PLUMBING AND DRAINAGE BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The Bill provides for:

(a) the introduction of a new *Plumbing and Drainage Bill 2002* which establishes the legislative framework for plumbing and drainage and on-site sewerage facilities in Queensland and repeals the *Sewerage and Water Supply Act 1949* (SWSA). It also implements the outcomes of the National Competition Policy (NCP) Review of the SWSA;

(b) amendments to the *Building Act 1975* (BA) and the *Integrated Planning Act 1997* (IPA) to improve the performance of the private building certification system and implement the outcomes of the NCP Review of the BA;

(c) amendments to the *Local Government Act 1993* (LGA) relating to:

- the transfer of controls over stormwater drainage from the SWSA to the LGA; and
- a competitive neutrality complaints process for selected local governments to apply to building approval services.

The Bill also provides for a number of minor and consequential amendments to the BA, IPA, LGA and the *Water Act 2000* (WA).

Reasons for the Bill

First, the Bill provides for the replacement of the SWSA with an up to date legislative framework for the plumbing and drainage industry and for the management of on-site sewerage facilities. The Bill retains much of the subject matter previously dealt with under the SWSA and its subordinate legislation and pursues the same objectives of protecting the environment, public health and safety.

Many of the provisions previously in the SWSA dealing with the infrastructure of service providers have been removed to the WA. What remained in the SWSA provided for a licensing regime for plumbers and drainers; an approval process for plumbing and drainage works; an approval process for on-site sewerage facilities; and enabled the making of subordinate legislation to contain technical requirements for plumbing and drainage work and on-site sewerage facilities. These provisions remain necessary but required updating.

However, the title of the SWSA no longer reflected its contents, and the name of the replacement legislation (ie, the *Plumbing and Drainage Bill 2002*) is more appropriate. The Bill reflects modern drafting practices and imposes modern accountability requirements on government agencies and representatives operating under the Bill.

The Bill provides for the new Plumbers and Drainers Board to manage the licensing of industry practitioners, interim approval processes for plumbing and drainage works that will eventually be incorporated into the Integrated Development Assessment System (IDAS) under the IPA, a framework for approval and management of on-site sewerage facilities, enforcement and appeal processes, transfers controls over stormwater to the LGA, and enables regulations to be made to contain the technical standards for plumbing and drainage.

The Bill also provides for improvements to the system of private certification of building work to ensure it operates to the highest possible standard and that the community interests are adequately protected.

The IPA and BA introduced private certification of building work in 1998, allowing applicants the choice of obtaining building approvals and inspections from either the local government or accredited private certifiers.

There are a number of problems with the system of private certification system that need to be resolved.

Key changes include:

- improving compliance with planning schemes by ensuring private certifiers have the necessary regulatory skills;
- improving the efficiency and effectiveness of the disciplinary system by having the Queensland Building Tribunal (QBT) hear complaints of professional misconduct, and allowing local governments to lodge complaints directly with the QBT rather than through the Building Services Authority (BSA);

- addressing concerns about the potential conflict of interest between certifiers and builders by ensuring owners are aware of who is doing the certification work for their building;
- ensuring consumers are protected from faulty work by providing the BSA and QBT with increased powers to make orders requiring a certifier to bring work into compliance with the legislation; and
- improving the safety of young children by introducing more stringent requirements for inspecting swimming pool fencing.

The Bill also addresses potential restrictions on competition in the building certification industry which are not in the public interest. The role of local government potentially gives rise to conflicts of interest and consequent breaches of competitive neutrality. Local governments undertake regulatory functions on which private certifiers rely, while also providing building certification services in competition with private certifiers. The Bill addresses this by providing for independent investigations of allegations that local government business certification activities are breaching competitive neutrality principles and competing unfairly with private sector certifiers.

Ways in which the objectives are to be achieved

The objectives of the Bill are to be achieved by:

- replacing the SWSA and providing an up to date legislative framework for plumbing and drainage and the management of on-site sewerage facilities in Queensland, while providing the first steps to integrate plumbing and drainage approvals into IPA's IDAS; and
- amending the BA with complementary amendments to the IPA to ensure the system of private certification of building work operates to the highest possible standard and that community interests are adequately protected;
- amending the BA and the LGA to provide a competitive neutrality complaint process to be applied to selected local governments whose business activities are in competition with private certification building services;
- transferring controls over stormwater drainage from the SWSA to the LGA, with complementary amendments to the WA; and

- providing for minor and inconsequential amendments to the BA, IPA, LGA and WA.

Why this way of achieving the objectives is reasonable and appropriate

Legislation is considered to be the best alternative to achieve the objectives of the Bill.

Alternatives to the Bill

There are no alternatives considered appropriate for achieving these policy objectives. A legislative framework is required for the operation of the plumbing and drainage industry and for on-site sewerage facilities and to ensure that the environment, public health and safety are protected. The amendments to the BA have been made necessary by problems reported in the private certification industry. It is anticipated that amendments to the BA will improve the standard of private certification and address community concerns.

Administrative cost to government of implementing the Bill

There are some costs to government of implementing the Bill, namely:

- increased disciplinary action by the new Plumbers and Drainers Board;
- providing for appeals against local government decisions to the Building and Development Tribunal on applications for compliance assessment of plumbing and drainage works; and
- expanding the Queensland Competition Authority's jurisdiction to allow it to hear complaints from private certifiers that local government building certification business activities are breaching competitive neutrality.

Consistency with fundamental legislative principles

Provisions relating to plumbing and drainage, on-site sewerage facilities and the amendments to the LGA and WA do not infringe fundamental legislative principles.

In respect of provisions relating to private building certifiers, a number of issues have been considered in balancing the need for a workable

regime, improving standards in the industry, and protecting community interests. As a result it may be argued that some provisions of the Bill infringe fundamental legislative principles. The provisions, outlined below, are considered necessary to ensure the system of private certification of building work operates to the highest possible standard and that community interests are adequately protected.

- Clause 174 of the Bill provides that the BSA must keep a register of persons who are building certifiers. The register must contain details of a person's name and contact details, their eligibility to be licensed, any orders of the Tribunal in respect of disciplinary proceedings, and any other particulars relevant to a person's license, or prescribed under a regulation. The register must be open for inspection by members of the public. Under clause 189, the Tribunal has discretion as to what material relating to a disciplinary proceeding is to be recorded on the register, and for how long.

  The content and availability of the information on the register could be considered to have insufficient regard to the rights and liberties of a person who may be adversely affected by the publication of the information. However, these provisions are in the public interest as they allow the public to research a building certifier's disclosable professional history so that an informed decision can be made on an engagement of a building certifier. These provisions also serve as a disincentive for building certifiers to engage in conduct that may later be judged to be "unsatisfactory conduct" or "professional misconduct" and appear on the register.

- The Bill also provides for the situation where a corporation employed a building certifier or former building certifier to perform building certification work and the corporation did not take all reasonable steps to ensure the former building certifier did not engage in professional misconduct. The QBT is empowered to make an order imposing a penalty on the corporation. Because the onus is on the corporation to prove that it took all reasonable steps, it could be argued that this provision is too stringent.

  However, to ensure there is effective accountability at a corporate level, it is appropriate that a corporation be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation.

Consultation

The following State agencies were consulted during the preparation of the Bill:

- Department of Aboriginal and Torres Strait Islander Policy;
- Department of Emergency Services;
- Department of Employment and Training;
- Department of Families;
- Department of Housing;
- Department of Justice and Attorney-General;
- Department of Main Roads;
- Department of Natural Resources and Mines;
- Department of Premier and Cabinet;
- Department of Public Works;
- Department of State Development;
- Department of the Premier and Cabinet;
- Department of Tourism, Racing and Fair Trading;
- Department of Transport;
- Disability Services Queensland;
- Environment Protection Agency;
- Office of Parliamentary Counsel;
- Office of Rural Communities, Department of Primary Industries.
- Plumbers and Drainers Examination and Licensing Board, Department of Local Government and Planning;
- Queensland Building Services Authority;
- Queensland Competition Authority; and
- Queensland Treasury.

Other key stakeholder groups consulted include the following:

- Association of Hydraulic Consultants;
- Australian Institute of Building Surveyors;
- Australian Services Union;

- Brisbane City Council;
- Building Designers Association of Queensland;
- Communication, Electrical and Plumbing Union (Plumbing Division);
- Gold Coast City Council;
- Housing Industry Association;
- Independent Private Certifiers Association of Queensland;
- Institute of Plumbing Inspectors;
- Institution of Engineers;
- Local Government Association of Queensland;
- Queensland Master Builders Association;
- Queensland Master Plumbers Association; and
- Royal Australian Institute of Architects.

Explanation of purpose and intended operation of each clause

PART 1—PRELIMINARY

Short title

Clause 1 provides that the short title of the Act is *Plumbing and Drainage Act 2002*.

Commencement

Clause 2 provides that the provisions of the Act will commence on a date to be fixed by proclamation, apart from part 15 containing the consequential amendments to the *Water Act 2000,* which will commence on assent.

Definitions

Clause 3 provides that the Schedule to the Act contains a dictionary with definitions of terms used in the Act.

Act binds all persons

Clause 4 provides that the Act binds all persons, including the State (ie, it binds public sector entities unless otherwise excluded), as well as the Commonwealth and other States – to the extent that the legislative power of the State allows. Under the provisions of the *Acts Interpretation Act*, this includes the Territories as well as States. This differs from the repealed SWSA which did not define the extent to which the Crown was bound by that Act.

PART 2—PLUMBERS AND DRAINERS BOARD

Division 1—Establishment, functions and powers

Establishment of board

Clause 5 provides for the establishment of the new Plumbers and Drainers Board, which replaces the Plumbers and Drainers Examination and Licensing Board which had been created under the SWSA. The board does not represent the State when exercising its powers or performing the functions given to it by the Act.

Functions of board

Clause 6 provides for the functions of the Plumbers and Drainers Board. Its primary function is to administer, monitor, and if necessary to recommend changes to the system for licensing plumbers and drainers. Its other functions include promoting acceptable standards of competence in the industry, contributing to national plumbing industry training and licensing issues, and providing reports to the Minister (ie, the Minister can direct the board to investigate and report on a matter under section 28).

When performing its functions, the board must act independently, impartially and in the public interest.

Powers of board

Clause 7 provides the board with powers given to it under this or another Act and the power to do anything reasonably necessary to perform its functions.

Delegation by board

Clause 8 provides that the board may delegate its powers under the Act to either a member of the board, a group of members such as a committee, the chief executive of the Department of Local Government and Planning, or an officer of the Department with appropriate qualifications to perform the function being delegated.

With regard to its licensing functions, the board may only delegate its power to decide to issue a licence. It may not delegate its licensing powers that have a detrimental impact on an applicant or licensee, ie, to refuse to issue a licence, impose or change any conditions on a licence, suspend or cancel a licence or use other disciplinary powers.

Division 2—Membership

Membership of board

Clause 9 provides for the board to consists of 7 members appointed by the Governor in Council. The provision for 6 of these members remains unchanged from the SWSA, namely, the members representing a range of relevant State Government departments, local government, the plumbing industry and the plumbers union. However, to increase the ability of the board to give consideration to consumer protection, an additional member has been added to the board to represent consumer interests.

Appointment of deputy members

Clause 10 provides for the Governor in Council to appoint deputy members to attend board meetings when the appointed members are unavailable. Deputy members must represent the same entity or interest as the member for whom they are the deputy. When attending such a meeting, the deputy member has the same powers, protection and rights as a member other than for section 11.

Chairperson and deputy chairperson of board

Clause 11 provides for the Governor in Council to appoint a member of the board as a chairperson, and another member as a deputy chairperson. The member appointed as chairperson or deputy chairperson, holds that appointment only for the term of their appointment as a member, even if their appointment as chairperson or deputy chairperson is for a longer period.

The office of chairperson or deputy chairperson becomes vacant if the person holding the office resigns the office or ceases to be a member. Resignation must be by a signed notice given to the Minister. Resigning the office of chairperson or deputy chairperson does not prevent the person from continuing to be a member of the board.

The deputy chairperson must act as chairperson when the office of chairperson is vacant, when the chairperson is absent or otherwise unable to perform the functions of the office.

Term of appointment

Clause 12 provides that a member's term of appointment cannot be for more than four years.

Disqualification from membership

Clause 13 provides a person cannot be or continue to be a member of the Plumbers and Drainers Board if they are affected by a bankruptcy action (ie, is bankrupt, has compounded with creditors, or as a debtor has applied or taken advantage of any law about bankruptcy). Another disqualification is to have been convicted of an offence under the SWSA or this Act or convicted of an indictable offence. However, the operations of the *Criminal Law (Rehabilitation of Offenders) Act 1986* provides that convictions obtained or sentences completed more than 10 years ago are not taken into account.

Vacation of office

Clause 14 provides for the circumstances in which a member is taken to have vacated office. These include resigning their position by a notice to the Minister, disqualification under section 13 (ie, affected by bankruptcy, convicted of an indictable offence, convicted of an offence against the Act

or the SWSA, or without the board's permission, being absent for 3 consecutive meetings for which due notice was given.

When notice of resignation takes effect

Clause 15 provides that a notice of resignation given to the Minister under section 11 (4) (ie, resignation of the chairperson or deputy chairperson) or section 14(1) (resignation of a member) takes effect when the notice is given to the Minister, or at a later time stated in the notice.

Leave of absence for members

Clause 16 provides for arrangements for members to be given leave of absence from the board. The Minister may approve leave of absence for a member for more than 3 meetings. If a deputy member has not been appointed by the Governor in Council under section 10, the Minister may appoint a person to act in the member's place during their absence. Where a deputy member has been appointed by the Governor in Council but is unable to act in the absent member's place, the Minister may appoint a person to act as member while the deputy member cannot fill this role.

A replacement member must represent the same entity or interest as the member who is absent (eg, relevant State department, local government, plumbing industry, plumbing union or consumer interests).

Where the chairperson is absent, the deputy chairperson will automatically act in the role of chairperson under section 22. However, where the deputy chairperson is absent on approved leave, the Minister may appoint another member in that position.

Remuneration of members

Clause 17 provides for board members to be paid fees and allowances approved by the Governor in Council.

Report about person's criminal history

Clause 18 provides for the chief executive of the Department of Local Government and Planning to request the commissioner of the police service to provide a written report on the criminal history of a person under consideration for appointment to the board. However, the operations of the *Criminal Law (Rehabilitation of Offenders) Act 1986* provides that

convictions obtained or sentences completed more than 10 years ago are not taken into account. This request must have the written consent of the person concerned. The commissioner must respond and provide information in his/her possession or to which he/she has access. Such a report must be destroyed as soon as practicable after it is no longer needed.

