window.

Examples—

tinted glass windows, double-glazed windows and triple-glazed windows

prescribed building means—

- (a) a class 1a or 2 building; or
- (b) an enclosed class 10a building attached to a class 1a or 2 building.

relevant instrument means any of the following—

- (a) a sublease or sub-sublease of a lease held under the *Land Act 1994*;
- (b) a building management statement under the *Land Act 1994* or *Land Title Act 1994*;
- (c) a community management statement for a community titles scheme under the *Body Corporate and Community Management Act 1997*, including by-laws in the statement and the provisions of any architectural and landscape code adopted under the statement;
- (d) a by-law in force for a building units plan or group titles plan under the *Building Units and Group Titles Act 1980*;
- (e) a management statement under the *South Bank Corporation Act 1989*, including by-laws in the statement;
- (f) a development approval under the *South Bank Corporation Act 1989*;

[s 29]

- (g) a development control by-law in force for an approved scheme under the *Integrated Resort Development Act 1987*;
- (h) a management statement under the *Mixed Use Development Act 1993*;
- (i) development control by-laws, activities by-laws and property by-laws in effect, and made by a community body corporate or precinct body corporate, under the *Mixed Use Development Act 1993*;
- (j) a development control by-law or residential zone activities by-law in force, and made by the principal body corporate, under the *Sanctuary Cove Resort Act 1985*;
- (k) a contract or other agreement, entered into in relation to a prescribed building, a provision of which includes a prohibition, requirement or restriction mentioned in division 2 that operates to the benefit of, or is enforceable by, a person other than the owner or occupier of the building.

solar hot water system includes any part of a water heating system designed to heat water using light or heat from the sun.

treat, in relation to a window in a prescribed building, means apply a colour tint or other substance to the window to reduce solar radiation passing through the window.

‘246N Application of pt 2

- ‘(1) This part applies to a relevant instrument—
 - (a) even if it were made or entered into before 1 January 2010; and
 - (b) despite any provision of an Act mentioned in section 246M, definition *relevant instrument*.
- ‘(2) To remove any doubt, it is declared that this part applies to a relevant instrument even if it is registered or recorded under the *Land Act 1994* or *Land Title Act 1994*.

-
- ‘(3) However, despite subsection (1)(a), this part does not apply in relation to a prescribed matter that, on 1 January 2010, is included in—
- (a) a relevant instrument that is a contract or other agreement mentioned in section 246M, definition *relevant instrument*, paragraph (k) and entered into before 1 January 2010; or
 - (b) another relevant instrument made or entered into before 1 January 2010 that is in force or effect for a lot within the meaning of the *Land Title Act 1994*.

- ‘(4) In this section—

prescribed matter means a prohibition, requirement or restriction mentioned in section 246O(1)(a) to (f), 246P(1), 246Q(1)(a) or (b), 246R(1) or 246S(1)(a) or (b).

‘Division 2 **Limiting effect of prohibitions etc. for particular sustainable housing measures**

‘246O **Prohibitions or requirements that have no force or effect**

- ‘(1) This section applies to a relevant instrument that, but for this section, would have the effect of—
- (a) prohibiting the use of a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building, if using the colour would achieve a solar absorptance value for the upper surface of the roof of not more than 0.55; or
 - (b) prohibiting—
 - (i) the use in a prescribed building of a window that is energy efficient; or
 - (ii) the treatment of a window in a prescribed building to ensure the window is energy efficient; or

[s 29]

- (c) prohibiting a person from occupying a class 1a building before particular landscaping, fencing, driveways or similar work associated with the construction of the building is completed; or
 - (d) requiring—
 - (i) a minimum floor area for a class 1a building; or
 - (ii) a minimum number of bathrooms or bedrooms for a class 1a building; or
 - (iii) the construction of a class 1a building, or any landscaping, fencing, driveways or similar work associated with the construction of the building, to be completed within a stated period; or
 - (iv) more than 1 garage ancillary to a class 1a building; or
 - (e) requiring—
 - (i) a minimum pitch for the roof of a class 1a building; or
 - (ii) a class 1a building or an enclosed class 10a building attached to a class 1a building to be orientated on a parcel of land in a particular way; or
 - (f) prohibiting the use of a specific material or type of surface finish for the roof or external walls of a class 1a building or an enclosed class 10a building attached to a class 1a building; or
 - (g) prohibiting the installation of a solar hot water system or photovoltaic cells on the roof or other external surface of a prescribed building.
- ‘(2) For a prohibition or requirement mentioned in subsection (1)(a) to (d), the relevant instrument has no force or effect to the extent of the prohibition or requirement.
- ‘(3) For a requirement or prohibition mentioned in subsection (1)(e) to (g), the relevant instrument has no force or effect to

the extent the prohibition applies merely to enhance or preserve the external appearance of the building.

Example of prohibition applying for other than a purpose mentioned in subsection (3)—

The installation of a solar hot water system with a roof storage tank on a roof might be prohibited because an engineering report shows the system would be too heavy for the roof.

