



Queensland

# **Plumbing and Drainage and Other Legislation Amendment Act 2016**

**Act No. 11 of 2016**





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Queensland

## **Plumbing and Drainage and Other Legislation Amendment Act 2016**

**Act No. 11 of 2016**

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**An Act to amend the Housing Act 2003, the Plumbing and Drainage Act 2002, the Queensland Building and Construction Commission Act 1991, the Queensland Building and Construction Commission and Other Legislation Amendment Act 2014, the Residential Tenancies and Rooming Accommodation Act 2008 and the Sustainable Planning Act 2009**

**[Assented to 24 March 2016]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Plumbing and Drainage and Other Legislation Amendment Act 2016*.

### **2 Commencement**

Part 5, other than sections 24 and 25, commences on a day to be fixed by proclamation.

## **Part 2 Amendment of Housing Act 2003**

### **3 Act amended**

This part amends the *Housing Act 2003*.

### **4 Insertion of new pt 8, div 2B**

Part 8—

*insert—*

#### **Division 2B Development of public housing premises**

##### **94F Definitions for div 2B**

In this division—



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***applicable laws***, for development of public housing premises, means any Act, including any of the following Acts, as in force at the time the development was carried out, to the extent it applied to the development—

- (a) the *Building Act 1975*;
- (b) the *Integrated Planning Act 1997*;
- (c) the *Local Government (Planning and Environment) Act 1990*;
- (d) the *Plumbing and Drainage Act 2002*;
- (e) the Planning Act.

***development*** means—

- (a) in relation to anything done on or before the commencement—development as defined under the Planning Act at the commencement, including development as defined under that Act carried out before that Act was enacted; and
- (b) in relation to anything done after the commencement—development as defined under the Planning Act from time to time.

***Planning Act*** means the *Sustainable Planning Act 2009*.

***premises*** means—

- (a) a building or other structure; or
- (b) land (whether or not a building or other structure is situated on the land).

***public housing premises*** means premises that are owned, or were owned, by the State or a statutory body representing the State and to which any of the following applies—

- (a) the premises are used, or have been used, to provide relevant public housing;

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- (b) the premises are approved by the chief executive to be used to provide a housing service;
- (c) the premises, are being used or have been used, under this Act or the repealed Act, for the provision of housing to an individual for residential use.

*relevant public housing* has the same meaning as public housing under the Planning Act, schedule 3.

#### **94G Development of public housing premises**

- (1) This section applies to development of public housing premises carried out by the State or a statutory body representing the State before or after the commencement.
- (2) The development is taken to have been carried out in accordance with all applicable laws.

#### **94H Transfer of public housing premises**

- (1) For the Planning Act, the transfer of public housing premises does not result in a material change of use of the premises if the transferor is an entity that uses the premises to provide relevant public housing or a housing service.
- (2) Without limiting subsection (1), the transfer may include—
  - (a) a transfer, from the provider of relevant public housing, to—
    - (i) an individual; or
    - (ii) an entity that provides a housing service that is not the provision of relevant public housing; or



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## **7 Replacement of pt 2, div 1 (QBCC's functions)**

Part 2, division 1—

*omit, insert—*

### **Division 1 Establishment, functions and powers of the council**

#### **5 Establishment**

The Service Trades Council is established.

*Note—*

Under the QBCC Act, section 6(c), the Service Trades Council constitutes part of QBCC.

#### **6 Functions**

The council has the following functions—

- (a) conferring on national policy development and implementation for the trade;
- (b) reporting to the Minister on—
  - (i) any issue relating to the trade the Minister refers to it; or
  - (ii) any issue relating to the trade the council considers the Minister should know about;
- (c) making recommendations to the QBCC commissioner about the performance of the commissioner's functions under the Act;
- (d) establishing a panel of the council to assist the QBCC commissioner to effectively and efficiently perform the commissioner's functions under part 3, divisions 1 to 6;
- (e) establishing other panels to assist the council to effectively and efficiently perform its functions;

- (f) reviewing decisions of the QBCC commissioner made under section 68;

*Note—*

The council reviews decisions under the QBCC Act, section 86C as an internal reviewer.

- (g) performing other functions relating to the trade given to the council under an Act.

## **7 Powers**

- (1) The council has the power to do all things reasonably necessary to be done for performing its functions.
- (2) Without limiting subsection (1), the council has the powers given to it under an Act.

## **Division 2 Membership of the council**

### **8 Appointment of members**

- (1) The council consists of members appointed by the Governor in Council.
- (2) The Governor in Council decides the number of members.
- (3) However, the membership must consist of at least the following—
  - (a) the assistant commissioner as a representative of the QBCC;
  - (b) at least 1 representative of each of the following entities—
    - (i) the Air Conditioning and Mechanical Contractors Assoc of Qld Ltd;

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- (ii) the Communications, Electrical and Plumbing Union, Plumbing Division, Queensland Branch;
  - (iii) the department in which this Act is administered;
  - (iv) the department in which the *Further Education and Training Act 2014* is administered;
  - (v) the department in which the *Public Health Act 2005* is administered;
  - (vi) the Institute of Plumbing Inspectors Qld Inc;
  - (vii) the Local Government Association of Queensland Ltd;
  - (viii) the Master Plumbers' Association of Queensland;
  - (ix) the National Fire Industry Association Queensland Inc;
- (c) an individual nominated as a representative of consumers by the department in which the *Fair Trading Act 1989* is administered.