Division 3—Board business

Conduct of business

Clause 19 provides the board can decide how to conduct its business, subject to any specific provisions of the Act.

Times and places of meetings

Clause 20 provides that the times and places for meetings are decided by the chairperson. However, the chairperson must call a meeting if requested in writing to do so by the Minister, or 4 members (ie, a quorum).

The secretary must give each member notice of a meeting at least 5 business days before the meeting.

Quorum

Clause 21 provides that a quorum for the 7 member board is 4 persons.

Presiding at meetings

Clause 22 provides that the chairperson must preside at all meetings which he or she attends. In the chairperson's absence, the deputy chairperson must preside. If both are absent, or the offices are vacant, the members may choose one of their number to preside at the meeting.

Conduct of meetings

Clause 23 provides that at a board meeting, a majority of the votes of the members present is needed to decide a question. All members have a vote, and in the event of a tied vote the presiding member has a casting vote. If a member abstains from voting the member is taken to have voted for the negative.

The board may hold a meeting, or allow a member to take part in a meeting, using teleconferencing or another method that allows reasonably contemporaneous and continuous communication between members. A member who participates in a meeting in this manner is taken to be present at the meeting.

Subclause 23(6) provides that a resolution that is not passed at a meeting is still validly made if the majority of members give written agreement to the resolution, and it is recorded in accordance with procedures adopted by the board.

Minutes

Clause 24 provides that the board must keep minutes of its meetings and any resolutions made under section 23(6), (ie, a resolution that is not passed at a meeting but passed by giving notice and the written agreement by the board's members). Where a resolution is passed at a meeting, a member voting against the resolution may request that the minutes record the manner in which the member voted.

Division 4—Board committees

Committees

Clause 25 provides the board with the powers to establish a committee to effectively and efficiently perform the board's functions. A committee may include a person who is not a board member. However, to satisfy section 8, the person must be appropriately qualified to exercise any powers delegated to the committee by the board.

Unless the board directs otherwise, the committee decides how to conduct its business. The committee must work within the terms of reference set by the board, to advise and make recommendations on matters referred to the committee by the board, and exercise the powers the board has delegated to it. The committee must keep a record of its decisions when it exercises a delegated power.

Remuneration of committee members

Clause 26 provides that committee members are paid the fees and allowances determined by the Governor in Council.

Division 5—Disclosure of interests by board members and committee members

Disclosure of interests

Clause 27 provides that when a board or a committee member becomes aware that they have a direct or indirect interest in a matter being, or about to be considered at a meeting, and their interest could conflict with the performance of their duty as a member, the member must disclose the nature of their interest to the meeting. Unless otherwise directed by the board or committee, the member must not be present during discussions nor take part in decisions on the matter. The member must also not be present while the board or committee is deciding whether the member can be present during discussions or decisions on the relevant matter.

If another member of the board or the committee also discloses an interest in the same issue, the other member cannot take part in discussions or making a decision about allowing the original member who disclosed an interest to be present during deliberations on the matter.

If under these circumstances, a member is directed not to be present while an issue is being decided, or a decision is being taken whether to exclude the member from the meeting, the remaining members at the meeting can decide the issue, or decide to give a direction, provided there was a quorum when the excluded member was present.

All disclosures about a member's conflict of interest must be recorded in the minutes of that board or the committee meeting.

Division 6—Directions by Minister

Minister's power to give directions in the public interest

Clause 28 provides the Minister with discretion to give a written direction to the board if the Minister is satisfied it is necessary in the public interest. For example, the Minister may direct the board to provide information or a report on a particular matter, or may direct the application of a public sector policy, such as the need for prior approval for overseas travel. The board must comply with any direction given by the Minister.

However, the Minister cannot direct the board to do any thing related to issuing, renewing, refusing, restoring, or cancelling a licence, or altering conditions on a licence.

Division 7—Other provisions about the board

Secretary and other officers

Clause 29 provides that the chief executive of the Department of Local Government and Planning may appoint a secretary to the board, and other officers considered appropriate to help the board to perform its functions. A public service officer may be assigned duties by the chief executive (eg, to investigate and undertake prosecutions in the Magistrates Court about complaints of plumbing or drainage work being performed by unlicensed persons). The officer may hold the appointment concurrently with any other public service appointment.

The secretary has the powers and must perform the functions conferred on the secretary by the Act, including ensuring that minutes of board meetings are kept.

Authentication of documents

Clause 30 provides that a document made by the board is sufficiently made if it is signed by the secretary.

Protection of members from civil liability

Clause 31 provides that a member of the board, or a person acting in the office of a member, is not civilly liable for an act that is done, or an omission that is made by the member, honestly and without negligence under the Act. If under these circumstances, the civil liability is prevented from attaching to the member or person acting in the office of member, the liability attaches instead to the State.

Revenue from fees

Clause 32 provides that fees (which are fixed by a regulation under section 145) must be deposited in a financial-institution account of the Department of Local Government and Planning, and the Department's accounts must record, track and account for the revenue in the manner prescribed for departmental accounts under the *Financial Administration and Audit Act 1977*.

Revenue from these fees (which would include fees for plumbers and drainers licenses) must be used only for services in relation to plumbing and drainage, ie, to fund:

- the administration of the *Plumbing and Drainage Act;* or
- objects and purposes that the chief executive of the Department of Local Government and Planning determines would advance the principles, standards or trade of plumbing and drainage.

Report on the board's operations

Clause 33 provides for the board to annually provide the chief executive of the Department of Local Government and Planning with a written report on its operations. The report must include a copy of any directions the Minister gives to the board during the year under section 28, but exclude any information likely to identify a person mentioned in a direction.

PART 3—LICENSING

Division 1—Classes of licences

Classes of licences

Clause 34 provides that the board can grant a plumbers licence, a drainers licence and a restricted licence. This is a reduction in the number of separate licence classes previously issued by the board, and has been achieved through allowing a license under each of the three classes to authorise specific work that can be undertaken by the licensee. The scope of work can be to be limited to that for which the licensee has the necessary qualifications. Under section 41, conditions can also be imposed on a licence.

The board may also issue the applicant with a provisional licence. This would occur where a person applied for a plumbers, drainers or restricted licence, but the board believed the persons needed more practical experience before being granted a full or restricted licence, or the person had not provided the board with evidence of their experience or qualifications.

Work that may be performed under licences

Clause 35 provides that the holder of a licence may only perform the plumbing or drainage work for which the licence was issued. For example, a plumbers licence entitles the licensee to perform plumbing work as defined under the Act, and a drainers licence entitles the licensee to perform drainage work as defined under the Act. Section 119 provides that it is an offence to do work without the relevant licence and section 120 provides it is an offence not to comply with conditions placed on a licence.

A person who holds a restricted licence may perform only the plumbing, drainage or other work regulated under the Act, stated in the licence. A restricted plumbers licence could, for example, only allow the licensee to undertake water plumbing work, dis-connect and re-connect a replacement electric hot water heater, or service an on-site sewerage treatment plant.

Division 2—Applying for, and issue of, licences

Procedural requirements for application

Clause 36 provides that a person making application for a licence must do so in the approved form. The application must include evidence of the person's practical experience and qualifications, other information required with the application, and if an applicant has interstate or New Zealand licences, provide details of any conditions of these licences. New Zealand licences are recognised under the Australia and New Zealand Reciprocity Agreement. The applicant must pay the application fee set in a regulation.

Entitlement to licence

Clause 37 provides that only an individual (a natural person) is entitled to be licensed. A corporation or a company cannot hold a licence. An individual is entitled to a licence if the board is satisfied the person has the qualifications and practical experience (which will be prescribed in a regulation), and has not been subject to certain disciplinary or enforcement actions. These include having an interstate or New Zealand licence cancelled or suspended or being convicted for an offence against the *Plumbing and Drainage Act* or the SWSA.

Inquiries into application

Clause 38 provides that to satisfy itself that an individual is entitled to hold a licence, the board may investigate an applicant including whether the applicant has been convicted of an offence against the SWSA or this Act within the last 10 years, require the applicant to supply additional information to support their application or to undergo an examination to assess the applicant's capacity to competently practice the trade. This could be an oral, written or practical examination at a place that is reasonable for the applicant to attend.

When the board requests additional information or that the applicant undergo an examination, this must be by a notice given to the applicant within 40 business days of the board receiving the original application. The notice must give the applicant at least 20 business days to meet the requirement. If the applicant does not provide the information or undergo the examination within the time stated in the notice, the application is taken to be withdrawn.

Further consideration of application

Clause 39 provides that if the board considers it needs more time to make a decision on an application involving complex issues, it can notify the applicant that it wishes to extend the original decision period of 40 business days, by up to another 40 days. During the extended consideration period of 40 business days, the applicant and the board can come to an agreement to extend the consideration period by a further period.

If the board has not made a decision on the application within the applicable period, it is taken to have refused the application. Under section 42, the board must as soon as practicable issue an information notice to the applicant advising of the deemed decision, and if necessary, refund fees not used in processing the application.

Decision on application for licence

Clause 40 provides that the board must consider an application and decide to either license or refuse to license the applicant.

The board also has the option of issuing a provisional licence if it reasonably considers an applicant lacks the practical experience for a plumbers, drainers or restricted licence. It may also issue a provisional licence if it considers the person would be eligible for a licence but the

person has failed to provided necessary information to the board to allow it to reasonably make this decision. A provisional licence expires after 1 year.

However, if the board decides to upgrade the provisional licence under section 46, the provisional licence would be cancelled when the board issued the licence that was originally applied for by the applicant.

Imposing conditions on licence

Clause 41 provides for licences to be issued with conditions that limit the licensees to carrying out work within their competencies. For example, a condition may limit a plumber with only water plumbing qualifications to carry out only water plumbing work. Another example would be a condition requiring a licensee to undertake further training on a particular area of plumbing, because his work had not been not up to standard in that area.

The register may not contain details of conditions imposed on licences unless access to this knowledge is in the public interest or the interests of persons using the licensee's services.

Steps to be taken after application decided

Clause 42 provides that the applicant must be advised of the board's decision on an application as soon as possible after the decision is made. If the application is approved a licence must be issued. If the application is refused, issued with conditions, or a provisional licence is issued, the applicant must be given an information notice about the board's decision.

In the case where an application is refused or withdrawn by the applicant, the board must refund any unused portion of the application fee.

Failure to decide application

Clause 43 deals with the situation where the board fails to make a decision on a licence application within the specified time. The specified time applicable is:

- 40 business days from receipt of an application, unless the application has been extended under section 39;
- where the board has requested an applicant provide further information about the application, the further time stated in the

notice (which, under section 38(1) (b) must be at least 20 business days) plus 40 business days after the board receives the information; or

- where the board has requested an applicant undergo an examination, the further time stated in the notice (which, under section 38(1)(c), must be at least 20 business days) plus 40 business days after the board receives the result of the examination.

If the board has not made a decision within the relevant specified time, it is taken to have decided to refuse to license the applicant. Under section 42, the board must as soon as practicable issue an information notice to the applicant, and if necessary, refund fees not used in processing the application.

Form of licence

Clause 44 provides for a licence to be in the approved form. A licence must contain the licensee's name and address, the expiry date of the licence, the licence number, the class of the licence, and any conditions or endorsements attached to the licence.

Duration of licence

Clause 45 provides that a licence is in force for the period stated on the licence . For example, while a plumbers, drainers or restricted licence can be for a maximum of 5 years, a applicant can apply and pay fees for a licence for a lesser period than the full 5 years available. A provisional licence can only be in force for a period of not more than 1 year.

Division 3—Upgrading provisional licences

Board may upgrade provisional licence

Clause 46 provides that an applicant who applied for a licence and was issued with a provisional licence, may be given the licence originally applied for if the licensee satisfies the board they have become eligible for the licence originally applied for. The provisional licence is cancelled from when the new licence is issued.

Division 4—Renewing licences

Notice of expiry of licence

Clause 47 provides that licensees, including licensees with provisional licences, must be given notice of the expiry of their licence at least 40 business days before the date when the licence expires. This is to allow the licensees sufficient time to apply for the renewal of their licences before they expire. While a provisional licence may not be renewed, the licensee may re-apply for an ordinary licence, and the board can decide either to issue another provisional licence or the licence applied for.

Procedural requirements for applications to renew a license

Clause 48 provides that a licensee may apply to renew a licence on receipt of an expiry notice issued by the board under section 47. The renewal application must be made in the approved form, be accompanied by any additional information required in the form, and be received by the board before the licence expires. The applicable licence fee must be paid.

The holder of a provisional licence cannot apply to renew a provisional licence but can apply for a general renewal. The board may decide to renew the provisional licence or upgrade it to a full licence.

Clause 48(3) provides for licensees to lodge a statutory declaration confirming they are retired, no longer perform, and do not intend to perform, plumbing or drainage work for payment. Licensees are then entitled to have their licences renewed for a reduced renewal fee (that will be set by a regulation).

Existing licence taken to be in force while application is considered

Clause 49 provides that where a licensee has applied to renew a licence under section 48, the old licence continues in force until the day the board issues a new licence under section 50. This provision does not apply if the applicant's licence was been earlier cancelled or suspended. However, a licensee whose licence was suspended with the suspension period ending after the day the licence expires, can apply for the restoration of their licence under section 51.

Steps to be taken after application made

Clause 50 provides that the board must make a decision on an application as soon as practicable after it receives the application. The board must either issue a new licence, or if the application does not comply with section 48, tell the applicant how the application does not comply. The renewed licence must be subject to the same conditions as the licence that expired.

Division 5—Restoring expired licences

When application to restore licence may be made

Clause 51 provides that a person may apply for his or her licence to be restored within 1 year of the date when the licence expired.

Procedural requirements for applications to restore licence

Clause 52 provides that an application to restore a licence must be made in the approved form, and be accompanied by the prescribed fee and any additional information reasonably required by the board to decide the application. The application form may require information to be verified by a statutory declaration.

Previous conditions continue for expired licence

Clause 53 provides that any conditions that attached to an expired licence immediately before its expiry are to be reinstated if it is restored.

How division 4 applies for applying to restore licence

Clause 54 provides that if a person wishes to restore a licence that has expired, an application must be made as if the person was applying for a renewal of his or her licence under division 4 – Renewing Licenses.