'246P Restrictions that have no force or effect—roof colours and windows

- (1) This section applies to a relevant instrument that, but for this section, would have the effect of—
- (a) restricting the use of a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building, if using the colour would achieve a solar absorptance value for the upper surface of the roof of not more than 0.55; or
 - (b) restricting—
 - (i) the use in a prescribed building of a window that is energy efficient; or
 - (ii) the treatment of a window in a prescribed building to ensure the window is energy efficient.
- (2) For a restriction mentioned in subsection (1), the relevant instrument has no force or effect to the extent the restriction prevents a person—
- (a) using a colour for the roof of the building to achieve a solar absorptance value for the upper surface of the roof of not more than 0.55, if use of the colour—
 - (i) minimises potential adverse effects on the external appearance of the building; and
 - (ii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building; or

[s 29]

- (b) using in a prescribed building a window that is energy efficient or treating a window in a prescribed building to ensure the window is energy efficient, if the type of window to be used or the treatment—
 - (i) minimises potential adverse effects on the external appearance of the building; and
 - (ii) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.

'246Q Restrictions that have no force or effect—other restrictions

- '(1) This section applies to a relevant instrument that, but for this section, would have the effect of—
 - (a) restricting a person from occupying a class 1a building before particular landscaping, fencing, driveways or similar work associated with the construction of the building is completed; or
 - (b) restricting the use of a specific material or type of surface finish for the roof or external walls of a class 1a building or an enclosed class 10a building attached to a class 1a building; or
 - (c) restricting the location on the roof or other external surface of a prescribed building where a solar hot water system or photovoltaic cells may be installed.
- '(2) For a restriction mentioned in subsection (1)(a) or (b), the relevant instrument has no force or effect to the extent the restriction applies merely for the purpose of preserving or enhancing the external appearance of the building.
- '(3) For a restriction mentioned in subsection (1)(c), the relevant instrument has no force or effect to the extent the restriction—
 - (a) applies merely to enhance or preserve the external appearance of the building; and

-
- (b) prevents a person from installing a solar hot water system or photovoltaic cells on the roof or other external surface of the building.

Example of restriction applying for other than a purpose mentioned in subsection (3)—

The installation of a solar hot water system at a particular location on a roof may be restricted to maximise available space for the installation of other hot water systems or to prevent noise from piping associated with the system causing unreasonable interference with a person's use or enjoyment of the building.

'246R When requirement to obtain consent for particular activities can not be withheld—roof colours and windows

- '(1) This section applies if, under a relevant instrument, the consent of an entity is required to—
- (a) use a colour for the roof of a class 1a building or an enclosed class 10a building attached to a class 1a building; or
 - (b) use in a prescribed building a window that is energy efficient or treat a window in a prescribed building to ensure the window is energy efficient.
- '(2) The entity can not withhold consent for an activity mentioned in subsection (1)(a) if use of the colour—
- (a) achieves a solar absorptance value for the upper surface of the roof of not more than 0.55; and
 - (b) minimises potential adverse effects on the external appearance of the building; and
 - (c) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.
- '(3) The entity can not withhold consent for an activity mentioned in subsection (1)(b) if the type of window to be used or the treatment—

[s 29]

- (a) minimises potential adverse effects on the external appearance of the building; and
 - (b) does not unreasonably prevent or interfere with a person's use and enjoyment of the building or another building.
- ‘(4) A requirement under this section to not withhold consent—
- (a) is taken to be a requirement under the relevant instrument; and
 - (b) applies to the relevant instrument despite any other provision of the instrument.

‘246S When requirement to obtain consent for particular activities can not be withheld—other matters

- ‘(1) This section applies if, under a relevant instrument, the consent of an entity is required to—
- (a) occupy a class 1a building before particular landscaping, fencing, driveways or similar work associated with the construction of the building is completed; or
 - (b) use a specific material or type of surface finish for the roof or external walls of a class 1a building or an enclosed class 10a building attached to a class 1a building; or
 - (c) install a solar hot water system or photovoltaic cells on the roof or other external surface of a prescribed building.
- ‘(2) The entity can not withhold consent for an activity mentioned in subsection (1)(a) or (b) merely to enhance or preserve the external appearance of the building.
- ‘(3) The entity can not withhold consent for an activity mentioned in subsection (1)(c) merely to enhance or preserve the external appearance of the building, if withholding the consent prevents a person from installing a solar hot water system or photovoltaic cells on the roof or other external surface of the building.

- ‘(4) A requirement under this section to not withhold consent—
- (a) is taken to be a requirement under the relevant instrument; and
 - (b) applies to the relevant instrument despite any other provision of the instrument.

‘Division 3 Miscellaneous provisions

‘246T Particular limitation on operation of pt 2

- ‘(1) This section applies if, under this part and in relation to the installation of a solar hot water system or photovoltaic cells on the roof or other external surface of a prescribed building—
- (a) a provision of a relevant instrument has no force or effect; or
 - (b) an entity can not withhold consent for the installation.
- ‘(2) The operation of this part does not give rise to any entitlement to install a solar hot water system or photovoltaic cells on the roof or other external surface of the building in a way that unreasonably prevents or interferes with a person’s use and enjoyment of any part of the building.