## **9 Appointment of deputy members**

- (1) The Governor in Council may appoint a person (a *deputy member*) to act for a member in the member's absence.
- (2) In appointing a deputy member to act for a member mentioned in section 8(3), the Governor in Council must appoint a person who represents the entity or interest that the member represents.
- (3) In acting for a member, a deputy member has the same duties, powers, protection and rights as the member but can not be appointed as chairperson or deputy chairperson.

- (4) If a member becomes disqualified from continuing as a member, a deputy member may continue to act for the member under this section, as if the member had not been disqualified, until a replacement member is appointed.

## **10 Appointment of temporary members**

- (1) The Minister may appoint a person (a *temporary member*) to act for a member while the member is absent on approved leave under section 18 if—
- (a) there is no deputy member for the member; or
  - (b) there is a deputy member for the member but the deputy member is unable to act in the member's office during the leave of absence.
- (2) In appointing a temporary member to act for a member mentioned in section 8(3), the Minister must appoint a person who represents the entity or interest that the member represents.
- (3) A temporary member has the same duties, powers, protection and rights, other than for sections 14 and 15, as the member during the member's leave of absence.

## **11 Disqualification as member, deputy member or temporary member**

- (1) A person is disqualified from becoming, or continuing as, a member, deputy member or temporary member if the person—
- (a) has a recorded conviction, other than a spent conviction, for an indictable offence; or
  - (b) is, or has been, convicted of an offence against this Act; or

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- (c) is an insolvent under administration within the meaning of the Corporations Act, section 9; or
  - (d) is disqualified from managing corporations under the Corporations Act, part 2D.6.
- (2) Also, a person can not become a member, deputy member or temporary member if the person does not consent to the chief executive requesting a report and other information about the person's criminal history (if any) under section 19.
- (3) In this section—
- recorded conviction*, for an indictable offence, does not include a finding of guilt, or the acceptance of a plea of guilty, by a court, in relation to the offence, if a conviction for the offence is not recorded.

## **12 Conditions of appointment**

- (1) A member or deputy member is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) For matters not provided for by this Act, a member or deputy member holds office on the conditions decided by the Governor in Council.

## **13 Term of appointment**

- (1) A member or deputy member is appointed for the term, of no more than 4 years, stated in the member's or deputy member's instrument of appointment.
- (2) However, a person's appointment as a member or deputy member ends if, during the term of the appointment, the person becomes disqualified under section 11.



## **14 Chairperson**

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

## **15 Deputy chairperson**

- (1) The Governor in Council must appoint a member, other than the chairperson, as the deputy chairperson of the council.
- (2) A person may be appointed as the deputy chairperson when the person is appointed as a member.
- (3) The deputy chairperson holds office for the term, ending no later than the person's term of appointment as a member, stated in the person's instrument of appointment as deputy chairperson.
- (4) However, a person's appointment as deputy chairperson ends if, during the term of the appointment, the person stops being a member.
- (5) The deputy chairperson must act as chairperson—
  - (a) during a vacancy in the office of chairperson; and
  - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

## **16 Resignation**

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

## **17 Vacation of office**

- (1) The office of a member, deputy member or temporary member becomes vacant if the member, deputy member or temporary member—
  - (a) dies; or
  - (b) is disqualified under section 11; or
  - (c) resigns under section 16.
- (2) Also, the office of a member becomes vacant if—
  - (a) the member is absent from 3 consecutive council meetings of which appropriate notice has been given; and
  - (b) the member does not have the council's permission to be absent or approved leave of absence under section 18.

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## **18 Leave of absence for members**

- (1) The Minister may approve leave of absence of 3 or more meetings for a member.
- (2) If the deputy chairperson is absent on approved leave under subsection (1), the Minister may appoint another member to act in the deputy chairperson's office while the deputy chairperson is absent on approved leave.

## **19 Chief executive's power to obtain criminal history**

- (1) To help decide whether a person is a suitable person to be appointed as a member, deputy member or temporary member, the chief executive may, with the person's written consent, ask the police commissioner for—
  - (a) a written report about the person's criminal history (if any); and
  - (b) a brief description of the circumstances of a conviction mentioned in the report.

*Note—*

Under section 11(2), a person can not become a member, deputy member or temporary member if consent for this section is not given.

- (2) If the chief executive makes a request under subsection (1), the police commissioner must comply with the request.
- (3) The duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.
- (4) The chief executive must retrieve and destroy any information received under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

## **20 Changes in criminal history must be disclosed**

- (1) If there is a change in the criminal history of a person who is a member, deputy member or temporary member, the person must immediately give written notice of the change to the chief executive, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) The notice must include the following information—
  - (a) the existence of the conviction;
  - (b) when the offence was committed;
  - (c) details adequate to identify the offence;
  - (d) the sentence imposed, if any, on the person.
- (3) If the person does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires one.
- (4) The chief executive must retrieve and destroy any information received under this section as soon as practicable after it is no longer needed for the purpose for which it was requested.