Division 6—Reviewing licence conditions

How licensee may start review

Clause 55 provides that a licensee may apply to have the conditions attached to his or her licence reviewed by the board, at any time except during the review period set by the board, or while the QBT is conducting a review of the conditions.

The review period is defined in the schedule as a period of not more than 2 years from the date the board imposed conditions. In the event the Tribunal has determined a review and imposed or altered conditions, the review period is as stated in the QBT's decision.

An application for a review of conditions must be in the approved form, be accompanied by the fee set in a regulation, and state the reasons why the licensee believes the conditions are no longer appropriate. The board must consider the application and make a decision in accordance with section 59.

Reviewing conditions during review period

Clause 56 provides that during a review period, the board may, with the written agreement of a licensee, review the conditions attached to their licence, if the board believes the conditions may no longer be appropriate.

Board's powers before making decision

Clause 57 provides that the board in considering an application to review licence conditions, may decide to investigate the licensee, or to ask the licensee to provide information the board believes it needs to decide the application. A notice requesting further information must be given to the licensee within 20 days after the board agrees to review the conditions, and allow the licensee at least 20 business days to provide the information. The board may require that the requested information is verified by a statutory declaration.

This allows the board to satisfy itself about such matters as a licensee's professional conduct, or the quality of the work the person performs, before it decides the licensee's application for licence renewal.

Deemed withdrawal of application etc.

Clause 58 provides that where a licensee applies for a review of licence conditions under section 55, the application is taken to have been withdrawn if the licensee has failed to respond to the board's request for additional information within the time stated in the notice issued under section 57(1)(b). The notice requiring the applicant to provide further information must be given within 40 business days of the board receiving the application.

Where conditions are being reviewed as the result of an agreement to do so under section 56, the board is taken to have decided to confirm the conditions if the licensee does not provide the additional information to the board within the time stated in the notice issued under section 57(1)(b).

Decision on review of conditions

Clause 59 provides that when making its decision, the board must consider whether the conditions remain necessary or desirable for the licensee to competently practice the trade. The board must then decide to confirm, remove or change the conditions. However, the board may only confirm or change the conditions for the reasons the conditions were initially imposed on the licence.

The licensee must be advised of the board's decision as soon as practicable after the decision is made. If the conditions have been confirmed or changed, the board must decide the review period applying to the conditions, and issue an information notice to the licensee. If the board decides to remove the conditions it must as soon as practicable, give the licensee notice of the decision.

When decision takes effect

Clause 60 provides that the board's decision to confirm conditions takes effect from when the decision is made. If the board decides to change or remove conditions, the change is not reliant on the licence being amended or replaced, but takes effect from the giving of the information notice advising of the decision.

Removal of conditions under these circumstances is not dependent on the person's original licence being amended or replaced.

Failure by board to make decision on application

Clause 61 provides that if the board fails to decide an application for a review of conditions on a licence under section 55 within the specified period, the board is taken to have confirmed the conditions. The specified period for making a decision is within 40 business days of receiving the application, unless the board has requested further information under section 57(1)(b), in which case the specified period runs until 40 business days after the board receives the requested information.

Failure by board to make decision on review agreed to under s 56

Clause 62 provides that if the board decides to review conditions on a licence during the review period under section 56, and fails to make a decision within 40 business days of the agreement, the board is taken to have confirmed the conditions. The board is also taken to have confirmed the conditions if it fails to make a decision within 40 business days of receiving further information it requested under section 57(1)(b).

Amendment of, or replacing, licence

Clause 63 provides for a licensee to return a licence for amendment or the issue of a new licence within 10 business days from receiving a notice (under section 59(4)(b) or (5)) about a board decision to alter or remove conditions. The maximum penalty for failing to return a licence is 10 penalty units.

The board must amend the returned licence, or if this is not practical, issue a replacement licence to the person.

Division 7—Disciplinary action

Grounds for discipline

Clause 64 provides the grounds for which the board may decide to take disciplinary action against a licensee. The grounds are that a licensee:

- obtained a licence based on providing false or misleading information;
- in relation to work they are licensed to carry out, performed incompetent or unsatisfactory work;

- directed or allowed another licensee to perform work for which they were licensed, in a way contrary to the appropriate standards;
- directed or allowed a person to perform work requiring a licence without that person holding a licence (ie, a breach of section 119)
- had their interstate or New Zealand licence conditioned, suspended or cancelled; or
- has been convicted of an offence against the *Plumbing and Drainage Act* or the SWSA.

Disciplinary action that may be taken

Clause 65 provides the board may take the disciplinary action it considers reasonable in the circumstances. The board may decide on any combination of the following disciplinary actions:

- a reprimand;
- an order to rectify work to comply with the *Standard Plumbing and Drainage Regulation*;
- imposing or changing licence conditions;
- suspending a licence for a specified period; or
- cancelling a licence.

Show cause notice

Clause 66 provides that before the board can take any disciplinary action under section 65, it must first give the licensee the opportunity to show cause why the disciplinary action should not be taken.

The show cause notice must state the ground for the proposed disciplinary action, and outline the facts and circumstances this is based on. The licensee must be given at least 20 business days from receiving the notice in which to show cause why the action should not be taken.

Representations about show cause notice

Clause 67 provides that a licensee may make representations about a show cause notice that the board must consider. These would ordinarily be written representations. However if the board is satisfied a licensee may be

disadvantaged by relying on written representations, it may allow the licensee to appear before it to make personal representations. This allows persons with a poor command of written English to put their case to the board.

Board must decide action to be taken

Clause 68 provides that the board after considering the licensee's representations, must decide either to take no further action or take disciplinary action against the licensee.

Board must advise licensee of its decision

Clause 69 provides that the board must provide the licensee with an information notice advising either that the board does not propose to take any further action in the matter, or that it proposes to take disciplinary action.

When suspension or cancellation takes effect

Clause 70 provides that the board's decision to suspend or cancel a licence takes effect from the day the information notice is given to the licensee advising of the cancellation or suspension.

Returning suspended or cancelled licence to board

Clause 71 provides that a licensee must return a suspended or cancelled licence to the board within 10 business days of receiving the information notice, unless the licensee has a reasonable excuse not to do so.

Division 8—General provisions about licences

Surrendering licence

Clause 72 provides that licensees may notify the board that they wish to surrender a licence. The licence is surrendered from the day the notice is given to the board, or on a later date stated in the notice. The licensee must then return the licence to the board within 10 business days after the date of surrender, unless the licensee has a reasonable excuse not to do so. The maximum penalty for failing to return a licence is 10 penalty units.

Replacing licence

Clause 73 provides that a licensee may apply to the board for a replacement licence, where their licence has been lost, stolen, destroyed or damaged. The application must be in the approved form (which can require information to be verified by a statutory declaration) and be accompanied by the fee set by regulation.

If the board is satisfied the application is merited, it must issue the licensee a replacement licence.

Certified copy of licence

Clause 74 provides that licensees may obtain certified copies of their licences on payment of the fee set in a regulation.

Notice of change in circumstances

Clause 75 provides licensees are obliged to advise the board of changes in their circumstances within 20 business days of the change occurring. This allows the board to maintain up to date records, particularly of addresses to enable notices to be effectively given. The changes which must be notified are:

- a change of address;
- if an interstate or New Zealand license is conditioned, suspended or cancelled; or
- being convicted of an offence against the *Plumbing and Drainage Act* or the SWSA.

The maximum penalties for failing to advise of changes in circumstances varies from 1 to 10 penalty units.

Notice of certain events to interstate licensing authorities and other entities

Clause 76 requires the board, where it is aware a licensee is licensed by other State or New Zealand licensing authorities, to provide those authorities with information the board considers appropriate about the board's decision to cancel a licence or impose or remove licence conditions. An interstate or New Zealand licensing authority is defined in the schedule as an entity established under the law of another State (which

includes Territories) or New Zealand and having functions similar to those of the Plumbers and Drainers Licensing Board.

Similarly, the board can chose to provide appropriate information about it cancelling, conditioning or removing conditions from a licence to the licensee's employer, relevant professional or industry associations and other entities connected with the plumbing trade, if it reasonably believes these entities need to know about the board's decision.

Register of licences

Clause 77 requires the board to keep a register of all licences issued and matters affecting licences.

PART 4—COMPLIANCE ASSESSMENT

The purpose of this Part is to provide an interim process for the compliance assessment of plumbing and drainage plans or work, which it is intended will operate until the compliance assessment provisions in the *Integrated Planning and Other Legislation Amendment Act 2001* are in force.

Division 1—Preliminary

Compliance permit

Clause 78 provides that a compliance permit authorises regulated work to be carried out to the extent stated in the permit and any conditions applied to the permit. Regulated work is plumbing and drainage work that is not defined as minor work or unregulated work. It is intended that the *Standard Plumbing and Drainage Regulation* provide details of what constitutes minor and unregulated work. In essence, minor unregulated work is work normally associated with maintaining plumbing or drainage to keep it in good working order.

A compliance permit will remain in force for the period prescribed under a regulation, or if no period is prescribed, for 2 years from the day the permit was given. The permit will continue to have effect if the work starts

while the permit is in force. A compliance permit attaches to land for which the permit was given, and binds the owner, the owner's successors in title and any occupier of the land.

Compliance certificate

Clause 79 provides that a compliance certificate approves regulated work to the extent stated in the certificate. For example, the certificate may state that the stages at which the work was inspected and the times when these inspections were carried out. The certificate may also state that compliance of certain aspects of the work had been verified by a competent person and were not inspected by the local government inspector.

Division 2—Compliance assessment generally

Purpose of compliance assessment

Clause 80 provides that the purpose of compliance assessment under this Part is to allow for-

- a plan about regulated work to be assessed for compliance with the *Standard Plumbing and Drainage Regulation*, and a compliance permit to be issued for the plan; and
- regulated work to be assessed for compliance with the *Standard Plumbing and Drainage Regulation*, and a compliance certificate to be issued for the work.

Regulated work must be assessed for compliance

Clause 81 provides that regulated work must be assessed for compliance with the *Standard Plumbing and Drainage Regulation*. It is intended that the regulation will specify the minimum technical standards for the installation of plumbing and drainage on premises.

Plans and all plumbing and drainage work must comply

Clause 82 provides that a person who carries out any plumbing or drainage work must ensure that the work complies with the *Standard Plumbing and Drainage Regulation.* Work carried out must comply with the regulation, even if a compliance permit is contrary to the regulation.

This requirement is to ensure that the protection of the environment, public health and safety remains the paramount concern, despite any error that may have occurred in any approval given. Contravening this section carries a maximum penalty of 165 penalty units.

Compliance permit required for certain regulated work

Clause 83 provides that a person must not carry out regulated work unless the person has a compliance permit for the work. The maximum penalty for carrying out regulated work without a compliance permit is 1,665 penalty units. While this is a substantial increase over the previous maximum penalty of 165 penalty units under the SWSA, it is consistent with offences under the IPA for carrying out development without a development permit.

An individual local government may, within its area, resolve it will not require compliance permits for certain regulated plumbing or drainage work. For example, it may decide that plans for plumbing and drainage work on domestic premises, or some minor installations in other types of buildings (eg, installing an extra water closet suite or a basin in a shop or a factory), do not need to be assessed before the work starts. In these cases, the relevant person will not need to have plans approved before work commences, but will still require inspection and assessment of the work as it progresses and the issue of a compliance certificate by the local government upon completion of work.

Where a local government resolves that certain regulated work may be carried out without first obtaining a compliance permit, it must provide a copy of the resolution to the chief executive of the Department of Local Government and Planning. It must also have a copy of the resolution open for inspection by the public during normal office hours at the local government's offices.

Regulated work by a public sector entity

Clause 84 provides that regulated plumbing or drainage work to be carried out by, or on behalf of a public sector entity, must be assessed for compliance with the *Standard Plumbing and Drainage Regulation*. The entity may carry out the assessment of the plans or the work itself, or it may ask the relevant local government to carry out the assessment on its behalf.

A public sector entity can determine the extent to which it wishes to assess plans or work on its projects. For example, an entity may decide to

assess only the plans of proposed work for compliance, and ask the local government of the area to assess/inspect ongoing work and issue a compliance certificate when work is completed. Where the entity assesses plans or work itself, it must issue either a compliance permit or a compliance certificate, as appropriate. If the entity issues a permit or a certificate it must give a copy to the local government for its records.

The definition of a public sector entity contained in the dictionary for this Act is consistent with the definition under the IPA.

Division 3—Assessing plans

Process for assessing plans

Clause 85 provides the process for the compliance assessment of a plan for regulated plumbing or drainage work. A plan includes any documentation that supports the plan for the work (ie, a certificate about elements of the design prepared by a competent person, or technical details of products proposed to be used in the installation).

A request for compliance assessment of a plan is to be made to the local government in the approved form, and accompanied by the relevant fee set by local government resolution. For consistency with applications lodged for building work, it is intended that the approved form be the Form 1 Development Application, Parts A and C under the IDAS under the IPA.

The local government must decide to issue a compliance permit, with or without reasonable and relevant conditions, or refuse to issue a compliance permit within 20 days of receiving the request. However, if the local government requires further information to make an assessment of the plans it must request this information within 10 business days of receiving the request for the plan assessment. The local government must then decide to issue a compliance permit, with or without reasonable and relevant conditions, or refuse to issue a compliance permit, within 20 business days of receiving the additional information.

If the local government fails to decide the request within the specified times, the request is deemed to be refused. When the local government issues a compliance permit to the applicant, it must also give a copy of the permit to the owner of the premises where the work is to be carried out.

A decision to refuse to issue a permit, a deemed refusal, or the imposition of conditions, may be appealed to a Building and Development Tribunal under the provisions of the IPA.

Division 4—Assessing plumbing and drainage work

Process for assessing regulated work

Clause 86 provides the process for the compliance assessment of regulated work. Regulated work is plumbing and drainage work that is not defined as minor work or unregulated work. It is intended that the *Standard Plumbing and Drainage Regulation* provide details of what constitutes minor and unregulated work.

A request for compliance assessment of work is to be made to the local government in the approved form with the relevant fee set by local government resolution. For work assessment, it is proposed the approved form will be the proposed notification of commencement form under the *Standard Plumbing and Drainage Regulation*.

The assessment process provides for a request to be made at the commencement of the work and a certificate to be issued when the work has been completed to the inspector's satisfaction. The local government must assess the work at the stages prescribed under the *Standard Plumbing and Drainage Regulation.* A person can request inspections at the various stages by phone or electronically. The regulation will also provide for the assessment to be made at an agreed time, and action that can be taken by the person making the request, if an inspector fails to assess the work within a reasonable period after the agreed time.