‘246U No compensation payable

‘To remove any doubt, it is declared that no compensation is payable by the State or another person for any loss or expense arising out of the operation of this part or its effect on a relevant instrument.

‘Chapter 8B Transport noise corridors

‘Part 1 Preliminary

‘246V Purpose of ch 8B

‘The purpose of this chapter is to provide for the designation of land as a transport noise corridor for building assessment provisions expressed to apply specifically for the reduction of noise in class 1, 2, 3 or 4 buildings.

‘246W Definitions for ch 8B

‘In this chapter—

railway land means rail corridor land, commercial corridor land or future railway land under the Transport Infrastructure Act, schedule 6.

road, for a road under the control of a local government, means any part of the surface of the road on which motor vehicles ordinarily travel.

State-controlled road means a road or land, or part of a road or land, declared under the Transport Infrastructure Act, section 24 to be a State-controlled road.

transport chief executive means the chief executive of the department in which the Transport Infrastructure Act is administered.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994*.

transport noise corridor means land designated under this chapter as a transport noise corridor.

[s 29]

- (b) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for inspection at an office of the local government mentioned in the gazette notice.

‘(7) In this section—

AADT, for a road, means its annual average daily traffic rate worked out by using the following formula—

$$AADT = \frac{V}{365}$$

where—

AADT is the annual average daily traffic rate.

V is the total volume of vehicular traffic for the road in a year, worked out under a relevant guideline for measuring traffic volume published by Austroads.

‘246Y Notification about designation of transport noise corridor

‘(1) As soon as practicable after designating land as a transport noise corridor, the local government must—

- (a) give notice of the designation to the chief executive; and
- (b) include a record of the transport noise corridor in its planning scheme.

‘(2) The record must—

- (a) identify the land that is within the transport noise corridor; and
- (b) include details about the levels of noise within the corridor caused by traffic on the road for which it is designated; and
- (c) state that interested persons may obtain details about the transport noise corridor and the levels of noise from the local government.

-
- ‘(3) Information required to be included in the record must be included in a way that readily allows an applicant for a building development approval to identify whether land the subject of the approval is within a transport noise corridor.

‘Part 3 Designation by transport chief executive

‘246Z Designation of transport noise corridor—transport chief executive

- ‘(1) The transport chief executive may, by gazette notice, designate land as a transport noise corridor.
- ‘(2) The transport chief executive may designate land under subsection (1) only if the land is within—
- (a) 100m of railway land or a State-controlled road; or
 - (b) a distance of more than 100m but not more than 250m of railway land or a State-controlled road, if the noise level caused by rolling stock operating on the railway land or traffic on the road at the distance has been measured, in a way approved by the chief executive, to be at least 58db(A).
- ‘(3) If the transport chief executive designates land under this section, the land must be—
- (a) identified specifically in the gazette notice; or
 - (b) identified generally in the gazette notice, and identified specifically in documents described in the gazette notice and available for inspection at an office of the department mentioned in the gazette notice.

[s 30]

‘246ZA Notification about designation of transport noise corridor

- ‘(1) As soon as practicable after designating land as a transport noise corridor, the transport chief executive must give notice of the designation to—
- (a) the chief executive of the department in which this Act is administered; and
 - (b) the local government in whose area the transport noise corridor is situated.
- ‘(2) The notice must include information about the levels of noise within the corridor caused by rolling stock or traffic on the railway land or State-controlled road for which it is designated.
- ‘(3) As soon as practicable after receiving the notice, the local government must include a record of the transport noise corridor in its planning scheme.
- ‘(4) The record must—
- (a) identify the land that is within the transport noise corridor; and
 - (b) include details about the levels of noise within the corridor caused by rolling stock or traffic on the railway land or State-controlled road for which it is designated; and
 - (c) state that interested persons may obtain details about the transport noise corridor and the levels of noise from the local government.
- ‘(5) Information required to be included in the record must be included in a way that readily allows an applicant for a building development approval to identify whether land the subject of the approval is within a transport noise corridor.’

30 Amendment of s 258 (Guidelines)

Section 258—

insert—

-
- ‘(2) Without limiting subsection (1), the chief executive may make a guideline to help persons to prepare a sustainability declaration under chapter 8A, part 1, division 2.’.