## **21 Criminal history is confidential**

- (1) A person must not, directly or indirectly, disclose any information received under section 19 or 20 to anyone else unless the disclosure is permitted under subsection (2).

Maximum penalty—100 penalty units.

- (2) The person may make the disclosure to someone else—
  - (a) to the extent necessary to perform the person's functions under this Act; or

- (b) for the purpose of the other person performing a function under this Act; or
- (c) if the disclosure is authorised under an Act; or
- (d) if the disclosure is otherwise required or permitted by law; or
- (e) if the person to whom the information relates consents to the disclosure.

### **Division 3      Business of the council**

#### **22 References to members**

In this division, a reference to a member includes a reference to a deputy member or temporary member acting for a member while the member is absent.

#### **23 Conduct of business**

Subject to this division, the council may conduct its business, including its meetings, in the way it considers appropriate.

#### **24 Times and places of meetings**

- (1) The chairperson decides the times and places for meetings of the council.
- (2) However, the chairperson must call a meeting if—
  - (a) the Minister or at least 4 members ask the chairperson in writing to call a meeting; or
  - (b) the assistant commissioner gives the chairperson written notice about an internal review application.

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- (3) If the chairperson receives a notice mentioned in subsection (2)(b), the meeting must be held at least 5 but no more than 14 business days after the chairperson receives the notice.
- (4) Notice of when and where a meeting of the council must be held, and of the business for the meeting, must be given by the assistant commissioner to each member at least 5 business days before the day for the meeting.
- (5) In this section—  
*internal review application* means an application to be decided by the council as an internal reviewer under the QBCC Act, section 86C.

## **25 Quorum**

A quorum for a meeting of the council is 4 members.

## **26 Presiding at meetings**

- (1) The chairperson must preside at all meetings of the council at which the chairperson is present.
- (2) If the chairperson is absent from a meeting, but the deputy chairperson is present, the deputy chairperson must preside.
- (3) If the chairperson and deputy chairperson are both absent from a meeting or the offices are vacant, a member chosen by the members present must preside.

## **27 Conduct of meetings**

- (1) A question at a meeting of the council is decided by a majority of the votes of members present at the meeting.

- 
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
  - (3) A member who is present at a meeting who abstains from voting is taken to have voted for the negative.
  - (4) A meeting may be held by using any technology that reasonably allows members to hear and take part in discussions as they happen.

*Example of use of technology—*

teleconferencing

- (5) A member who takes part in a meeting under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the council, even if it is not passed at a meeting, if—
  - (a) notice of the resolution is given under procedures approved by the council; and
  - (b) a majority of the members gives written agreement to the resolution.

## **28 Minutes**

- (1) The council must keep—
  - (a) minutes of its meetings; and
  - (b) a record of its resolutions made under section 27(6).
- (2) Subsection (3) applies if a resolution is passed at a meeting.
- (3) If asked by a member who voted against the passing of the resolution, the council must record in the minutes of the meeting that the member voted against the resolution.

## **29 Establishing panels**

- (1) The council must establish a panel of the council to assist the QBCC commissioner to effectively and efficiently perform the commissioner's functions under part 3, divisions 1 to 6.
- (2) Without limiting subsection (1), the functions of a panel established under that subsection include—
  - (a) advising and making recommendations to the QBCC commissioner about any matter about the performance of the commissioner's functions under part 3, divisions 1 to 6 that the commissioner refers to the panel; and
  - (b) performing functions and exercising powers that the council delegates to the panel.
- (3) The council may establish other panels to assist the council to effectively and efficiently perform its functions.
- (4) Without limiting subsection (3), the functions of a panel established under that subsection include—
  - (a) advising and making recommendations to the council about any matter about the performance of the functions of the panel that the council refers to the panel; and
  - (b) performing functions and exercising powers that the council delegates to the panel.

## **30 Panel members and other matters about panels**

- (1) The council may appoint any person, including a person who is not a member, to a panel established under section 29.



- (2) A panel member is to be paid the fees and allowances decided by the Governor in Council.
- (3) The council must decide the terms of reference of a panel.
- (4) The council may decide matters about a panel that are not provided for under this Act, including, for example, the way a panel must conduct meetings.
- (5) A panel must keep a record of the decisions it makes when performing a function or exercising a power delegated to it by the council.

### **31 Disclosure of interests**

- (1) This section applies to a member or panel member (the *interested person*) if—
  - (a) the interested person has an interest in an issue being considered, or about to be considered, by the council or a panel; and
  - (b) the interest conflicts or may conflict with the proper performance of the interested person's duties about the consideration of the issue.
- (2) After the relevant facts come to the interested person's knowledge, the interested person must disclose the nature of the interest to a meeting of the council or panel.
- (3) The interested person must not be present when the council or panel considers the issue, unless the council or panel otherwise directs.
- (4) The interested person must not take part in a decision of the council or panel about the issue, unless the council or panel otherwise directs.