On completion of the work the local government may ask the person making the request for a compliance certificate, to supply as-constructed plans of the work that has been assessed. Within 3 days of making the final assessment of the work, or after it receives any requested plans of the assessed work, the local government must issue a compliance certificate. If the local government fails to make a decision within the specified times the request is deemed to be refused.

A decision to refuse to issue a certificate, or a deemed refusal, may be appealed to a Building and Development Tribunal. When the local government issues a compliance certificate to the applicant, it must also give a copy of the certificate to the owner of the premises where the work has been carried out.

Minor work

Clause 87 provides that if a person carries out minor work, they must give written notice to the local government within 20 days of completing

the work. The local government may decide to assess the work for compliance. Also, person who carries out minor work must hold a licence entitling the person to do the work.

It is intended that the *Standard Plumbing and Drainage Regulation* will require the notification to be made in an approved form and specify details of minor work that is excluded from notification. It is intended that minor work will include emergency work, repairing or replacing a short length of water pipe or sanitary drain, or other plumbing or drainage work of a minor nature.

Unregulated work

Clause 88 provides that a person who carries out unregulated work need not notify the local government about the work. Unregulated work is not subject to any compliance assessment. Unregulated work will be defined in the *Standard Plumbing and Drainage Regulation* to include installing or maintaining irrigation systems downstream of a backflow prevention device, and replacing a jumper valve or washer in a tap.

Division 5—Standard Plumbing and Drainage Regulation

Administration of Standard Plumbing and Drainage Regulation

Clause 89 provides that individual local governments are responsible for administering the *Standard Plumbing and Drainage Regulation* in their local government area. Local governments includes Aboriginal and Torres Strait Island Councils. However, to administer this regulation a local government will need to appoint an inspector or inspectors under section 107.

There can be areas within a local government area that a local government does not control, for example areas under the control of a port authority. In addition there can be land that is not part of any local government area, for example land below the high water mark. Because the Act now binds all persons including the State, some areas of the State that are not within a local government area must also comply with the Act.

In either of these cases, where these areas are under the control of another entity, the entity is responsible for administering the *Standard Plumbing and Drainage Regulation*. However the entity responsible for an

area may ask the local government to administer the *Standard Plumbing and Drainage Regulation* for the area.

Standard Plumbing and Drainage Regulation may prescribe additional requirements and actions

Clause 90 provides that the *Standard Plumbing and Drainage Regulation* may prescribe requirements for any plan for a compliance assessment, or a plan of work that has been assessed. This clause also provides that additional actions may be undertaken by the local government.

PART 5—ON-SITE SEWERAGE FACILITIES

The purpose of Part 5 is to:

- ensure that on-site sewerage facilities are of an adequate standard to maintain a high level of public health and safety and environmental protection;
- ensure that only approved on-site sewage treatment plants are installed;
- set out the powers and responsibilities of local governments and the chief executive of the Department of Natural Resources and Mines in relation to on-site sewerage facilities;
- set out the responsibilities of owners, service persons, manufacturers and installers in relation to on-site sewerage facilities.

This part continues the intent of the provisions for on-site sewerage management contained in the now repealed *Standard Sewerage Law* and will be administered by the Department of Natural Resources and Mines.

Division 1—Preliminary

Definition for pt 5

Clause 91 clarifies that this part of the Act deals only with on-site sewerage facilities having a peak design capacity to treat sewage of less than 21 equivalent persons. Systems of this size are typically used for single domestic dwellings, small commercial premises and small residential complexes.

Sewerage systems having a peak design capacity to treat sewage of 21 or more equivalent persons are regulated as an environmentally relevant activity under the *Environmental Protection Act 1994* and are not dealt with under this part of the Bill.

Division 2 —Codes and standards applying to on-site sewerage facilities

Codes and standards applying to on-site sewerage facilities

Clause 92 requires the construction, installation and operation of on-site sewerage facilities that are not chemical, composting or incinerating toilets to comply with the requirements of the on-site sewerage code of practice published by the Department of Natural Resources and Mines as at the commencement of these provisions and, to the extent the facility consists of a septic tank (regardless of its size), AS/NZS 1546.1.1998.

Chemical, composting or incinerating toilets must comply with the requirements of design rules currently specified in the *Environmental Protection (Waste Management) Regulation 2000*, schedule 8, part 2.

Division 3—Model and type specification approvals

Model approval for prefabricated items

Clause 93 provides a process for "model approvals" for wholly prefabricated on-site sewage treatment plants, or prefabricated elements of on-site sewage treatment plants, to be given by the chief executive of the Department of Natural Resources and Mines. Model approvals are not required for prefabricated on-site sewage treatment plants that consist only of a septic tank, but such plants must comply with the requirements of AS/NZS 1546.1.1998 (see clause 101). Clause 96 requires a local government

to consider, before approving the building, installation or a change to an on-site sewerage facility, whether relevant components of the facility conform with a model approval.

For a model approval to be given, the prefabricated item must conform with the requirements of the on-site sewerage code. The approval may be given on conditions, including conditions of manufacture, installation, operation, service and maintenance. A maximum time limit of 5 years applies to a model approval, in recognition of the rate of development of new equipment and technologies in on-site sewage treatment.

If the chief executive gives a model approval on conditions, or refuses to give a model approval, the chief executive must give the applicant an information notice about the decision. An application can then be made to the chief executive for a review of the decision, and the review decision can be appealed against.

Type specification approval for built items

Clause 94 provides a process for "type specification approvals" for on-site sewage treatment plants that are wholly built on the premises where they will be used, or elements of on-site sewage treatment plants that are wholly built on the premises where they will be used, to be given by the chief executive of the Department of Natural Resources and Mines. Type specification approvals are not required for on-site sewage treatment plants that are wholly built on the premises where they will be used, that consist only of a septic tank, but such plants must comply with the requirements of AS/NZS 1546.1.1998 (see clause 101). Clause 96 requires a local government to consider, before approving the building, installation or a change to an on-site sewerage facility, whether relevant components of the facility conform with a type specification approval.

For a type specification approval to be given, the item must conform with the requirements of the on-site sewerage code. The approval may be given on conditions, including conditions of construction, operation, service and maintenance. A maximum time limit of 5 years applies to a type specification approval, in recognition of the rate of development of new equipment and technologies in on-site sewage treatment.

If the chief executive gives a type specification approval on conditions, or refuses to give a type specification approval, the chief executive must give the applicant an information notice about the decision. An application can then be made to the chief executive for a review of the decision, and the review decision can be appealed against.

Misleading statement by builder, manufacturer or supplier

Clause 95 makes it an offence for builders, manufacturers and suppliers of prefabricated items and built items to make false or misleading claims concerning whether those items have a current model approval or type specification approval. It is also an offence for these people to make false or misleading claims concerning the extent of compliance of a prefabricated item or built item with the conditions of its model approval or type specification approval.

Division 4—Role of local governments

Approval for on-site sewerage facilities

Clause 96 provides for approvals to be given by local governments to allow an on-site sewerage facility to be built, installed or changed. Approvals under this clause may be given on conditions.This clause sets out the criteria a local government must consider before giving an approval.

A local government must consider whether the on-site sewerage facility is actually required, bearing in mind the extent to which the premises can be served by a sewerage system or by a common effluent drainage system.

It is the responsibility of a local government to ensure that the on-site sewerage facilities it approves will not have an adverse effect on human health and safety or the environment. To this end, a local government needs to consider the extent of compliance of the proposed facility with the on-site sewerage code, AS/NZS 1546.1.1998, the requirements of the design rules currently specified in the *Environmental Protection (Waste Management) Regulation 2000*, schedule 8, part 2, and any model approvals and type specification approvals, so far as they are relevant to the proposed facility.

As most on-site sewerage systems rely on water to transport wastes, consideration also needs to be given to whether there is an adequate and reliable supply of water for this purpose.

It is essential for local governments to consider whether there is sufficient land of a suitable nature available to absorb all of the liquid effluent from a treatment plant on a long-term basis. If this cannot be assured, an alternative means of disposing of the effluent must be found, such as disposal to common effluent drainage or to storage tanks (local

governments should require these tanks to be emptied periodically under their conditions of approval).

If the local government gives an approval on conditions, or refuses to give an approval, the local government must give the applicant an information notice about the decision. An application can then be made to the local government for a review of the decision, and the review decision can be appealed against.

Local governments can also currently, through their planning scheme, make installing, repairing, altering or removing an on-site sewerage system "assessable development" under the IPA. Owners of premises should therefore check whether they need to obtain, in addition to an approval under this clause, a development permit under the IPA.

Notice to build or install on-site sewerage facility or dispose of greywater

Clause 97 assists a local government to ensure that all premises in its area have, or are connected to, adequate systems for the collection, treatment and disposal of sewage. The clause allows a local government to issue a notice to a property owner requiring that owner to install an on-site sewerage facility to handle human waste or, if the property is outside a sewerage service provider's service area under the WA, to use a stated system of on-site sewerage for the disposal of sewage other than human waste, (for example, greywater).

Before an on-site sewerage facility is installed in compliance with the notice, local government approval for that facility must still be obtained under section 96.

If a local government gives a notice under this clause, the notice must inform the recipient that an application can then be made to the local government for a review of the requirements in the notice. The review decision can be appealed against.

If a notice under this clause is not complied with, the local government has powers under the LGA, sections 1066, 1067 and 1068, to perform the relevant work and recover its costs.

Notice to repair on-site sewerage facility

Clause 98 sets out the circumstances under which a local government can require work to be done on an existing on-site sewerage facility and it

allows a local government to issue a notice to a property owner requiring that owner to perform work that is reasonably necessary for fixing or otherwise dealing with an existing on-site sewerage facility.

The section helps a local government to ensure that an on-site sewerage facility, once installed, does not have an adverse effect on human health and safety or the environment.

If a local government gives a notice under this clause, the notice must inform the recipient that an application can then be made to the local government for a review of the requirements in the notice. The review decision can be appealed against.

If a notice under this clause is not complied with, the local government has powers under the LGA, sections 1066, 1067 and 1068, to perform the relevant work and recover its costs.

Notice to remove on-site sewerage facility

Clause 99 gives a local government power to require, by written notice, removal of an on-site sewerage facility that is no longer required and appropriate disposal of its contents. For example, it may be appropriate for a local government to require any tanks forming part of an on-site sewerage facility that is no longer required to be emptied, sealed, filled in or dismantled.

If a local government gives a notice under this clause, the notice must inform the recipient that an application can then be made to the local government for a review of the requirements in the notice. The review decision can be appealed against.

If a notice under this clause is not complied with, the local government has powers under the LGA, sections 1066, 1067 and 1068, to perform the relevant work and recover its costs.

Approval to build or install on-site sewerage facility for testing purposes

Clause 100 gives a local government a limited power to approve, for testing purposes, the building or installation of an on-site sewage treatment plant (other than an on-site sewage treatment plant that consists only of a septic tank) which does not have a model approval or type specification approval. Testing of on-site sewage treatment plants is often necessary to

enable an application for a model approval or type specification approval to be progressed.

Approvals can only be given if the chief executive of the Department of Natural Resources and Mines has also approved the use of the plant for testing purposes. An application for a model approval or type specification approval for the plant must also have been lodged with the chief executive of the Department of Natural Resources and Mines.

Approvals under this clause may be given on conditions. For example, a local government may wish to specify where the relevant plant can be installed, or it may require the applicant to notify the local government when the testing process is complete or the results of the application to the chief executive for the model approval or type specification approval.

If the local government gives an approval on conditions, or refuses to give an approval, the local government must give the applicant an information notice about the decision. An application can then be made to the local government for a review of the decision, and the review decision can be appealed against.

If the model approval or type specification approval applied for is not ultimately given for the plant, the plant must be removed.

Division 5 —Responsibilities of owners and others relating to on-site sewerage facilities

Codes and standards for building, installing or operating on-site sewerage facilities

Clause 101 requires on-site sewerage facilities to be built, installed and operated in accordance with, to the extent they are relevant to the particular facility, the on-site sewerage code, AS/NZS 1546.1.1998, the requirements of the design rules currently specified in the *Environmental Protection (Waste Management) Regulation 2000*, schedule 8, part 2, model approvals and type specification approvals. However, this requirement does not apply to on-site sewerage facilities built or installed before 30 April 1998 unless an application is approved to change that facility under clause 96, or, a local government gives a notice under clause 98 for that facility (for example, a notice requiring work to be carried out on the facility because it is not adequate for dealing with the sewage generated on the premises). On-site sewerage facilities built or installed before 30 April 1998 were built or installed prior to the commencement date of the now repealed

Standard Sewerage Law, which, although it required compliance with the on-site sewerage code and AS/NZS 1546.1.1998, did not apply that requirement to facilities built or installed before it came into force.

The clause also requires all on-site sewerage facilities to be built, installed, and operated in compliance with the on-site facility conditions applying to them. This requirement applies regardless of when the facility was actually built or installed.

The clause provides that an on-site sewerage facility must not be built, installed or changed, or dismantled or removed (in whole or in part) without the local government's approval. However, local government approval is not required to the extent that any dismantling or removal is authorised under a condition of a relevant model approval or type specification approval. Dismantling or removing part of a facility, for purposes other than maintenance, may cause the facility to malfunction.

The requirement that on-site sewerage facilities be installed in appropriate locations, to ensure that they can be accessed for servicing and maintenance, continues to apply. In addition, this clause also applies AS/NZS 1546.1.1998 to the greatest extent practicable, to storage tanks that are installed if they are to be used for sewage or effluent.

Service and maintenance

Clause 102 requires on-site sewerage facilities to be maintained and serviced to keep the facility in good working order and in accordance with any conditions set under a relevant model approval or type specification approval. This is necessary to ensure the facility continues to function satisfactorily, and to minimise the risk of health and environmental problems arising from the use of defective systems.

Service reports must be sent to the local government after an on-site sewerage facility is serviced. In the event of an unsatisfactory service report being received, a local government may decide to issue a notice ordering remedial action be taken.

It is an offence if a person who services an on-site sewerage facility gives to the local government, or the owner, a service report containing information that the person knows is false, misleading or incomplete in a material particular.

Disposal of contents of on-site sewerage facility

Clause 103 regulates the disposal of the contents of an on-site sewerage facility, whether the contents are effluent or not. The contents of on-site sewerage facilities have the capacity to cause health and environmental problems if handled or disposed of inappropriately.