31 Amendment of s 260 (Evidentiary aids)

Section 260(2)—

omit, insert—

- ‘(2) A certificate purporting to be signed by the general manager of BSA stating any of the following matters is evidence of the matter—
- (a) a stated document is a copy of, or an extract from or part of—
 - (i) a licence; or
 - (ii) the register; or
 - (iii) another document kept or made under chapter 6, part 2, 3 or 4;
 - (b) on a stated day, or during a stated period, a licence—
 - (i) was, or was not, in force; or
 - (ii) was, or was not, subject to a stated condition; or
 - (iii) was, or was not, cancelled or suspended.
- ‘(3) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
- (a) a stated document is a copy of, or an extract from or part of—
 - (i) the BCA; or
 - (ii) the QDC; or
 - (iii) a document kept or made under this Act, other than a document kept or made under chapter 6, part 2, 3 or 4;

[s 32]

- (b) an edition of the BCA was the current edition of the BCA at a stated time or during a stated period;
- (c) a particular version of the QDC was in force at a stated time or during a stated period;
- (d) a particular part of the QDC was in force at a stated time or during a stated period.’

32 Insertion of new ch 11, pt 8

Chapter 11—

insert—

‘Part 8 Transitional provisions for Building and Other Legislation Amendment Act 2009

‘286 Continuing application of s 154

- ‘(1) This section applies to a relevant person who does not have at least 1 years experience as a building surveying technician employed by a local government or under the supervision of a private certifier.
- ‘(2) Section 154 as in force immediately before 1 January 2010 continues to apply to the relevant person—
 - (a) while the person is licensed as a building surveying technician; and
 - (b) until the person has the experience mentioned in subsection (1).
- ‘(3) In this section—

relevant person means a person—

 - (a) licensed as a building surveying technician immediately before 1 January 2010; or

- (b) issued with a licence or a renewed licence on a decision for an application mentioned in section 287(1).

Note—

This section commenced on 1 January 2010.

‘287 Continuing application of s 155

- ‘(1) This section applies to a following application made but not decided before 1 January 2010—
 - (a) an application under section 155 for a licence at the level of building surveying technician;
 - (b) an application under section 167 for renewal of a licence at the level of building surveying technician.
- ‘(2) For considering and deciding the application, section 155 as in force immediately before 1 January 2010 continues to apply.’.

33 Replacement of sch 1 (The QDC on 26 February 2008)

Schedule 1—

omit, insert—

[s 33]

'Schedule 1 The QDC on 26 October 2009

section 13

Part	Description	Former part reference
Siting and amenity—detached housing		
MP 1.1	Design and siting standard for single detached housing on lots under 450m ² , but only— <ul style="list-style-type: none"> (a) the headings 'application' and 'commencement' and the words under those headings; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c). 	11
MP 1.2	Design and siting standard for single detached housing on lots 450m ² and over, but only— <ul style="list-style-type: none"> (a) the headings 'application' and 'commencement' and the words under those headings; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c). 	12
Fire safety		
MP 2.1	Fire safety in budget accommodation buildings	14
MP 2.2	Fire safety in residential care buildings	14.1
MP 2.4	Buildings in bushfire-prone areas	—

Part	Description	Former part reference
Special buildings and structures		
MP 3.1	Floating buildings	31
MP 3.2	Tents	28
Building sustainability		
MP 4.1	Sustainable buildings	29
MP 4.2	Water savings targets	25
MP 4.3	Alternative water sources—commercial buildings	—
General health, safety and amenity		
MP 5.1	Workplaces	1
MP 5.2	Higher risk personal appearance services	15
MP 5.3	Retail meat premises	4
MP 5.4	Child care centres	22
MP 5.5	Private health facilities	7
MP 5.6	Pastoral workers' accommodation	21
MP 5.7	Residential services building standard	20
MP 5.8	Workplaces involving spray painting	2
Maintenance of buildings		
MP 6.1	Maintenance of fire safety installations	— ¹ .

34 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definition *BCA classification change*—
omit.
- (2) Schedule 2—

[s 34]

insert—

‘bathroom, for chapter 8A, part 2, see section 246M.

BCA classification or use change see section 109.

current sustainability declaration, for chapter 8A, part 1, see section 246A.

energy efficient, for chapter 8A, part 2, see section 246M.

prescribed building, for chapter 8A, part 2, see section 246M.

publish, for chapter 8A, part 1, see section 246A.

railway land, for chapter 8B, see section 246W.

relevant advertisement, for chapter 8A, part 1, see section 246A.

relevant instrument, for chapter 8A, part 2, see section 246M.

road, for chapter 8B, see section 246W.

seller, for chapter 8A, part 1, see section 246A.

solar hot water system, for chapter 8A, part 2, see section 246M.

State-controlled road, for chapter 8B, see section 246W.

sustainability declaration see section 246A.

transport chief executive, for chapter 8B, see section 246W.

Transport Infrastructure Act, for chapter 8B, see section 246W.

transport noise corridor see section 246W.

treat, for chapter 8A, part 2, see section 246M.’.

- (3) Schedule 2, definition *building*, ‘and is roofed’—

omit, insert—

‘or is roofed’.

- (4) Schedule 2, definition *self-assessable building work*, ‘section 21(2)’—

omit, insert—
'section 21(3)'.

Part 3 **Amendment of Animal Management (Cats and Dogs) Act 2008**

35 Act amended

This part amends the *Animal Management (Cats and Dogs) Act 2008*.