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- (5) The interested person must not be present when the council or panel is considering whether to give a direction under subsection (3) or (4).
- (6) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
  - (a) be present when the council or panel is considering whether to give a direction under subsection (3) or (4); or
  - (b) take part in making the decision about giving the direction.
- (7) Subsection (8) applies if—
  - (a) because of this section, the interested person is not present at a council or panel meeting for considering or deciding an issue or deciding whether to give a direction under subsection (3) or (4); and
  - (b) there would be a quorum if the interested person were present.
- (8) The remaining members or panel members present are a quorum of the council or panel for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.
- (9) A person who represents an entity under section 8(3)(b) is not an interested person at a meeting of the council or panel only because the meeting is about another person who is a member of, or associated with, the entity.
- (10) The disclosure under subsection (2) must be recorded in the council's minutes or panel's record of decisions.

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## **Division 4            Role of QBCC                                  commissioner**

### **32 Plumbing and drainage functions performed by the QBCC commissioner**

The functions of the QBCC commissioner for the trade include the following—

- (a) administering the licensing system under part 3;
- (b) monitoring the operation of the licensing system and, if necessary, recommending changes;
- (c) promoting acceptable standards of competence for the trade;
- (d) receiving and investigating complaints about work for which a licence is required;
- (e) approving audit programs and auditing licensees to monitor and enforce compliance with part 4;
- (f) performing any other functions given to the QBCC commissioner under this Act.

*Note—*

For powers of the QBCC commissioner, see the QBCC Act, section 20J(3).

## **Division 5            The assistant                                  commissioner**

### **32A Appointment of assistant commissioner**

- (1) The QBCC commissioner must appoint an assistant commissioner.

[s 7]

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- (2) The assistant commissioner must be employed under the QBCC Act, section 29F.

### **32B Role, functions and powers of the assistant commissioner**

- (1) The assistant commissioner is responsible for the following—
  - (a) helping the council perform its functions;
  - (b) performing a function given to the assistant commissioner under an Act.
- (2) The assistant commissioner has all the powers necessary for carrying out the assistant commissioner's responsibilities and performing any function the assistant commissioner is authorised by this Act to carry out.

### **32C Reports to the council**

- (1) The chairperson or 4 members of the council may ask the assistant commissioner to give a report to the council about any of the following—
  - (a) licensing functions, including details about licences issued by the QBCC commissioner;
  - (b) disciplinary functions, including any details of the disciplinary action carried out by the QBCC commissioner;
  - (c) offences under this Act for which the QBCC commissioner or an investigator has served an infringement notice under the *State Penalties Enforcement Act 1999*;
  - (d) other functions performed by the QBCC commissioner under this Act.
- (2) The assistant commissioner must give the report to the chairperson within a reasonable period.

(3) In this section—

*member* includes a deputy member or temporary member acting for a member while the member is absent.

### **32D Representation of council at QCAT proceedings**

(1) This section applies to a proceeding (the *QCAT proceeding*) before QCAT in relation to an external review application for an internal review decision of the council.

(2) The assistant commissioner may act on behalf of the council in the QCAT proceeding.

(3) In this section—

*internal review decision*, of the council, means a decision made by the council as an internal reviewer under the QBCC Act, section 86C.

*external review application* means an application under the QBCC Act, section 87.

## **8 Insertion of new s 33Y**

Part 2, division 7, as renumbered—

*insert*—

### **33Y Authentication of documents**

A document made by the council is sufficiently made if it is signed by the assistant commissioner.

## **9 Amendment of s 128RA (False or misleading statements)**

Section 128RA, ‘or the QBCC commissioner’—

*omit, insert*—

, the QBCC commissioner or the council

[s 10]

---

**10 Amendment of s 128S (False or misleading documents)**

Section 128S, ‘or the QBCC commissioner’—

*omit, insert—*

, the QBCC commissioner or the council

**11 Insertion of new s 144A**

After section 144—

*insert—*

**144A Delegation**

(1) The council may delegate its functions under an Act, other than the following, to a relevant officer of QBCC or a panel member—

(a) its function of making an internal review decision for a decision of the QBCC commissioner under section 68;

(b) this power of delegation.

(2) The assistant commissioner may delegate the assistant commissioner’s functions under this Act, other than this power of delegation, to a relevant officer of QBCC.

(3) In this section—

*functions* includes powers.

*internal review decision* see the QBCC Act, section 86C(1).

**12 Amendment of schedule (Dictionary)**

(1) Schedule, definitions *appropriately qualified* and *QBC board*—

*omit.*

(2) Schedule—

*insert—*

**assistant commissioner** means the person appointed as the assistant commissioner under section 32A(1).

**chairperson** means the chairperson of the council appointed under section 14(1).

**council** means the Service Trades Council established under section 5.

**criminal history**, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

**deputy chairperson** means the deputy chairperson of the council appointed under section 15(1).

**deputy member** means a deputy member appointed under section 9(1).

**member** means a member of the council appointed under section 8(1).

**panel** means a panel established under section 29.

**panel member** means a person appointed to a panel under section 30(1).

**police commissioner** means the commissioner of the Queensland Police Service.

**relevant officer**, of QBCC, see the QBCC Act, schedule 2.

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.





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*insert—*

- (c) the Service Trades Council.