Stormwater drainage must be separate from on-site sewerage facility

Clause 104 prevents the admission of stormwater into on on-site sewerage facility. Admission of stormwater can lead to facility overflows, the discharge of untreated sewage to the environment with the attendant health problems and failure of the treatment processes used to render sewage fit for disposal to the environment.

Permissible and prohibited discharges

Clause 105 makes it an offence to discharge waste into an on-site sewerage facility if the facility was not installed to process that waste. On-site sewerage facilities are designed primarily for the treatment and disposal of human wastes, but may also be more limited in their intended operation (for example, some on-site sewerage facilities are only designed to process greywater).

It is also an offence for a person to discharge prohibited wastes into an on-site sewerage facility. The discharge of prohibited wastes to an on-site sewerage facility has potential to cause the facility to malfunction and the effluent disposal system may also be damaged. Prohibited substances are defined in the dictionary.

On-site sewerage facility no longer required

Clause 106 obliges a person to notify the local government if an on-site sewerage facility is no longer required for premises, other than because the premises have been connected to a service provider's sewerage system. For example, a facility may not longer be required because the premises are now being serviced by a new on-site sewerage facility.

After being notified under this clause, a local government may decide to issue a notice ordering removal of the on-site sewerage facility that is no longer required and appropriate disposal of its contents. For example it may be appropriate to require tanks forming part of the on-site sewerage

facility that is no longer required to be emptied, and then sealed, filled in or dismantled.

PART 6—INVESTIGATION, ENFORCEMENT AND OFFENCES

Division 1—Inspectors

Appointment and qualifications

Clause 107 provides that each local government may appoint one or more individuals to be inspectors. The local government must be satisfied a person has the necessary qualifications and experience which will be prescribed under a regulation.

The local government must advise the board of each appointment and provide a list of its inspectors to the board within 20 business days of 1 July each year.

This clause will be supplemented by a regulation that it is intended will provide, as the current subordinate legislation under the SWSA does, the qualifications needed for appointment as an inspector. The minimum qualification is to be a licensed plumber. The regulation will also provide that if a local government wishes to appoint a person with lesser qualifications than this, the Plumbers and Drainers Board must approve the person for appointment.

Appointment conditions and limit on powers

Clause 108 provides that the conditions on which inspectors hold their office can be specified in their instrument of appointment (which can limit their powers), a signed notice from the local government's chief executive officer that is given to the inspector, or a regulation.

Issue of identity card

Clause 109 provides for the local government to issue each inspector with an identity card, which can be a single identity card for the purpose of

this Act as well as other purposes. The identity card must contain the inspector's photograph, signature, identify that the person is an inspector under the *Plumbing and Drainage Act*, and note the expiry date of the card.

Production or display of identity card

Clause 110 provides that where an inspector is excising a power under this Act, the inspector must either produce the identity card for inspection or have it clearly displayed. Where it is not practicable to comply with these requirements, the inspector must produce the identity card for inspection at the first reasonable opportunity. Merely entering a place does not mean an inspector is exercising a power under this Act.

When inspector ceases to hold office

Clause 111 provides that inspectors ceases to hold office when their terms of office expire, upon ceasing to hold office under another condition of office, or they resign under section 112. This clause does not prevent an inspector ceasing to hold office in other ways.

Resignation

Clause 112 provides that an inspector may resign by a signed notice given to the chief executive of the local government. Where the inspector must be an inspector in order to hold another office, the inspector must resign from both offices.

Return of identity card

Clause 113 provides that on ceasing to be an inspector, the ex-inspector has 21 days to return their identity card to the local government. Failing to do so carried a maximum penalty of 25 penalty units.

Functions and powers of inspectors and relationship to the Local Government Act 1993

Clause 114 provides that an inspector may conduct investigations and inspections of premises to monitor and enforce compliance with the *Plumbing and Drainage Act*, as well as the IPA and the LGA, so far as the IPA and the LGA relate to plumbing and drainage.

When performing an inspector's functions, an inspector has the powers of the authorised person appointed under section 1084 of the LGA. Chapter 15, part 5 of the LGA provides for the powers of authorised officers, including powers to:

- require a person found committing an infringement notice offence, to provide their name and address;
- enter a place with the occupier's consent or under a warrant to investigate about an offence;
- inspect a place or premises in order to grant an approval, to monitor authorisations or an approved inspection program, and while there to investigate, make tests, take samples or copy documents in order to perform their prescribed duties under this Act.

The combination of the powers under the LGA would allow an inspector to require a person performing plumbing and drainage work to produce their license.

These powers are subject to provisions protecting the rights of individuals and landowners and providing for compensation in the event of damage caused in the exercise of these powers.

An inspector may give a notice requiring the undertaking of work regulated under *Plumbing and Drainage Act*, the IPA and the LGA. For example, at an inspection the inspector could give a notice requiring specified work to be done to bring plumbing and drainage work being inspected into conformance with the *Standard Plumbing and Drainage Regulation*.

Division 2—Enforcement

This division provides for a process for local governments to issue enforcement notices requiring plumbing work be brought into compliance with the required technical standards and to prevent danger to public health and safety. Unless an enforcement notice relates to an immediate danger to public health and safety, the local government must first utilise a show cause process before issuing an enforcement notice. Enforcement notices under this Act have the force and effect of enforcement notices under IPA, and failing to comply with an enforcement notice attracts the penalties under IPA.

In addition to powers under this division, where a local government issues an enforcement notice and the recipient does not perform work required under the notice, a local government can rely on powers in sections 1066 and 1067 of the LGA to undertake the work and recover the costs from the landowner. Also under section 4.3.17 of IPA, an assessment manager has powers when an enforcement notice is not complied with.

Show cause notices

Clause 115 provides that a local government must issue a show cause notice before proceeding to issue a person with an enforcement notice under section 116 in relation to defective work that needs to be altered, repaired or replaced or work that was installed either without local government approval or did not comply with the terms of a local government approval. No show cause notice is required before issuing an enforcement notice in relation to plumbing or drainage that is a danger or constitutes a health risk either within the premises or to the public at large.

A show cause notice must be in writing, outline the facts and circumstances on which it is believed that an enforcement notice should be issued, and provide the recipient of the notice with information to allow that person to show cause why an enforcement notice should not be issued. The show cause notice must state a period within which the person can show cause why further action should not be taken, and this period must be at least 20 business days from when the notice is given.

Enforcement notices for plumbing and drainage

Clause 116 provides that local governments may issue enforcement notices where the local government has formed a reasonable belief that plumbing and drainage work is deficient. In the first instance the local government may issue an enforcement notice to the owners of premises to take action to remedy the situation where the local government believes the plumbing and drainage on the premises is:

- a danger or health risk to occupiers of the premises or the general public;
- defective and should be altered, repaired or replaced; or
- installed without obtaining the necessary local government approval, or installed without complying with the local government approval.

In the second instance, the local government may issue an enforcement notice on a person who has performed plumbing and drainage work requiring them to take action where the local government believes the work does not comply with this Act.

Any enforcement notice may, among other things, require an owner or other person to:

- seek necessary local government approvals (ie, request compliance assessment);
- take a specified action to ensure work complies with the local government approval;
- not take an action where the action would result in work not comply complying with the local government approval; or
- alter, repair or replace plumbing and drainage.

Enforcement notices for backflow prevention devices

Clause 117 makes specific provision for a local government to issue an enforcement notice in relation to backflow prevention devices, where the local government has formed a reasonable belief that plumbing on a premises could pollute the water supply in the premises or the water service of the water provider to the area. This situation can arise where a person operates a business in leased premises within a shopping centre that can potentially cause pollution. Therefore, enforcement notices under this section can be given to occupiers as well as owners of premises in circumstance where a properly operating back flow prevention device is needed to prevent contamination of the water supply system.

An enforcement notice under this section can require an owner or occupier to, among other actions, install a backflow prevention device, ensure these devices are registered where required, and that a device is tested and maintained in proper working order by an appropriately licensed person.

Relationship with Integrated Planning Act 1997

Clause 118 provides that an enforcement notice under this Act is taken to be an enforcement notice given under the IPA, and therefore provisions relating to enforcement notices under IPA apply to notices given under this Act. When a local government issues an enforcement notice it must follow the procedures provided for under the IPA.

The IPA enforcement provisions require notices to be in writing, and specify the information that must be contained in a notice (ie, describe the offence, the action needed to remedy the offence, the period in which to take the required action). The offence of failing to comply with a notice within the stated time attracts a maximum penalty of 1,665 penalty units.

If a person has contravened an enforcement notice by failing to take the action stated in the notice, the local government can do whatever is necessary to fix the problem, and recover costs under section 1066 of the LGA.

If an enforcement notice is given under section 116(1)(a) in relation to plumbing or drainage that constitutes a danger or health risk, an appeal against the notice must be started within 5 days after the notice is given, not the 20 day period allowed for other enforcement notices.

Division 3—Offences about licenses

Offences by persons not holding appropriate licence

Clause 119 makes it an offence for a person to perform plumbing or drainage work unless the person has a licence that entitles the person to do that particular aspect of work. This ensures that only licensed persons with the appropriate competencies are allowed to perform specific work within the scope of their licence, and provides for a maximum penalty of 165 penalty units for unlicensed persons performing plumbing or drainage work.

However, this clause also provides for certain work that does not require a licence, eg, unskilled work such as excavating or backfilling trenches, an apprentice carrying out work under proper supervision of an appropriately a licensed person, or a person undertaking drainage work under direct supervision of a licensed drainer.

Contravening licence conditions

Clause 120 makes it an offence for licensee to breach the conditions of their licences, ie, a licensee may only perform plumbing or drainage work where their licence entitles them to undertake that particular aspect of work. This ensures that only licensed persons with the appropriate competencies are allowed to perform specific work within the scope of

their licence. There is a maximum penalty of 100 penalty units for this offence.

Limitations on provisional licence holders

Clause 121 makes it an offence for a holder of a provisional licence to work alone. Provisional licensees may only undertake work authorised by their licences, while they are supervised by a person with the appropriate licence. A person with a provisional plumbing licence could work for a licensed plumber, or work for a business that employs a licensed plumber to supervise the provisional licensee. There is a maximum penalty of 100 penalty units for this offence.

Restriction on advertising as a licence holder

Clause 122 makes it an offence for a person to advertise they can carry out plumbing and drainage work without holding the appropriate licence. There is a maximum penalty of 100 penalty units for this offence.

Division 4—Offences about plumbing and drainage

Owner's duty to maintain plumbing and drainage

Clause 123 imposes a duty on the owner of premises to take reasonable steps to maintain the plumbing and drainage on the premises in good condition and working properly. There is a maximum penalty of 165 penalty units for breaching this.

Offence to pollute service provider's services

Clause 124 makes it an offence for a person carrying out plumbing or drainage work to anything that is likely to pollute a service provider's water or sewerage service. There is a maximum penalty of 165 penalty units for this offence.

Offence to remove or tamper with backflow prevention device

Clause 125 makes it an offence to remove or render inoperable any backflow prevention device installed on a premises. This provides for action to be taken when a device has been made inoperable, or removed, in

circumstances where it needs to be maintained in good working order. There is a maximum penalty of 165 penalty units for this offence.

Offence to remove or tamper with a hot water control device

Clause 126 makes it an offence to remove or render inoperable any hot water control device installed on a premises. For health reasons, hot water systems produce water that can scald persons. Hot water control devices provide for a mixing valve or other control to ensure that sufficient cold water is added to hot water before it flows from a tap, to ensure that the water is cooled to a safe temperature. This clause provides for action to be taken when a device has been made inoperable, or removed, in circumstances where it needs to be maintained in good working order. There is a maximum penalty of 165 penalty units for this offence.

Division 5—Other Offences

Obstruction of inspectors

Clause 127 makes it an offence for a person to obstruct (ie, hinder, resist or attempt to obstruct) an inspector exercising a power under this Act, unless the person has a reasonable excuse. There is a maximum penalty of 100 penalty units for this offence.

Impersonation of inspector

Clause 128 makes it an offence for a person to pretend to be an inspector. There is a maximum penalty of 40 penalty units for this offence.

PART 7—REVIEWS

Division 1—Reviews about plumbing and drainage licenses

Applying for a review

Clause 129 provides that a person given, or entitled to be given an information notice in relation to a decision of the board, may apply for a review of the decision within 28 days of becoming aware of the decision. The grounds for a review is that they are dissatisfied with the decision, or were not given an information notice. The decision is to be reviewed by the QBT established under the *Queensland Building Tribunal Act 2000.*

Review of decision

Clause 130 states that the decision of the board may be reviewed as if it were a reviewable decision under the *Queensland Building Tribunal Act 2000.* Therefore the review is governed by the provisions of the *Queensland Building Tribunal Act 2000* dealing with how applications are made and how the QBT conducts the review.

Powers of Queensland Building Tribunal when reviewing

Clause 131 provides that in reviewing the decision of the board, the QBT may confirm or amend the original decision, or substitute another decision for the original decision. Alternatively, the QBT may decide to set aside the original decision and return the matter to the board with directions the QBT considers appropriate for dealing with the matter.

If the original decision is amended, or another decision substituted by the court, the QBT's decision is taken to be a decision of the board. Where the QBT imposes conditions on a licence it must give reasons and decide the review period applicable to the conditions.

Division 2—Reviews about on-site sewerage facilities

Applying for a review

Clause 132 provides that a person given, or entitled to be given, an information notice for a decision under Part 5, or a notice by a local

government about a decision to make a requirement under Part 5, may apply to the decision maker for a review of the original decision.

The decision maker will be the chief executive of the Department of Natural Resources and Mines, or the local government depending on the nature of the decision made.

The application does not stay the original decision. The review must not be dealt with by the person who made the original decision or by a person in a less senior office. However, these requirements do not apply to an original decision made by the chief executive of the Department of Natural Resources and Mines.

Review decision

Clause 133 sets out the procedure for the reviewer to make a review decision and advise the applicant of the results of the review. Review decisions can be appealed to the Building and Development Tribunal established under the IPA.

PART 8—LEGAL PROCEEDINGS

Division 1—Evidence

Application of div 1

Clause 134 clarifies that this division applies to a proceeding under this Act.

Appointments and authority

Clause 135 provides that it is not necessary to prove the appointment or the authority of inspectors, the chief executive of the Department of Local Government and Planning, or a member of the board or the secretary of the board.

Signatures

Clause 136 confirms that a signature purporting to the signature of the Minister, the chief executive of the Department of Local Government and

Planning, a member of the board, the secretary or an inspector, is evidence of the signature it purports to be.