36 Amendment of long title

Long title, from 'and to amend'—
omit.

37 Amendment of s 3 (Purposes of Act)

Section 3(c), 'cat'—
omit, insert—
'cats'.

38 Amendment of s 4 (How purposes are to be primarily achieved)

Section 4(g), services services'—
omit, insert—
'services'.

[s 39]

39 Amendment of s 13 (Supplier must ensure cat or dog is implanted)

Section 13(1), note—

omit, insert—

Note—

For requirements about implanting a PPID in a cat or dog that is less than 8 weeks old, see section 24 (Age restriction for implanting PPID).’.

40 Amendment of s 24 (Minimum age for cat or dog to be implanted)

(1) Section 24, heading—

omit, insert—

‘24 Age restriction for implanting PPID’.

(2) Section 24(1)—

omit, insert—

‘(1) An authorised implanter must not implant a PPID in a cat or dog that is less than 8 weeks old, unless—

- (a) the implanter has a reasonable excuse; or
- (b) the implanter is a veterinary surgeon who considers implanting the PPID is not likely to be a serious risk to the health of the cat or dog; or
- (c) there is a signed veterinary surgeon’s certificate for the cat or dog stating that implanting the PPID when it is less than 8 weeks old is not likely to be a serious risk to the health of the cat or dog.

Maximum penalty—60 penalty units.’.

41 Amendment of s 34 (PID must not be removed or otherwise interfered with)

Section 34(2), definition *interfere with*, ‘it a way’—

omit, insert—

‘it in a way’.

42 Amendment of s 90 (Notice of proposed declaration)

Section 90(1), ‘dog notice’—

omit, insert—

‘dog a notice’.

43 Amendment of s 97 (Declared dangerous dogs)

Section 97(1), after ‘2 to 6’—

insert—

‘and 8’.

44 Amendment of s 98 (Declared menacing dogs)

Section 98(1), ‘and 4 to 6’—

omit, insert—

‘, 4 to 6 and 8’.

45 Insertion of new ch 10, pt 1 hdg

Chapter 10, before section 211—

insert—

**‘Part 1 Transitional provisions for Act
No. 74 of 2008’.**

46 Insertion of new ch 10, pt 2

Chapter 10—

insert—

Part 4 **Amendment of Body Corporate and Community Management Act 1997**

48 **Act amended**

This part amends the *Body Corporate and Community Management Act 1997*.

49 **Amendment of s 66 (Requirements for community management statement)**

Section 66—

insert—

- ‘(3A) A community management statement must not include provisions adopting, under a regulation module, an architectural and landscape code or a provision of an architectural and landscape code that has no force or effect under the *Building Act 1975*, chapter 8A, part 2.

Editor’s note—

Building Act 1975, chapter 8A, part 2 (Provisions to support sustainable housing)’.

50 **Amendment of s 180 (Limitations for by-laws)**

Section 180—

insert—

- ‘(7) A by-law must not be oppressive or unreasonable, having regard to the interests of all owners and occupiers of lots included in the scheme and the use of the common property for the scheme.
- ‘(8) A by-law must not include a provision that has no force or effect under the *Building Act 1975*, chapter 8A, part 2.

[s 51]

Editor's note—

Building Act 1975, chapter 8A, part 2 (Provisions to support sustainable housing)'.
'

51 Amendment of sch 4 (By-laws)

Schedule 4, section 8—

insert—

Note—

Under the *Building Act 1975*, sections 246R and 246S, a body corporate can not withhold consent for particular activities stated in the sections that might change the external appearance of a lot.'

Part 5 Amendment of Fire and Rescue Service Act 1990

52 Act amended

This part amends the *Fire and Rescue Service Act 1990*.

53 Insertion of new ss 104SG–104SK

After section 104SF—

insert—

'104SG Assessors to help QCAT

'(1) In conducting a proceeding that is a review of a notice given under section 69(2)(a) or part 9A or the terms of a notice, QCAT must be helped by the following chosen by the principal registrar from the list mentioned in section 104SI(3)—

(a) at least 1 assessor nominated under section 104SI(2)(b)(i);

-
- (b) at least 1 assessor nominated under section 104SI(2)(b)(ii);
 - (c) if the notice is an occupancy notice or a decision notice under section 104KI—at least 1 assessor nominated under section 104SI(2)(b)(iii).
- ‘(2) A person chosen under subsection (1)(b) must have been nominated by the local government of the area in which the premises to which the notice relates are situated.
- ‘(3) For subsection (2)—
- (a) if the local government is not the person seeking the review, the person nominated must be a person appointed to be a building certifier by the local government; and
 - (b) if the local government is the person seeking the review, the person nominated must be a person appointed to be a building certifier by another local government.
- ‘(4) Subsection (2) does not apply to a review of a notice or the terms of a notice, given under section 69(2)(a), that relates to premises other than a building.
- ‘(5) Despite subsection (1), a proceeding may be conducted without the help of assessors if the presiding member is satisfied it is necessary because of the urgency of the matter.
- ‘(6) In this section—
- presiding member* see the QCAT Act, schedule 3.
 - principal registrar* see the QCAT Act, schedule 3.
 - proceeding* see the QCAT Act, schedule 3.