*Note—*

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

## 15 Amendment of s 11 (Functions)

Section 11—

*insert—*

- (da) providing guidance and leadership to the Service Trades Council, other than in relation to its function of conferring on national policy development and implementation for the trade under the *Plumbing and Drainage Act 2002*;

## 16 Amendment of s 85A (Definitions for sdiv 1)

Section 85A—

*insert—*

*internal reviewer*, for an internal review application, means—

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

## 17 Amendment of s 86A (Who may apply for internal review)

Section 86A(1), ‘the commission’—

*omit, insert—*

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the internal reviewer

**18 Amendment of s 86B (Requirements for making application)**

Section 86B(a)(ii), ‘the commission’—

*omit, insert—*

the internal reviewer

**19 Amendment of s 86C (Internal review decision)**

(1) Section 86C(1) and (3), ‘the commission’—

*omit, insert—*

the internal reviewer

(2) Section 86C(4), ‘The application’—

*omit, insert—*

If the internal reviewer is the commission, the application

**20 Amendment of s 86D (Notice of internal review decision)**

Section 86D(1), ‘the commission’—

*omit, insert—*

the internal reviewer

**21 Amendment of s 114 (Protection)**

(1) Section 114—

*insert—*

(1A) A relevant entity does not incur any civil liability for an honest act or omission in the performance or purported performance of functions under the *Plumbing and Drainage Act 2002*.

(2) Section 114(2), ‘(1),’—

*omit, insert—*

(1) or (1A),

(3) Section 114(5)—

*insert—*

**relevant entity** means any of the following entities—

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

## **22 Insertion of new sch 1, pt 12**

Schedule 1—

*insert—*

### **Part 12 Transitional provision for the Plumbing and Drainage and Other Legislation Amendment Act 2016**

#### **69 Internal review applications of relevant decisions**

- (1) This section applies if, before the commencement—
  - (a) an internal review application for a relevant decision under the unamended Act had been made but not decided or otherwise finally dealt with; or

[s 23]

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- (b) the period under the unamended Act in which a person was entitled to apply to have a relevant decision reviewed had started but not ended.
- (2) An internal review may be completed, or started and completed, as if the unamended Act continued to apply.
- (3) Part 7, division 3, subdivision 2 applies to a person affected by a decision made under subsection (2) as if the decision under subsection (2) were a reviewable decision under section 87.
- (4) In this section—

*internal review* means a proceeding for review under part 7, division 3, subdivision 1.

*relevant decision* means a decision under the *Plumbing and Drainage Act 2002*, section 68.

*unamended Act* means this Act as in force immediately before the commencement.

## 23 Amendment of sch 2 (Dictionary)

Schedule 2—

*insert—*

*internal reviewer*, for part 7, division 3, subdivision 1, see section 85A.

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

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## Part 4A                      Amendment of Queensland Building and Construction Commission and Other Legislation Amendment Act 2014

### 23A    Act amended

This part amends the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014*.

### 23B    Amendment of s 36 (Replacement of pt 5 (The statutory insurance scheme))

- (1) Section 36, inserted section 67WA, definition *consumer*—  
*insert*—

*Note*—

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

- (2) Section 36, inserted section 68H(1)(c)—  
*renumber* as inserted section 68H(1)(d).
- (3) Section 36, inserted section 68H(1)—  
*insert*—

(c) a person (the *defrauded person*) enters into a contract for the carrying out of residential construction work with a person (the *fraudulent person*) fraudulently claiming to hold a licence under which the fraudulent person may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or

- (4) Section 36, inserted section 68H—  
*insert*—

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- (5) For subsection (1)(c), this part applies as if—
- (a) a reference to a consumer were a reference to a defrauded person; and
  - (b) a reference to a licensed contractor were a reference to a fraudulent person.

*Editor's note—*

Legislation ultimately amended—

- *Queensland Building and Construction Commission Act 1991*

## **Part 5**

# **Amendment of Residential Tenancies and Rooming Accommodation Act 2008**

### **24 Act amended**

This part amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

### **25 Amendment of s 180 (Tenancy guarantees)**

- (1) Section 180(1), 'by the department'—  
*omit.*
- (2) Section 180—  
*insert—*
- (3) The department or a community housing guarantor may give a tenancy guarantee for a residential tenancy agreement between a lessor and a tenant.
  - (4) In this section—

***community housing guarantor***, for the giving of a tenancy guarantee for a residential tenancy agreement, means a community housing provider for the residential tenancy under the agreement who has been approved by the chief executive of the department to give the tenancy guarantee.

***department*** means the department in which the *Housing Act 2003* is administered.

## **25A Amendment of s 245 (Injury to domestic associate)**

Section 245(6), examples—

*insert—*

- 3 an order that any other person must not list the person's personal information in a tenancy database under section 459

## **26 Amendment of s 457 (Definitions for ch 9)**

- (1) Section 457, definitions *list*, *personal information* and *tenancy database*—

*omit.*

- (2) Section 457—

*insert—*

***database operator*** means an entity that operates a tenancy database.

***inaccurate***, in relation to personal information listed in a tenancy database, includes that the information is inaccurate because of the following—

- (a) the information indicates the individual owes an amount;
- (b) the amount was paid more than 3 months after it became payable.

***list***, in relation to personal information—

[s 26]

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- (a) means—
  - (i) enter the personal information into a tenancy database; or
  - (ii) give the personal information to a database operator or someone else for entry into a tenancy database; and
- (b) for personal information already stored in a tenancy database—includes amend the personal information to include additional personal information whether by entering it in the database or giving it to the database operator or someone else for entry.