Evidentiary provisions

Clause 137 provides that a certificate purporting to be signed by the chief executive of the Department of Local Government and Planning, the chairperson of the board, or the secretary is evidence of the documents having been made, issued or kept, and of events having occurred at specific times. For example, a certificate may state that a licence or an inspector's appointment was or was not in force on a stated day.

Division 2—Offence proceedings

Offences under Act are summary

Clause 138 provides that an offence against this Act is a summary offence, ie, is heard in the Magistrates Court. A proceeding for the offence must commence either within 1 year of the commission of the offence, or within 6 months (but before 2 years after) the complainant becomes aware of the offence.

Either an officer appointed by the chief executive officer of the Department of Local Government and Planning under section 29 or local government officers can prosecute offences in the Magistrates Court under the provisions of section 42 of the *Acts Interpretation Act.*

Statement of complainant's knowledge

Clause 139 provides that in making a complaint to start a proceeding, a statement by the complainant that an offence came to the complainant's knowledge on a stated day, is evidence of the matter.

Conduct of representatives

Clause 140 deals with proving a person's state of mind about particular conduct for the purposes of establishing an offence has occurred. It provides that it is sufficient to show that a person's conduct was within their actual or apparent authority, and the person has the state of mind. A person's state of mind includes the reasons behind and their beliefs, intentions, knowledge, opinions or purpose.

The conduct of a person's representative is taken to be within their actual or apparent authority, unless the person can prove they took reasonable steps to prevent the representative's conduct, or were not in a position to influence the representative's conduct.

In this clause, a representative is a corporation's agent, employee or executive officer; or an individual's agent or employee.

PART 9 —MISCELLANEOUS PROVISIONS

Approval of forms

Clause 141 provides that the chief executive of the Department of Local Government and Planning may approve forms for use under this Act.

Maintenance of existing combined sanitary drains

Clause 142 provides for works on combined sanitary drains that serve two or more premises, where the owners of the premises cannot agree on maintenance or repair works. Where a drain is obstructed, damaged or disrepair because of defective materials, breakages or tree roots and the owners cannot agree on arrangements for necessary repairs or maintenance, the local government may perform the work and recover from each owner their fair share of the costs.

However, this clause does not apply to sanitary drains serving premises under a community titles scheme, or part of a building unit plan or group title plan under the *Body Corporate and Community Management Act 1997* or *Building Units and Group Titles Act 1980.*

Local government's obligation to keep particular records

Clause 143 requires local governments to keep copies of certificates, permits, plans and other relevant documents relating to the compliance assessment of plumbing or drainage work carried out on a premises, until the premises is either demolished or removed.

Chief executive may publish information

Clause 144 empowers the chief executive of the Department of Local Government and Planning to publish information considered appropriate about plumbing and drainage or licensed plumbers and drainers. Publication can be on the Internet or by other some other telecommunication medium. Information that could be published in this way would be a resolution by a local government under section 83 (ie, a local government resolution about what plumbing and drainage works will be subject to compliance permits or compliance certificates that has been provided to the chief executive) or information from the Plumbing and Drainers Board register of licenses under section 77).

Regulation-making power

Clause 145 provides the Governor-in-Council may make regulations under this Act. It is proposed to make a regulation to contain the technical requirements and standards for plumbing and drainage works, that will replace the *Standard Sewerage Law 1998* and the *Standard Water Supply Law 1998* made under the SWSA. This will be the *Standard Plumbing and Drainage Regulation*, which this clause states will be made about plumbing and drainage work and the inspection of work.

This clause also provides that a regulation, either the *Standard Plumbing and Drainage Regulation* or another regulation may provide for:

- setting the standards for persons to be licensed;
- require compliance with a code of practice or guideline issued under this Act;
- setting fees and how they may be paid;
- providing for maximum penalties of not more than 20 penalty units for contravening a regulation.

See also section 159 re transitional regulations.

References to repealed Act, by-laws and laws

Clause 146 provides that where Acts or documents refer to the repealed SWSA, other repealed Acts and subordinate legislation, once this clause commences, to be taken to be a reference to the *Plumbing and Drainage Act 2002* and regulations made pursuant to that Act.

PART 10 —REPEAL AND TRANSITIONAL PROVISIONS

Division 1—Repeal

Act repealed

Clause 147 repeals the SWSA.

Division 2—Transitional provisions about members, inspectors and licensing

Board members under the repealed Act continue in office

Clause 148 provides for a member of the existing board under the SWSA to continue as a member of the board until 1 November 2003, or until a new board is appointed under this Act if that occurs before 1 November 2003.

Inspectors under the repealed Act continue in office

Clause 149 provides that a person who was an inspector of a local government immediately before the *Plumbing and Drainage Act* commenced, shall continue in office and is to be taken to be an inspector under this Act.

Licence applications continue under repealed Act

Clause 150 provides that an application for a licence made under the repealed SWSA that was not decided when the *Plumbing and Drainage Act* commenced, must be decided as if the repealed SWSA had not been repealed. A licence decided and issued under this clause is subject to section 151 (ie, as the license were is force immediately before this Act commenced and is therefore taken to be the relevant license issued under this Act).

Licences issued under the repealed Act continue

Clause 151 provides for licences issued under the repealed SWSA and in force immediately before the *Plumbing and Drainage Act* commences, to continue in force but to be taken to be the appropriate class of license under the *Plumbing and Drainage Act*. For example, an existing full plumber's or drainer's licence with no limitations will be taken to be a plumber's or drainer's licence. A water plumber's licence in force under the repealed SWSA will be taken to be a plumber's licence, but with the limitations imposed on the licence under the repealed SWSA.

Division 3—Transitional provisions about plumbing and drainage work

Applications for approval to carry out plumbing or drainage work continue under repealed Act

Clause 152 provides that where an application for approval to carry out plumbing or drainage work is made under the repealed SWSA, and not decided when the *Plumbing and Drainage Act* commences, this application is to be decided as if the repealed SWSA were still in force. An approval issued under this clause is subject to section 153 as if it were in force under the repealed SWSA.

Approvals for works issued under the repealed Act continue

Clause 153 provides that an approval given for plumbing or drainage work under the repealed SWSA continues in force and is taken to be a compliance permit under the *Plumbing and Drainage Act*.

Plumbing and drainage work lawfully carried out under the repealed Act continues to be lawful

Clause 154 provides that plumbing or drainage work lawfully carried out under the repealed SWSA continues to be lawful.

Notices issued under the repealed Act continue under the repealed Act

Clause 155 requires a notice issued under the repealed SWSA, and in force immediately before this Act commences, to be dealt with as if the repealed SWSA had not been repealed.

Division 4—Transitional provisions about on-site sewerage facilities

Existing applications continue

Clause 156 provides for an application for an approval relating to an on-site sewerage facility made under the *Standard Sewerage Law*, and not decided when this Act commences, to be decided as an application under this Act.

Existing approvals continue

Clause 157 provides that approvals relating to on-site sewerage facilities that were in force under the *Standard Sewerage Law* and not complied with immediately before the commencement of this Act, continue in force to the greatest practicable extent as approvals under this Act, until they would have expired under the *Standard Sewerage Law*.

Notices issued under the repealed Act continue under this Act

Clause 158 provides that notices relating to on-site sewerage facilities that were given under the *Standard Sewerage Law* and not complied with immediately before the commencement of this Act, continue in force as notices given under this Act for the same purpose. However, penalty levels for non-compliance that applied under the *Standard Sewerage Law* continue to apply.

Division 5—Miscellaneous transitional provisions

Transitional regulation-making power

Clause 159 provides that a regulation declaring itself to be a transitional regulation may make provision for transitional matters. Where this Act does not make sufficient provision for the transition from the SWSA to the *Plumbing and Drainage Act*, a regulation may make provision to allow or facilitate the doing of to anything necessary for the transition.

A transitional regulation may have retrospective operation but not to a day earlier than the day on which this clause commences. This clause and any regulation made pursuant to it, expire 1 year after commencement.

PART 11—AMENDMENT OF BUILDING ACT

Act amended by part 11

Clause 160 declares Part 11 amends the *Building Act 1975*

Amendment of section 3 (Definitions)

Clause 161 amends section 3 dealing with definitions for the Act.

Clause 161(1) deletes the existing definitions for:

"accrediting auditor",
"accrediting body",
"building certifier",
"complaint",
"disciplinary finding",
"professional misconduct", and
"show cause notice".

Clause 161(2) inserts new definitions for:

"accreditation standards body",
"auditor",
"assessable development",
"BSA",
"building certifier",
"building certifying function",
"building tribunal",
"code of conduct",
"complaint",
"development application",
"development approval",
"development permit",
"former building certifier",
"local planning instrument",
"national accreditation framework",
"professional misconduct",
"register",
"self-assessable development",
"show cause notice",
"show cause period",
"Tribunal Act", and
"unsatisfactory conduct".

The current complaint system has been criticised as too rigid as there is no clear distinction between offences of a basic administrative nature, and more serious offences, such as significant technical breaches which may compromise the safety of people in buildings.

Many complaints of professional misconduct investigated to date, may be more appropriately described as an error of professional judgement rather than professional misconduct. At common law, for a charge of professional misconduct to be proven it must be conduct that would reasonably be regarded as disgraceful or dishonourable by fellow professionals of good repute and competency. A charge of professional misconduct is a very serious matter, which has the potential to destroy the reputation and livelihood of competent professionals.

A charge of professional misconduct should only be considered when the conduct of a building certifier would warrant severe disciplinary action. There is therefore a need to distinguish between minor and serious charges of professional misconduct and to develop appropriate decision processes and penalties for each.

The definition of 'professional misconduct' has therefore been amended to create a category of 'unsatisfactory conduct' for minor offences and leave more serious misconduct as 'professional misconduct'.

An 'accreditation standards body' is an entity approved under regulation which specifies what level of education and training is required for each level of licensing available to building certifiers. A 'national accreditation framework' refers to the framework approved by the Australian Building Codes Board which prescribes the appropriate level of training and education. The Australian Building Codes Board is an entity established by intergovernmental agreement that is responsible for the maintenance and administration of the *Building Code of Australia* at a national level.

The 'BSA' is the Building Services Authority established under the Queensland *Building Services Authority Act 1991.* The BSA is responsible for the individual licensing of building certifiers so that they may perform building certifying functions. A description of the activities that the BSA undertakes is detailed in the new section 29 of the BA. Chapter 5, part 3 of IPA defines private certifier and sets out their role and responsibilities.

As the development assessment process within which building certifiers work has altered to provide for two levels of approval, three new definitions have been called-up from IPA. These terms are 'development application' and 'development approval' which can be found in Schedule 10, and 'development permit' which can be found in section 3.1.5 (3) of the IPA.

The definition of "complaint" has been amended to include complaints against a former building certifier made under new Part 5A of the BA.

Amendment of s 4 (Standard Building Regulation)

Clause 162 amends section 4(1)(b), to allow a regulation to be made under the BA about the licensing of, instead of accrediting of building certifiers. Currently, the accreditation of building certifiers is a two stage, co-regulatory process involving the 'Building Surveyors and Allied Professions Accreditation Board' (BSAP) and the BSA. To improve the clarity of the accreditation process, the Bill provides for an accreditation standards body to assess an applicant's qualifications and experience to establish the particular level at which the applicant can be licensed, and the BSA to licence building certifiers to perform building certifying functions.

Amendment of s 10 (How changes to Standard Building Regulation may affect certain building work to be carried out)

Clause 163 amends section 10(3) to apply section 10 to not only the *Building Code of Australia* but also any other document adopted or referenced by the *Standard Building Regulation*.

Amendment of s 12A (Definitions for pt 2A)

Clause 164 amends section 12A by deleting the definitions 'development application' and 'development approval' as they are now provided in section 3.

Amendment of s 13 (Local law for fencing of swimming pools)

Clause 165 amends section 13(3) so that no further tourist resorts can be exempted from complying with local laws requiring fencing around swimming pools by regulation. The decision as to whether a tourist resort's swimming pool fencing complies with local laws will be decided by the relevant local government.

The 'tourist resort complexes' currently specified in the Regulation as exempt from the application of local laws will remain exempt through the application of transitional provisions provided in a new section 61.

Amendment of s 14 (Outdoor swimming pools must be fenced)

Clause 166 amends section 14(2) to create an offence if a person fills a pool with water to a depth of 300 mm or more, before compliant fencing has been installed and inspected by a building certifier and the owner of the pool has been issued with a certificate stating that the pool and pool fence complies with the standards prescribed under a regulation. A maximum penalty of 165 penalty units applies.

Clause 166(2) amends section 14(3)(b) and (4) to clarify an owner must at all times ensure swimming pool fencing complies with the standards prescribed under a regulation.

Replacement of pt 5, hdg

Clause 167 replaces the heading of part 5 'ACCREDITING BODIES AND BUILDING CERTIFIERS', with 'PART 5— ACCREDITATION AND PROVISIONS ABOUT BUILDING CERTIFIERS' to more appropriately reflect the function of the part.

Replacement of s 28 (Authorisation of accrediting bodies)

Clause 168 replaces section 28 and inserts a new heading 'Authorisation of accreditation standards body'. Currently, the accreditation of building certifiers is a two- stage, co-regulatory process involving the BSAP and the BSA. To improve the clarity of the accreditation process, the Bill provides for an accreditation standards body (e.g. BSAP) to assess an applicant's qualifications and experience to establish the particular level at which the applicant can be licensed and the BSA to license building certifiers to perform building certifying functions under a separate process.

Section 28(1) provides that a regulation may authorise an entity to be an accreditation standards body.

Section 28(2) outlines that an accreditation standards body must not be authorised unless they have identifiable competence and expertise in accrediting building certifiers.

Section 28(3) allows for more than one accreditation standards body to be authorised.

Insertion of new s 28A (Function of accreditation standards bodies)

Clause 169 inserts a new section 28A.

Section 28A(1) states that the function of an accreditation standards body is to issue accreditation to individuals who intend to apply to be building certifiers.

Section 28A(2)(a) to (c) outlines the functions and responsibilities of an acceptable accreditation standards body.

Duties of accrediting bodies include setting educational and experiential standards for each level of licensing as a building certifier.

Section 28A(2)(b) requires an accreditation standards body to comply with the national accreditation framework for building certifiers approved by the Australian Building Codes Board when deciding the current education and experience accreditation for different licences for building certification.

The NCP review of the BA recommended the accreditation standards body who assesses the eligibility of building certifiers to be licensed by the BSA should not have sole discretion to determine accreditation requirements.