‘104SH Function and powers of assessors

- ‘(1) The function of an assessor is to help QCAT decide questions of fact in a proceeding.
- ‘(2) To enable an assessor to perform the assessor’s function, the assessor may, during a proceeding—
 - (a) ask questions of a witness in the proceeding; and

[s 53]

- (b) discuss a question of fact with a person appearing for a party in the proceeding.

‘104SI Appointment of assessors

- ‘(1) The commissioner must, for each year, appoint persons as assessors for helping QCAT in proceedings mentioned in section 104SG(1).
- ‘(2) A person is qualified to be appointed as an assessor only if—
 - (a) the commissioner is satisfied the person has the knowledge, expertise and experience relevant for helping QCAT in the proceedings; and
 - (b) the person is nominated by—
 - (i) the chief executive of the department in which the *Building Act 1975* is administered; or
 - (ii) a local government in the State; or
 - (iii) the chief executive (liquor licensing).
- ‘(3) The commissioner must, at the beginning of each year, give the principal registrar a list of the persons appointed as assessors for the year.
- ‘(4) The list must state, for each person appointed—
 - (a) the area in which the person has relevant knowledge, expertise and experience; and
 - (b) whether the person was nominated under subsection (2)(b)(i), (ii) or (iii).

‘104SJ Disqualification from appointment as assessor

‘A person may not be appointed or continue as an assessor if the person is not qualified, or ceases to be qualified, under section 104SI(2).

‘104SK QCAT may have regard to assessor’s view

‘In deciding a question of fact in a proceeding, the member or members constituting QCAT may, to the extent the member or members consider appropriate, have regard to the views of an assessor helping QCAT.’.

54 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

‘*assessor* means an assessor appointed under section 104SI.

presiding member see section 104SG.

principal registrar see section 104SG.

proceeding see section 104SG.’.

**Part 6 Amendment of Land Title Act
1994**

55 Act amended

This part amends the *Land Title Act 1994*.

56 Amendment of s 50 (Requirements for registration of plan of subdivision)

Section 50(2)(b), ‘local government concerned’—

omit, insert—

‘relevant planning body’.

57 Insertion of new s 54DA

After section 54D—

‘of the department in which the *Valuation of Land Act 1944* is administered.’.

60 Amendment of s 136 (General provisions that apply to management statement)

Section 136(2), ‘section 124(7)’—

omit, insert—

‘section 124(8)’.

Part 8 Amendment of Plumbing and Drainage Act 2002

61 Act amended in part and schedule

This part and the schedule amend the *Plumbing and Drainage Act 2002*.

62 Replacement of pt 2 hdg (Plumbers and Drainers Board)

Part 2, heading—

omit, insert—

‘Part 2 Plumbing Industry Council’.

63 Replacement of s 5 (Establishment of board)

Section 5—

omit, insert—

‘5 Establishment of council

‘(1) The Plumbing Industry Council is established.

‘(2) The council does not represent the State.’.

[s 64]

64 Amendment of s 9 (Membership of board)

(1) Section 9, before paragraph (a)—

omit, insert—

‘9 Membership of council

‘(1) The council consists of members appointed by the Minister.

‘(2) The Minister decides the number of members.

‘(3) However, the membership must consist of—’.

(2) Section 9(3)(a), as amended under this section, ‘a representative’—

omit, insert—

‘at least 1 representative’.

(3) Section 9(3)(a)(vi), as amended under this section, ‘Branch;’—

omit, insert—

‘Branch; and’.

65 Amendment of s 10 (Appointment of deputy members)

(1) Section 10, ‘Governor in Council’—

omit, insert—

‘Minister’.

(2) Section 10(1), ‘section 9(a)’—

omit, insert—

‘section 9(3)(a)’.

66 Amendment of s 11 (Chairperson and deputy chairperson of board)

(1) Section 11, heading, ‘board’—

omit, insert—

‘council’.

(2) Section 11(1), ‘board’s’—

omit, insert—

‘council’s’.

(3) Section 11, ‘Governor in Council’—

omit, insert—

‘Minister’.

67 Amendment of s 17 (Remuneration of members)

Section 17, ‘Governor in Council’—

omit, insert—

‘Minister’.

68 Amendment of s 26 (Remuneration of committee members)

Section 26, ‘Governor in Council’—

omit, insert—

‘Minister’.

69 Insertion of new pt 10, div 6

Part 10—

insert—

‘Division 6 Transitional provisions for Building and Other Legislation Amendment Act 2009

‘177 Definitions for div 6

‘In this division—

[s 69]

commencement means the day the *Building and Other Legislation Amendment Act 2009*, section 63 commences.

former board see section 178(1).