***out of date***, in relation to personal information listed in a tenancy database, means that the information is out of date because—

- (a) the information indicates an individual owes a lessor an amount, but the amount was paid within 3 months after it became payable; or
- (b) the information is listed on the basis that the tribunal has made a termination order but the proceeding for the termination order was reopened or appealed under the QCAT Act, and the termination order was set aside.

***personal information*** means information (including an individual's name) or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

***tenancy database*** means a database containing information that—

- (a) is personal information relating to, or arising from, the occupation of residential premises under a residential tenancy agreement; or



- (b) is used for a purpose relating to a past, current or future occupation of residential premises under a residential tenancy agreement.

## **27 Insertion of new ss 457A and 457B**

After section 457—

*insert—*

### **457A References to lessors and tenants in ch 9**

Without limiting sections 8, 13 and 20, in this chapter, a reference to a lessor, lessor's agent or tenant includes a reference to the lessor, lessor's agent or tenant under a residential tenancy agreement that has ended.

### **457B Extra-territorial application of particular provisions of ch 9**

- (1) This section applies if—
  - (a) a person does an act, or makes an omission, outside the State in relation to—
    - (i) the personal information of another person who resides in the State; or
    - (ii) premises located within the State; and
  - (b) the act or omission would constitute an offence against a provision of this chapter if it were done or made by the person within the State.
- (2) The person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the act or omission had happened in the State.
- (3) This section does not limit the Criminal Code, sections 12 to 14.

[s 28]

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## **28 Insertion of new ss 458A and 458B**

After section 458—

*insert—*

### **458A Notice of usual use of database**

- (1) This section applies if—
  - (a) a person (the *applicant*) applies to a lessor, whether or not through the lessor’s agent, to enter into a residential tenancy agreement; and
  - (b) the lessor or lessor’s agent usually uses 1 or more tenancy databases for deciding whether a residential tenancy agreement should be entered into with a person.

*Example for subsection (1)(b)—*

A lessor or agent under an agreement with a database operator accesses the database operator’s tenancy database to check a prospective tenant’s tenancy history.

- (2) The lessor or agent must, when the application is made, give the applicant written notice of the following—
  - (a) the name of all the tenancy databases the lessor or agent usually uses;
  - (b) that the reason the lessor or agent uses the relevant databases is for checking a person’s tenancy history;
  - (c) for each relevant database, how a person may contact the database operator and obtain information from the operator.

Maximum penalty—20 penalty units.

- (3) Subsection (2) applies to a tenancy database whether or not the lessor or agent intends to use the database for deciding whether a residential

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tenancy agreement should be entered into with the applicant.

- (4) The lessor or agent is not required to give a notice under subsection (2) if—
  - (a) an earlier notice was given to the applicant under the subsection not more than 7 days before the application was made; and
  - (b) the details contained in the notice, if it were given, would be the same as the details contained in the earlier notice.
- (5) A notice under subsection (2) may be combined with another document that the lessor or agent gives the tenant.

*Example for subsection (5)—*

A notice may be combined with a written tenancy application form.

#### **458B Notice of listing if database used**

- (1) This section applies if—
  - (a) a person (the *applicant*) applies to a lessor, whether or not through the lessor's agent, to enter into a residential tenancy agreement; and
  - (b) the lessor or the lessor's agent uses a tenancy database for checking whether personal information about the applicant is in the database; and
  - (c) personal information about the applicant is in the database.
- (2) The lessor or agent must, within 7 days after using the tenancy database, give the applicant written notice of the following—
  - (a) the name of the database;

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- (b) that personal information about the applicant is in the database;
- (c) details of the listing entity for the personal information;
- (d) how and in what circumstances—
  - (i) the applicant can have the personal information removed or amended under this chapter; and
  - (ii) the applicant can obtain a copy of the personal information.

Maximum penalty—20 penalty units.

*Note—*

Section 459C provides for when a lessor, lessor's agent or database operator must provide the applicant's listed personal information to the applicant.

- (3) However, the requirement to state details of the listing entity applies only if the listing entity's details are contained in the tenancy database.
- (4) In this section—

*listing entity*, for personal information, means the lessor or agent who listed the personal information in a tenancy database.

## **29 Amendment of s 459 (Restriction on listing)**

- (1) Section 459(1), from 'A person' to 'unless'—  
*omit, insert—*

A person must not list personal information about another person in a tenancy database unless

- (2) Section 459(1)(c) to (e)—  
*omit, insert—*

- (c) there is a reason prescribed under a regulation for listing the information; and

---

(d) the tribunal has not made an order under section 245(6) prohibiting the listing of the information.

(3) Section 459(2) and (3)—

*omit, insert—*

(2) Without limiting subsection (1), the person must not list personal information about the other person on a tenancy database unless—

(a) the person has without charging a fee, given the other person a copy of the personal information or taken other reasonable steps to disclose the personal information to the person; and

(b) the person has given the other person at least 14 days to review the personal information and make submissions objecting to its entry into the database or about its accuracy, completeness or clarity; and

(c) the person has considered any submissions made.

Maximum penalty—20 penalty units.

(3) The person does not commit an offence under subsection (2) if the person cannot locate the other person after making reasonable enquiries.