The Australian Building Codes Board, which is established by an intergovernmental agreement between the Commonwealth, States, and Territories to develop national building standards, has recently completed a review of the national accreditation framework for building certifiers. In determining accreditation requirements for building certifiers, an accreditation standards body will be required to comply with the national accreditation framework produced by the Australian Building Codes Board. This will address concerns about the discretion of accreditation standards body in determining accreditation requirements for building certifiers.

In addition, building certifiers are required to undertake Continuing Professional Development (CPD) as part of their accreditation. The NCP review found that CPD should focus more on addressing inadequacies in the competencies of the building certifier profession. Section 28A(2)(c) requires an accreditation standards body to provide a professional development scheme approved by the chief executive as part of the education and experience accreditation that address these inadequacies.

Insertion of new pt 5, div 1A, hdg

Clause 170 inserts a heading for a new 'Division 1A—Functions of BSA and licensing of building certifiers' before section 29.

Replacement of section 29 (Function of accrediting body)

Clause 171 replaces section 29 concerning functions of accrediting bodies with a new section 29 concerning the functions of the BSA.

Section 29(a) states that the function of the BSA, instead of the accrediting body, is to license individuals who have accreditation from an accreditation standards body for building certifiers.

Section 29(b) provides the BSA with an additional power to endorse building certifiers who have a base licence so that they may issue development permits for building work.

Section 29(c) specifies that the BSA must monitor the compliance of building certifiers with the licensing requirements.

Section 29(d) provides that the BSA must carry out audits of building certifier's work. The BSA must take action for both professional misconduct and unsatisfactory conduct that is detected while auditing the work of a building certifier. However, in the instance that the BSA uncovers professional misconduct while auditing the work of the building certifier, the BSA is to apply to the Building Tribunal, as described under part 5, Division 6, Subdivision 3 – Disciplinary Proceedings.

Subsections 29(e) and 29 (f) specifies that the BSA must investigate all written complaints made to it, and take the necessary disciplinary action if it is found that a building certifier or former building certifier did not comply with the code of conduct, or this or another Act.

Subsection 29(g) outlines that the BSA must provide the Department of Local Government and Planning and local governments a list of building certifiers and the disciplinary action that has been taken against them for that year.

Subsection 29 (h) and 29(i) requires that the BSA must keep a register of building certifier's details, as specified under section 30B, and that this register be available for purchase on request, as specified under section 30C.

Insertion of new s 29A (Application for licence)

Clause 172 inserts a new section 29A prescribing that an individual applying to BSA for a licence as a building certifier must apply in the way prescribed under a regulation.

Replacement of s 30 (Persons must not perform or exercise building certifying functions without accreditation)

Clause 173 replaces section 30 to provide that a person must not practice as a building certifier, unless the individual is a building certifier.

Failure to be licensed, while practicing as a building certifier can result in a penalty of up to 165 penalty units.

This does not apply to a corporation or a local government, if an individual who holds a current licence as a building certifier is employed by the corporation or a local government to perform the building certification function on behalf of that corporation or local government.

New section 30A (Restrictions on building certifiers without endorsement)

Section 30A creates an offence if a building certifier issues a development permit for building work, if the building certifier's licence is not endorsed by the BSA to issue development permits for building work. A maximum penalty of 165 penalty units applies.

Building certifiers who are licensed to issue approvals will be required by regulation to obtain greater competencies in regulatory skills so that building approvals comply with local planning laws.

Alternatively, building certifiers licensed at the base level will be able to issue a certificate of compliance with *Standard Building Regulation 1993* that a local government, or a building certifier with the necessary regulatory skills, may rely on without further checking when issuing a development permit.

New Section 30B (Keeping register)

Section 30B requires the BSA to keep a register with a list of details and matters about a building certifier that are required by the Act or prescribed under regulation. This register may be kept in any form the BSA considers appropriate, including in electronic format.

New section 30C (Inspection of register)

Section 30C requires the BSA to keep the register open for inspection by the public and must provide a person with a copy of, or an extract from the

register upon payment of a prescribed fee. The BSA may make the register available for inspection on its website.

When read in conjunction with section 30B, this clause allows the public to research a building certifiers' professional history, to enable an informed decision to be made on any potential engagement of professional services. Former licensees will be removed from the register upon leaving the certification business, unless the building tribunal has ordered otherwise.

Amendment of s 31 (Jurisdiction of building certifiers)

Clause 174 amends section 31(5) by replacing the word accreditation with licence. This change of term separates the process of 'accreditation' that is overseen by the 'accreditation standards body' from the application for a licence as a building certifier, a process administered by the BSA.

Replacement of pt 5, div 3

Clause 175 replaces Part 5, division 3.

Division 3—Code of conduct for building certifiers.

New section 32 (Making code of conduct)

Section 32 requires the chief executive of the Department of Local Government and Planning, to make a code of conduct by which the performance of building certifiers may be measured, and with which building certifiers must comply. The code has no effect until it is approved under a regulation and has the legal status of a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

The BSA, who is the licensing body, previously published the code of conduct. This change in administrative responsibility was designed to separate policy from the regulatory aspects of the building certification system.

New section 32A (Tabling of code)

Section 32A provides that, where a code of conduct has been approved under a regulation, the Minister will table a copy of the code with the

regulation in the Legislative Assembly. This is intended to provide transparent access to codes by stakeholders and the public.

New section 32B (Notice of approval of code)

Section 32B provides that the chief executive of the Department of Local Government and Planning must notify building certifiers of the approval of the code.

Replacement of pt 5, div 4, hdg

Clause 176 omits the heading of Part 5, division 4, and inserts a new heading 'PART 5A—COMPLAINTS, INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS RELATING TO BUILDING CERTIFIERS' and inserts a new division heading *'Division 1—Complaints'*.

Amendment of s 33 (Making a complaint against a building certifier)

Clause 177 amends section 33(1) to include 'unsatisfactory conduct' as well as 'professional misconduct' within the scope of complaints that may be made against a building certifier.

Clause 177(2) amends section 33(3) to provide that the BSA, instead of the accrediting body, may require the complainant to give further particulars of the complaint.

Clause 177(3) amends section 33(4) to provide that the BSA may dismiss any complaint without taking further action under this division where further particulars are not verified. This allows the BSA to dismiss spurious or unfounded complaints without having to investigate further. New section 33(5) provides that the BSA must not disclose unproved complaints against a building certifier.

Amendment of s 34 (Building certifier must be advised of complaint)

Clauses 178 amends section 34 to require the BSA, instead of the accrediting body, to inform a building certifier of the nature of the complaint received against the certifier, and to invite the certifier to make representations to the BSA about the complaint.

Section 34(3) is amended to prescribe that if the BSA, instead of the accrediting body, makes a decision on a complaint under section 40, the BSA must have regard to representations made to it.

Insertion of new ss 34A and 34B

Clause 179 inserts new sections 34A and 34B after section 34.

New section 34A (BSA may recommend mediation to resolve complaint)

Section 34A applies if the BSA considers that a complaint about a building certifier is capable of resolution by mediation.

This is designed to minimise the number of disputes that proceed to a formal complaint.

The BSA is given the ability to require mediation before it investigates a complaint, however this mediation will take place independent of the BSA.

For example, industry associations, or the Alternative Dispute Resolution Branch of the Department of Justice and Attorney-General could provide mediation. If resolved by mediation, the complaint about the certifier will not be further investigated.

This process may not only assist in achieving the complainants desired outcome but also serve to possibly reduce the ultimate need for formal complaint lodgement. This recognises that some complaints are better resolved by mediation than a more formal disciplinary solution.

Section 34A(1) provides that the BSA's recommendation for mediation must be made by notice in writing and specifies what details have to be included on the notice. Such details include; that attendance and participation in mediation is voluntary, and that either party can withdraw from this mediation at any time, when the mediation period ends and the effect of giving the BSA a certificate about the mediation.

Section 34A(2) allows the BSA to recommend that the complainant and the building certifier enter into a process of mediation to resolve the complaint as soon as practicable after the complaint has been made to the BSA.

New Section 34B (Mediation process)

Section 34B requires that if the parties agree on a resolution to the complaint, the agreement must be signed by, or on behalf of, each party and by the mediator. Time limits for the mediation are included, as is the effect of giving the BSA a certificate about the mediation.

The mediator must give the BSA a certificate about the mediation in the approved form as soon as practicable after mediation has ended. If the parties sign a mediation agreement, the complaint is taken to be withdrawn when the mediator gives the certificate to the BSA.

Replacement of s 35 (Accrediting body must investigate complaint)

Clause 180 replaces the heading of section 35 with 'Investigation of complaint', and details in what circumstances an investigation is necessary. With mediation as an option, the BSA need conduct an investigation only where mediation is not recommended, or where mediation is undertaken but fails to resolve the complaint by the end of the mediation period.

The BSA, instead of the accrediting body, is required to investigate a complaint as soon as possible. If during the course of the investigations, the BSA discovers evidence that would suggest a complaint could have been made or received, the BSA may also investigate that matter at the same time as it is investigating the first complaint.

Replacement of pt 5, div 5, hdg

Clause 181 replaces the heading of Part 5, division 5, and inserts a heading 'Division 2—Investigations'.

Amendment of s 36 (Accrediting body may require documents to be produced)

Clause 182 amends section 36 and its heading to allow the BSA, instead of the accrediting body, to require a building certifier to produce documents within a reasonable time, for the purpose of investigating a complaint or auditing the work of the certifier.

Clause 182(3) creates a new offence if a certifier fails, without reasonable excuse, to comply with a notice to provide a document to the BSA. A maximum penalty of 50 penalty units applies.

Replacement of s 37 (Inspection of documents)

Clause 183 replaces section 37 to enable the BSA, instead of the accrediting body auditor, to make copies of any information it considers necessary, to assist it with its investigations.

Amendment of s 38 (Power to enter and inspect building)

Clause 184 amends section 38 to allow an auditor from the BSA, instead of the accrediting body, to enter and inspect a building site for auditing purposes, but only with the consent of the person in control of the building site.

Amendment of s 39 (Cooperating with investigation or audit)

Clause 185 amends section 39 to require the building certifier to assist and cooperate with the audit by the BSA, instead of the accrediting body.

Clause 185(2) states that a building certifier engages in professional misconduct if the certifier fails to comply with the audit requirements, or misleads, or obstructs the BSA in the exercise of any of its functions.

Insertion of new ss 39A and 39B

Clause 186 inserts new sections 39A and 39B after section 39.

New Section 39A (False or misleading statements)

Section 39A creates the offence of providing to the BSA, a statement which the person knows is materially false or misleading. A maximum penalty of 165 penalty points is associated with this offence.

In a proceeding for an offence against section 39A, it is sufficient to state that the statement was false or misleading without specifying which.

New s 39B (False or misleading documents)

Section 39B creates the offence of providing a document to the BSA which is false or misleading. A maximum penalty of 165 penalty points is associated with this offence.

However, this does not apply if, when providing the documentation, the person informs the BSA how the document is false or misleading and provides the correct information to the BSA.

Replacement of ss 40 and 41

Clause 187 replaces sections 40 and 41.

New section 40 (Decision after investigation or audit completed)

Section 40 requires the BSA after investigating a complaint or conducting an audit to either apply to the QBT to start a disciplinary proceeding against the building certifier; or decide whether or not the building certifier has engaged in unsatisfactory conduct.

The BSA must give the building certifier and the complainant (if any) written notice of the decision.

Also, if a local government or corporation employs the building certifier in question, the BSA must provide them a copy of the notice.

The disciplinary action that the BSA may take has been changed. The BSA can no longer suspend or cancel a building certifier's license. This disciplinary action will only be available to the QBT for the more serious charge of professional misconduct.

Also, there currently is no specific provision allowing the BSA to order a building certifier to bring building work into compliance. To address this, the powers of the BSA to make orders to require a building certifier to bring the certification of building work into compliance and to direct necessary enforcement action to be taken have been increased. However, any order for compensation or costs will only be given by the QBT.

Irrespective of disciplinary proceedings undertaken by the BSA, if an offence under the Act has been committed, then the BSA may also start proceedings to prosecute the building certifier for that offence.

Any decision under this provision does not prevent the BSA taking such matters into account when initiating any subsequent disciplinary proceedings against a building certifier. For instance, if a building certifier were to have a number of charges of unsatisfactory conduct that are similar in nature, the BSA may apply to the QBT to have the case heard as professional misconduct. The amendments are intended to tighten the disciplinary system, so that building certifiers who commit serial offences are subject to increasingly serious proceedings and penalties.

New Section 41 (Review of BSA's decision)

Section 41 provides that if a building certifier or a complainant is dissatisfied with the BSA's decision or action under sections 40 (1) or 40 (4). The building certifier or the complainant may appeal to the QBT against the decision. Previously, an appeal was made to the chief executive of the Department of Local Government and Planning.

The appeal must be made within 20 business days after the day the person making the appeal received notice of the decision being appealed against.

Replacement of pt 5, div 6

Clause 188 replaces part 5, Division 6.

Division 3—Show cause notice for disciplinary proceedings

New Section 41A (Show cause notice)

Section 41A requires if a local government intends to start a disciplinary proceeding against a building certifier under section 42, the local government must give the building certifier a show cause notice before making the application to the QBT.

The show cause notice must state the grounds for making the application; and outline the facts and circumstances forming the basis for the grounds; and invite the building certifier to show within a stated period of not less than 20 business days why the application should not be made.

New Section 41B (Representations and decision)

Section 41B allows the building certifier to make written representations about the show cause notice to the local government within the stated show cause period. After considering the representations made by the building certifier, the local government must decide to either take no further action or apply to the QBT to start a disciplinary proceeding against the building certifier. The local government must give the building certifier written notice of its decision and the reasons for the decision.

Division 4—Disciplinary proceedings

New Section 42 (Building Tribunal may conduct disciplinary proceeding)

Section 42 transfers the powers currently held by the BSA to determine the guilt, and appropriate discipline, of a building certifier for a charge of professional misconduct to the QBT established under the *Queensland Building Tribunal Act 2000*. Responsibility for determining the guilt and appropriate penalty for a lesser charge of unsatisfactory conduct will remain the responsibility of the BSA.

The use of a tribunal, independent of the BSA, will remove any concerns with respect to natural justice issues. The current disciplinary process under the BA requires the BSA to investigate complaints against building certifiers and determine what disciplinary action, if any, is to be taken. In effect, the BSA undertakes the roles of both prosecutor and judge in a disciplinary matter.

In addition, to improve access to the disciplinary system the option for local governments to lay a complaint of professional misconduct directly with the Tribunal is also provided.