‘178 Dissolution of Plumbers and Drainers Board

- ‘(1) On the commencement—
- (a) the Plumbers and Drainers Board (the *former board*) ceases to exist; and
 - (b) the following go out of office—
 - (i) the former board’s members;
 - (ii) the former board’s chairperson and deputy chairperson;
 - (iii) a member of a committee of the former board.
- ‘(2) To remove any doubt, it is declared that subsection (1) does not prevent a person mentioned in subsection (1)(b) from being nominated for, or holding office with, the council.
- ‘(3) No amount, whether by way of compensation, reimbursement or otherwise, is payable by the State for or in connection with the enactment or operation of subsection (1).

‘179 Registrar and officers of former board

- ‘On the commencement—
- (a) the former board’s registrar immediately before the commencement becomes the council’s registrar; and
 - (b) another officer of the former board becomes an officer of the council in the same position as their former office with the board.

‘180 References to former board

‘In an Act or document a reference to the former board may, if the context permits, be taken as a reference to the council.

‘181 Legal proceedings

- ‘(1) A proceeding that has been started or could have been started or continued by or against the former board before the commencement may be started or continued by or against the council.
- ‘(2) In this section—
proceeding includes a referral under section 70A to QCAT.

‘182 Migration of undecided applications

‘If, immediately before the commencement, an application had been made to the former board but not decided, the application is taken to have been made to the council when it was made to the former board.

‘183 Migration of former board’s matters

‘On the commencement, the following made by the former board in force immediately before the commencement are taken to have been made by the council when the former board made them—

- (a) a decision;
- (b) a licence or other document;
- (c) a referral under section 70A to QCAT.’.

70 Amendment of schedule (Dictionary)

- (1) Schedule, definition *board*—
omit, insert—
‘*council* means the Plumbing Industry Council established under section 5.’.
- (2) Schedule, definitions *chairperson, deputy chairperson, information notice, member* and *review period*, ‘board’—
omit, insert—

[s 73]

Example of a class 2 building—

a building containing 2 or more sole-occupancy units that are separate dwellings

seller's agent see section 373B(1).

'Division 2 Requirements about advertising sale, and inspection, of residential dwellings

'373B Application of div 2

- '(1) This division applies to an entity (the *seller's agent*) appointed to sell a residential dwelling under a written agreement under this Act by the person authorising the sale of the dwelling.
- '(2) However, this division applies to the seller's agent only until the earlier of the following days to happen—
 - (a) the day a contract for the sale of the dwelling settles;
 - (b) the day the dwelling is withdrawn from sale.

'373C Requirements about advertising sale of residential dwelling

- '(1) The seller's agent must not publish a relevant advertisement for the sale of the residential dwelling unless the advertisement includes information about where a person may obtain a copy of the current sustainability declaration for the dwelling.

Maximum penalty—100 penalty units.

Example—

An advertisement published on the internet might include a link to a website at which a person may obtain a copy of the declaration.

- '(2) The seller's agent must not give a person a document advertising the sale of the residential dwelling unless—

-
- (a) the person has a copy of the current sustainability declaration for the dwelling; or
 - (b) a copy of the declaration accompanies the document.

Maximum penalty—100 penalty units.

- ‘(3) Subsection (2) does not apply to the seller’s agent if the document is given to the person at—
 - (a) the residential dwelling; and
 - (b) a time it is generally open to the public for inspection by potential buyers of the dwelling.

‘373D Requirements about inspection of residential dwelling

- ‘(1) At any time the residential dwelling is generally open to the public for inspection by potential buyers of the dwelling, the seller’s agent must ensure a copy of the current sustainability declaration for the dwelling is conspicuously displayed so anyone entering the dwelling can easily read the declaration.

Maximum penalty—100 penalty units.

- ‘(2) If a person enters the residential dwelling to inspect it as a potential buyer of the dwelling, other than at a time mentioned in subsection (1), the seller’s agent must ensure—
 - (a) the person has a copy of the current sustainability declaration before the person enters the dwelling; or
 - (b) a copy of the declaration is readily available for inspection by the person before the person enters the dwelling and the person is advised by the seller’s agent that a copy is available for inspection; or
 - (c) a copy of the declaration is conspicuously displayed at the dwelling so the person can easily read it.

Maximum penalty—100 penalty units.

[s 73]

‘373E Requirement to give copy of sustainability declaration

‘If a person who is a potential buyer of the residential dwelling asks the seller’s agent for a copy of the current sustainability declaration for the dwelling, the seller’s agent must give the person a copy as soon as practicable.

Maximum penalty—100 penalty units.

‘373F Breach of obligation does not generally give rise to right or remedy

‘A breach of an obligation under this division does not of itself give rise to an action for breach of statutory duty or another civil right or remedy.

‘Division 3 Publishing or giving incomplete or false or misleading sustainability declaration

‘373G Application of div 3

‘This division applies if—

- (a) a seller’s agent—
 - (i) publishes a relevant advertisement for the sale of a residential dwelling that includes information about a current sustainability declaration for the dwelling; or
 - (ii) gives or makes available to a person a current sustainability declaration for the dwelling; and
- (b) the declaration is incomplete or contains information that is false or misleading; and
- (c) if the declaration contains information that is false or misleading—the information was not included in the declaration by the seller’s agent, or because of any representation made by or for the seller’s agent, after the seller signs it.