(4) The person is not required to give an opportunity to review or consider submissions made under subsection (2) if—

(a) the personal information, at the time of the listing, is contained in publicly available court or tribunal records; or

(b) the listing involves only an amendment of the personal information under section 461.

(5) A person must not list personal information about another person if the person is aware that the

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personal information is inaccurate, incomplete, ambiguous or out of date.

Maximum penalty—20 penalty units.

### **30 Insertion of new ss 459A–459D**

After section 459—

*insert—*

#### **459A Ensuring quality of listing—lessors and lessors agents**

- (1) This section applies if—
  - (a) a lessor or lessor’s agent lists personal information about a person; and
  - (b) the lessor or agent becomes aware that the personal information is inaccurate, incomplete, ambiguous or out of date.
- (2) The lessor or agent must, within the relevant notice period, give the database operator written notice—
  - (a) for information that is inaccurate, incomplete or ambiguous—
    - (i) that the information is inaccurate, incomplete or ambiguous; and
    - (ii) of how the information must be amended so that it is no longer inaccurate, incomplete or ambiguous; and
  - (b) for information that is out of date—that the information is out of date and must be removed; and
  - (c) in either case—that the database operator must comply with section 459B.

Maximum penalty—20 penalty units.

- 
- (3) However, in either of the following circumstances, the lessor or agent is not required to give the notice—
- (a) the personal information is inaccurate, incomplete or ambiguous but not out of date, and the lessor or agent amends the information in the tenancy database within the relevant notice period so that it is no longer inaccurate, incomplete or ambiguous;
  - (b) the personal information is out of date, and the lessor or agent removes the information from the tenancy database within the relevant notice period.
- (4) If the lessor or agent gives a notice under this section, the lessor or agent must keep a copy of the notice for 1 year after it is given to the database operator.

Maximum penalty—20 penalty units.

- (5) In this section—
- relevant notice period* means 7 days from the day the lessor or agent becomes aware that the person's personal information is inaccurate, incomplete, ambiguous or out of date.

#### **459B Ensuring quality of listing—database operators**

- (1) This section applies if a lessor or lessor's agent gives a database operator notice under section 459A for personal information in the database operator's tenancy database.
- (2) If the notice states that the information is inaccurate, incomplete or ambiguous but not out of date, the database operator must, within 14 days from the day the notice is given, amend the information in the way stated in the notice.

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Maximum penalty—40 penalty units.

- (3) If the notice states that the information is out of date, the database operator must, within 14 days from the day the notice is given, remove the information from the tenancy database.

Maximum penalty—40 penalty units.

#### **459C Providing copy of personal information listed**

- (1) A lessor or lessor's agent who lists personal information about a person must, if asked in writing by the person, give the person a copy of the personal information listed within 14 days after the request is made and any fee for giving the information has been paid.

Maximum penalty—20 penalty units.

- (2) A database operator must, if asked in writing by a person whose personal information is in the database operator's tenancy database, give the person a copy of the information within 14 days after the request is made and any fee for giving the information has been paid.

Maximum penalty—20 penalty units.

- (3) If a fee is charged by a lessor or lessor's agent for giving personal information under subsection (1), or by a database operator for giving personal information under subsection (2), the fee—

- (a) must not be excessive; and
- (b) must not apply to lodging a request for accessing the information.

#### **459D Keeping personal information listed**

A database operator must not keep personal information about a person in the tenancy database for longer than 3 years.



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Maximum penalty—40 penalty units.

*Note—*

Under section 459B(3) a database operator must remove out of date information from a tenancy database within 14 days.

**31 Amendment of s 460 (Application to tribunal about breach)**

Section 460(1), from ‘459,’ to ‘listing of’—

*omit, insert—*

459(1), relating to the listing of personal information about

**32 Amendment of s 461 (Application to tribunal about incorrect or unjust listing)**

(1) Section 461, heading, ‘incorrect or unjust listing’—

*omit, insert—*

**personal information listed**

(2) Section 461(1), ‘who’—

*omit, insert—*

whose personal information

(3) Section 461(2), ‘tenant’s name or other’—

*omit.*

(4) Section 461(3)(a), ‘incorrect or misleading’—

*omit, insert—*

inaccurate, incomplete, ambiguous or out of date

(5) Section 461(3)(a), example, ‘X is’—

*omit, insert—*

Personal information about X is

(6) Section 461(3)(b), ‘tenant’s name or other’—

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*omit.*

- (7) Section 461(3)(b), example 1, from ‘Y is’ to ‘Y’s spouse’—

*omit, insert—*

Personal information about Y is listed on a tenancy database for a reason relating to damage caused to premises by a domestic associate of Y

- (8) Section 461(3)(b), example 2, ‘Z is’—

*omit, insert—*

Personal information about Z is

- (9) Section 461(4)(b), after ‘lists’—

*insert—*

personal information about

### **33 Amendment of s 462 (Application to tribunal about proposed listing)**

Section 462(1), after ‘listing of’—

*insert—*

personal information about

### **34 Insertion of new ch 14, pt 4**

Chapter 14—

*insert—*

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## **Part 4**

# **Transitional provisions for Plumbing and Drainage and Other Legislation Amendment Act 2016**

### **558 Definitions for pt 4**

In this part—

*existing database* means a tenancy database under former chapter 9.

*existing listing* means personal information in an existing database immediately before the commencement.

*former*, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the *Plumbing and Drainage and Other Legislation Amendment Act 2016*.

*new*, in relation to a provision, means the provision as in force after the insertion or amendment of the provision under the *Plumbing and Drainage and Other Legislation Amendment Act 2016*.

### **559 Meaning of particular terms**

If the context permits, a term used in this part and defined in new section 457 has the same meaning in this part as it has under that section.

### **560 Use of tenancy databases before commencement**

New section 458B does not apply to a lessor or lessor's agent in relation to an application to enter into

[s 34]

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a residential tenancy agreement if the application was made before the commencement.

### **561 Listings proposed to be made before commencement**

- (1) This section applies if—
  - (a) before the commencement, a person (the *listing person*) proposing to list personal information about a tenant in an existing database gave, under former section 459, the tenant written notice about the personal information; and
  - (b) at the commencement, the listing person had not listed the personal information about the tenant in the tenancy database (with or without variation).
- (2) New section 459 applies to the proposed listing as if the notice given to the tenant was personal information given under new section 459(2)(a).

### **562 Ensuring quality of existing listings**

New sections 459A and 459B apply to an existing listing as well as to personal information included in a tenancy database after the commencement.

### **563 Providing copy of personal information for existing listings**

New section 459C applies to an existing listing as well as to personal information included in a tenancy database after the commencement.

### **564 Keeping existing listings in tenancy databases**

- (1) New section 459D applies to an existing listing as well as to personal information

included in a tenancy database after the commencement, subject to subsection (2).

- (2) Section 459D applies to an old listing as if the reference to keeping the information for longer than 3 years were a reference to keeping the information after the day that is 6 months after the commencement.
- (3) In this section—

*old listing* means an existing listing that, at the commencement, had been kept in a tenancy database for at least 2 years and 6 months.

### **565 Applications to tribunal about breach**

- (1) This section applies to an existing listing, or a listing to which section 561 applies, about a tenant if the tenant claims that, before the commencement, there had been a breach of former section 459.
- (2) New chapter 9 applies for the purpose of an application to the tribunal about the breach.

### **566 Applications to tribunal about personal information listed**

To avoid any doubt, it is declared that new chapter 9 applies for the purpose of an application to the tribunal about personal information included in—

- (a) an existing listing; or
- (b) a listing to which section 561 applies.

### **567 Applications to tribunal about proposed listings**

- (1) This section applies if—

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- (a) a tenant became aware of a proposed listing by a lessor or lessor's agent of personal information about the tenant on an existing database before the commencement; and
  - (b) at the commencement, the tenant had not made an application under former section 462.
- (2) New chapter 9 applies for the purpose of an application to the tribunal about the proposed listing.

### **568 Existing applications to tribunal**

- (1) This section applies to an application to the tribunal under former section 460, 461 or 462 if—
- (a) the application was started before the commencement; and
  - (b) at the commencement, the application had not been finally dealt with.
- (2) The tribunal must hear, or continue to hear, and decide the application under former chapter 9 as if the *Plumbing and Drainage and Other Legislation Amendment Act 2016* had not been enacted.

## **35 Amendment of sch 2 (Dictionary)**

- (1) Schedule 2, definition *list*—  
*omit.*
- (2) Schedule 2—  
*insert—*

*database operator*, for chapter 9, see section 457.

*existing database*, for chapter 14, part 4, see section 558.

*existing listing*, for chapter 14, part 4, see section 558.

*former*, for chapter 14, part 4, see section 558.

*inaccurate*, for chapter 9, see section 457.

*list*, for chapter 9, see section 457.

*new*, for chapter 14, part 4, see section 558.

*out of date*, for chapter 9, see section 457.

- (3) Schedule 2, definition *lessor*—

*omit, insert*—

*lessor* see—

- (a) generally—sections 8 and 20; and
- (b) for chapter 9—section 457A.

- (4) Schedule 2, definition *tenant*—

*omit, insert*—

*tenant* see—

- (a) generally—sections 13 and 20; and
- (b) for chapter 9—section 457A.

## Part 6                      Minor and consequential amendments

### 36      Acts amended

Schedule 1 amends the Acts it mentions.

## **Schedule 1      Minor and consequential amendments**

section 36

### **Plumbing and Drainage Act 2002**

**1      Section 135(a) and (b), after ‘commissioner’—**

*insert—*

, a member, the assistant commissioner

**2      Section 136, after ‘commissioner’—**

*insert—*

, a member, the assistant commissioner

**3      Section 137, ‘or QBCC commissioner’—**

*omit, insert—*

, QBCC commissioner, chairperson or assistant commissioner

### **Queensland Building and Construction Commission Act 1991**

**1      Section 17(2), ‘as chairperson.’—**

*omit, insert—*

as deputy chairperson.



**2 Section 17—**

*insert—*

- (5) A person may be appointed as the deputy chairperson when the person is appointed as a member.

## **Sustainable Planning Act 2009**

**1 Section 719—**

*insert—*

*Note—*

The *Housing Act 2003*, sections 94G and 94H also apply to development for public housing.

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