‘373H No right to terminate contract for publishing or giving declaration

‘The buyer under a relevant contract, or a contract formed on a sale by auction, for the sale of the residential dwelling can not terminate the contract only because the declaration is incomplete or contains information that is false or misleading.

‘373I Publishing or giving declaration does not contravene particular provisions

‘(1) It is declared that the mere publication of the advertisement or the giving of or making available the declaration does not constitute a contravention of any of the following provisions by the seller’s agent—

- (a) section 573A, 573B(1), 573C(1) or 574(1);
- (b) the *Fair Trading Act 1989*, section 38, 39, 40 or 40A.

Editor’s note—

Fair Trading Act 1989, section 38 (Misleading or deceptive conduct—TPA s 52), 39 (Unconscionable conduct—TPA s 51AB), 40 (False or misleading representations—TPA s 53) or 40A (False representations and other misleading or offensive conduct in relation to land—TPA s 53A)

- ‘(2) To remove any doubt, it is declared that merely publishing the advertisement, or giving or making available the declaration, does not constitute a contravention of section 573A, 573B(1), 573C(1) or 574(1) for which a person may make a claim against the fund.
- ‘(3) Subsection (2) applies despite section 470(1)(a).’.

74 Amendment of s 470 (Claims)

Section 470(1)—

insert—

[s 75]

‘Note—

See, however, section 373I for particular activities that do not constitute a contravention of section 573A, 573B(1), 573C(1) or 574(1) for which a person may make a claim against the fund.’.

75 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘Building Act, for chapter 11, part 5, see section 373A.

current sustainability declaration, for chapter 11, part 5, see section 373A.

publish, for chapter 11, part 5, see section 373A.

relevant advertisement, for chapter 11, part 5, see section 373A.

residential dwelling, for chapter 11, part 5, see section 373A.
seller’s agent, for chapter 11, part 5, see section 373B(1).’.

Part 10 Amendment of Sustainable Planning Act 2009

76 Act amended

This part amends the *Sustainable Planning Act 2009*.

77 Amendment of s 335 (Content of decision notice)

Section 335(3), from ‘include’—

omit, insert—

‘—

- (a) include the approved drawings for the development approval; and
- (b) if the development involves building work that is building, repairing or altering a building—state the classification or proposed classification of the building or parts of the building under the BCA.’.

78 Amendment of s 870 (References to repealed IPA)

- (1) Section 870, heading, after ‘IPA’—

insert—

‘and other legislation’.

- (2) Section 870(3)—

renumber as section 870(5).

- (3) Section 870—

insert—

- ‘(3) Subsection (4) applies—

- (a) for a reference in this Act to the *Local Government Act 2009* or a provision of that Act or a regulation made under that Act (the **local government reference**); and
- (b) until the day the *Local Government Act 2009*, section 288 commences.

Note—

The *Local Government Act 2009*, section 288 repeals the *Local Government Act 1993*.

- ‘(4) The local government reference may, if the context permits, be taken as a reference to the *Local Government Act 1993* or any provision of that Act, all or part of which corresponds or substantially corresponds to the reference.’.

‘(8) In this section—

transport noise corridor means a transport noise corridor designated under the *Building Act 1975*, section 246Z.’

Part 12 Amendment of Acquisition of Land Act 1967

81 Act amended

This part amends the *Acquisition of Land Act 1967*.

82 Amendment of schedule (Purposes for taking land)

Schedule, part 2, after second dot point—

insert—

- conservation of koalas on land in a ‘Rural Living Area’ or ‘Regional Landscape and Rural Protection Area’ under the regional plan for the SEQ region under the *Sustainable Planning Act 2009*, if the land is in the local government area of the Brisbane City Council, Gold Coast City Council, Ipswich City Council, Logan City Council, Moreton Bay Regional Council, Redland City Council or Sunshine Coast Regional Council’.

Schedule

Consequential amendments of Plumbing and Drainage Act 2002

section 61

- 1** Sections 6 to 8, 14, 19 to 25, 27 to 29, 30, 32 to 34, 36 to 43, 46 to 48, 50 to 53, 55 to 70A, 70C to 77 and 107, part 2, divisions 5 and 7 headings and part 3, division 7, subdivision 2 heading, ‘board’—

omit, insert—

‘council’.

- 2** Sections 6(1), 14(c), 25(4)(a), 27(7), 29(4) and 33 heading, ‘board’s’—

omit, insert—

‘council’s’.

- 3** Part 2, divisions 3, 4 and 8 headings, section 20(1) and sections 46, 68, 69 and 70A headings, ‘Board’—

omit, insert—

‘Council’.

- 4** Section 57 heading, ‘Board’s’—

omit, insert—

‘Council’s’.