Section 92 of the *Queensland Building Tribunal Act 2000* provides that a party to a tribunal proceeding may appeal to the District Court against a decision of the QBT that fully decides a matter that is the subject of the proceeding. It is noted that the words "cancellation"; "disqualification" and "suspension" are to be accorded their ordinary dictionary meanings.

New section 43 (Application of Tribunal Act to disciplinary proceeding)

Section 43 provides that the *Queensland Building Tribunal Act 2000* applies to a disciplinary proceeding under this division. In accordance with the *Queensland Building Tribunal Act 2000*, hearings are conducted before a single member, who will be from the legal profession.

New section 44 (Notification of disciplinary proceeding)

Section 44 provides a mechanism, to ensure separate complaints by a local government and the BSA about the same matter will be brought as a joint complaint to the QBT.

New section 45 (Orders relating to current building certifier)

Section 45 outlines the orders the QBT may make if it decides that a disciplinary ground is established against a building certifier. These orders include heavy fines, conditions on licence and loss of licence.

Section 45(3) allows the QBT to make other orders requiring the building certifier to bring the certification of building work into compliance with the BA, or another Act, or any necessary development approval that applies, or a local planning instrument. The QBT may also order any necessary enforcement action be taken.

Section 45(4) allows the QBT to make an order regarding defective or incomplete work. It can be rectified or completed by a person who is appropriately licensed; or payment can be made to the complainant or another person to rectify or complete the work.

Section 45(6) provides for the situation where a corporation employed a building certifier to perform building certification work, and the corporation did not take all reasonable steps to ensure the building certifier did not engage in professional misconduct. The QBT is empowered to make an order imposing a penalty on the corporation. However, the QBT may only make an order under subsection (6) if the corporation or local government has been joined as a party to the proceeding under section 45 of the *Queensland Building Tribunal Act*.

Section 45(7) allows the QBT to make any other order it considers appropriate.

Section 45(8) requires if the QBT makes an order imposing a penalty under sections 45(5) or 45(6), the QBT must also order that the amount be paid to the person bringing the proceedings.

New section 45A (Orders relating to former building certifier)

Section 45A applies where a disciplinary proceeding is taken against a former building certifier who is not currently accredited at the time of the QBT's decision. For example, this provision would apply to a building certifier who resigns after commencement of disciplinary proceedings but before the time of the QBT's decision.

The same disciplinary measures will be able to be taken against a former building certifier as can be taken against an accredited building certifier. The intent is to ensure accountability for the work of a building certifier, even if a licence is discontinued.

However, the QBT can not cancel or suspend a former building certifiers licence but may make an order that a former building certifier must not be licensed or re-licensed by the BSA for the period stated in the order; or never be licensed or re-licensed.

New section 45B (Consequences of failure to comply with building tribunal's orders and directions)

If a building certifier fails to comply with an order or direction of the QBT, the QBT has the power to order that the building certifier's licence be suspended or cancelled.

New section 45C (Recording details of orders)

Section 45C provides for the recording on the register held by the BSA of QBT orders relating to building certifiers.

Amendment of s 46A (Fees for statutory functions)

Clause 189 requires that a local law or local government resolution setting fees for statutory functions must prescribe the person liable to pay the fee and the time limit within which it must be paid. Previously, no time limit was imposed.

Amendment of section 50 (Prosecution of offences)

Clause 190 amends section 50 by providing that only the BSA, rather than 'any person' may lay a complaint for an offence under part 5 or 5A of the BA or an offence against a regulation made under these Parts. A new subsection (5) allows all penalties recovered from a prosecution against a building certifier under these provisions is to be paid to the BSA.

Insertion of new part 8 (Transitional Provisions For Plumbing and Drainage Act 2002)

Clause 191 inserts a new part 8 after section 59 providing savings and transitional provisions for the *Plumbing and Drainage Act 2002.*

PART 8—SAVINGS AND TRANSITIONAL PROVISIONS FOR PLUMBING AND DRAINAGE ACT 2002

'New section 60 (Definitions for pt 8)

Section 60 inserts the following new definitions for part 8—

"amending Act" means the *Plumbing and Drainage Act 2002*, part 11.

"building certifier" includes a former building certifier.

"commencing day" means the day this section of the *Plumbing and Drainage Act 2002* commences.

"unamended Act" means the BA as in force immediately before the commencing day.

New section 61 (Swimming pool fences for existing tourist resort complexes exempted)

Section 61 applies to a tourist resort complex if, immediately before the commencement of this section, the land used for the tourist resort complex was specified under a regulation and the tourist resort complex was not required to construct fencing around a swimming pool on the land. In this instance, a local law is of no effect if it requires the construction of fencing around a swimming pool on the land, provided the land continues to be specified under a regulation.

However, if the resort is found at a later date to be not providing adequate safety to young children, the resort may be removed from the regulation and will then have to comply with the local law.

New section 62 (Unsatisfactory conduct and professional misconduct)

Section 62 provides that if the QBT is deciding whether proper grounds exist for taking disciplinary action against a building certifier or a former building certifier, the QBT may take into account conduct of the building certifier before or after the commencing day.

If BSA is deciding whether to apply to the QBT to start a disciplinary proceeding against a building certifier, BSA may take into account conduct of the building certifier before or after the commencing day.

Also, if the BSA is deciding whether or not a building certifier has engaged in unsatisfactory conduct, the BSA may take into account conduct

of the building certifier or a former building certifier before or after the commencing day.

New section 63 (Appeals to chief executive against accrediting body's decision)

Section 63 provides that if a person had appealed to the chief executive of the Department of Local Government and Planning under the former Act, against a decision of the accrediting body; and the appeal had not been decided before the commencing day; the chief executive may hear, or continue to hear, and decide the appeal as if this section had not commenced.

Also, if a person could have appealed to the chief executive under the unamended Act against a decision of the accrediting body; and the person had not appealed before the commencing day; the person may appeal to the QBT under section 41 of the Act.

New section 64 (Appeal to the court against chief executive's decision)

Section 64 provides that if a person has appealed to the court under the former Act against a decision of the chief executive of the Department of Local Government and Planning, and the appeal had not been decided before the commencing day; the court may hear, or continue to hear, and decide the appeal under the unamended Act as if this section had not commenced.

Also, if a person could have appealed to the court under the former Act against a decision of the chief executive, and the person had not appealed before the commencing day; the person may appeal under the unamended Act as if this section had not commenced.

New section 65 (Orders relating to building certifiers)

Section 65 applies if the QBT orders a building certifier under section 45(5) or (6)(b), or former building certifier under section 45A(5) or (6)(b), to pay an amount to the accrediting body.

The QBT may disregard any previous finding of professional misconduct against the building certifier or former building certifier made by an accrediting body before the commencing day.

However, if the building certifier or former building certifier has, before the commencing day, been prosecuted under section 50 for an offence against this Act and found guilty, the QBT may take the offence into account when making the order.

PART 12—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Division 1—Preliminary

Act amended by part 12

Clause 192 declares Part 12 amends the IPA.

Division 2—Amendments for plumbing and drainage

Amendment of s 1.3.5 (Definitions for terms used in "development")

Clause 193 amends section 1.3.5 by omitting the definitions of 'drainage work' and 'plumbing work' from this section. These definitions are now contained in the dictionary.

Amendment of s 4.2.4 (Referee with conflict of interest not to be member of tribunal)

Clause 194 amends section 4.2.4 including plumbers, plumbing inspectors, site evaluators and soil assessors among the referees who may not be a member of a tribunal if there is a conflict of interest in regard to the matter to be, or being heard, by the tribunal

Amendment of s 4.2.7 (Jurisdiction of tribunals)

Clause 195 amends section 4.2.7 by including matters under the *Plumbing and Drainage Act 2002*, to be matters to which an appeal to a tribunal may be made.

New section 4.2.12A (Appeals for plumbing and drainage matters)

Clause 196 inserts a new section 4.2.12A for plumbing, drainage and on-site sewerage matters that can give rise to an appeal to a tribunal. The added matters concern decision notices in respect to sections 85 or 86 of the *Plumbing and Drainage Act 2002* (in relation to an application for compliance assessment of a plan for regulated work or for regulated work), and a review notice in respect of section 133 of the *Plumbing and Drainage Act 2002* (in relation to a review decision of a decision maker in respect of on-site sewerage, ie, a review decision of a local government or the chief executive).

Amendment of s 4.2.18 (Notice of appeal to other parties (div 4))

Clause 197 amends section 4.2.18(1)(a) by requiring the registrar of the tribunal to provide written notice of an appeal lodged under section 4.2.12A, to the entity that gave the notice that is being appealed, within 10 business days of the appeal being started.

Amendment of s 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

Clause 198 amends section 5.3.5(4)(c) by replacing the references to the "*Standard Water Supply Law*" and the *"Standard Sewerage Law"* with the "*Plumbing and Drainage Act 2002"*.

Amendment of sch 8 (Assessable, self-assessable and exempt development)

Clause 199 amends Part 3 of Schedule 8 by inserting a new provision to include all plumbing and drainage work declared to be an exempt development under the *Standard Plumbing and Drainage Regulation*, to be an exempt development that may not be made assessable, or self-assessable development.

Amendment to sch 10 (Dictionary)

Clause 200 amends the Schedule 10 definitions by inserting a new definition of the "*Standard Plumbing and Drainage Regulation*," and replacing the current definitions of plumbing work and drainage work, with definitions that refer directly to the "*Plumbing and Drainage Act 2002*."

Division 3—Amendments for building

Amendment of s 3.5.15 (Decision notice)

Clause 201 inserts section 3.5.15(6) to require the assessment manager to give the owner of the land to which the approval attaches mentioned under a regulation, the documents prescribed under a regulation, within 5 business days after the day the decision is made.

Amendment of s 4.1.42 (Notice of appeal to other parties (div 9))

Clause 202 repeals the redundant section 4.1.42(1)(e) requiring a notice of appeal to be given other parties where an appeal is made to the Planning and Environment Court about disqualification of a private certifier.

Amendment of s 4.1.50 (Who must prove case)

Clause 203 repeals the redundant section 4.1.50(8) prescribing who must prove a case in an appeal to the Planning and Environment Court by a person about the disqualification of a private certifier.

Amendment of s 5.3.2 (Definition for pt 3)

Clause 204 amends section 5.3.2 to clarify the definition of "assessment manager" for part 3 means the person who would have been the assessment manager for an application for development if a private certifier had not been engaged to assess an application.

Replacement of s 5.3.3 (What is a private certifier)

Clause 205 amends section 5.3.3 to repeal provisions enabling a regulation to be made about the accrediting of building certifier entities.

This is consistent with the outcomes of the National Competition Policy Reviews of the *Professional Engineers Act 1988* and the *Architects Act 1985*. Both these reviews advocated removal of entity registration from the current legislation due to the business restrictions this may impose.

Replacement of section 5.3.4 (Application must not be inconsistent with earlier approval)

Clause 206 inserts a new section 5.3.4.

New section 5.3.4(1) creates an offence if a private certifier fails to ensure building approvals are consistent with earlier development approvals relating to a building approval. A maximum penalty of 165 penalty units applies.

New section 5.3.4(2) creates an offence if a private certifier fails to ensure building approvals are consistent with the self-assessable provisions of local planning instruments that are likely to affect the position, height and form of buildings. These would include provisions dealing with the layout of car parking and infrastructure.

Currently, building certifiers are required to ensure building approvals are consistent with earlier approvals issued by local governments. Local governments have also expressed concern at the lack of compliance by applicants using private certifiers with self-assessable requirements under transitional planning schemes. When a local government gives a building approval, it checks the application for consistency with these self-assessable requirements. A common example is where a private certifier is accused of approving a commercial building, but not ensuring sufficient land is set aside for car parking as required under the scheme.

Amendment of section 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

Clause 207 amends section 5.3.5.

Clause 207(1) amends section 5.3.5(1) to refer to a private certifier who has a "license", instead of "accreditation", for types of development may act as if the private certifier were the assessment manager for a development application.

Clause 207(2) omits section 5.3.5(2) the requirements for which were transferred to section 5.3.9(3) when the *Integrated Planning and Other legislation Amendment Act 1998* commenced on the 3 September 2000.

Clause 207(3) amends section 5.3.5(4) to create an offence if a private certifier decides an application before all other necessary approvals listed in the section are effective.

Clause 207(4) amends sections 5.3.5(6) and 5.3.5(7) to create an offence if a private certifier fails to provide to the assessment manager within five business days copies of building approvals and inspection certificates.

Clause 207(5) amends sections 5.3.5(8) to require that a resolution made by a local government concerning fees for archiving fees must also prescribe the period within which the fee must be paid.

Amendment of s 5.3.6 (Private certifiers may act as assessing authority in certain circumstances)

Clause 208 amends section 5.3.6(1) to clarify a private certifier is taken to be an assessing authority in relation to works for which the private certifier has been engaged to carry out certification work.

Amendment of section 5.3.8 (Public certifiers must act in the public interest)

Clause 209 amends section 5.3.8(2)(e) to refer to the code of conduct approved under a regulation as required by section 32.

Amendment of section 5.3.9 (Engaging private certifiers)

Clause 210 amends section 5.3.9(2) to create an offence if a private certifier fails to give to the assessment manager within 5 business days written notice of engagement by an applicant.

It will also be an offence if a private certifier fails, within 5 business days after an engagement, to give the owner of the land to which the application relates written notice of the name of the private certifier. Alternately, if a corporation is acting as the private certifier the owner must be given the name of the officer or employee who is carrying out the certification work. The owner must also be given the details, in an approved form, of the responsibilities of the private certifier in performing building certifying functions.

Owner awareness is a critical accountability mechanism in ensuring both builders and certifiers perform adequately. An owner should clarify, and be satisfied with, who will be issuing development approval for their building work before signing a contract with a building contractor.

However, builders generally make a decision about engaging private or local government certifiers without the knowledge and consent of the owner. Most major building companies have entered into contractual

arrangements with private certifiers to provide services. Local governments advise that in domestic situations, owners generally believe the building work is to be approved by the local government.

Therefore, private certifiers will be required to advise an owner who is doing the certification work for their building and who is responsible for mistakes and how these are addressed.

Amendment of s 5.3.10 (Private certifiers may not be engaged if there is a conflict of interest)

Clause 211 amends section 5.3.10 to clarify a private certifier must not accept engagement as a private certifier for a development if the private certifier has a conflict of interest prescribed under a regulation under this or another Act.

Amendment of s 5.3.11 (Discontinuing engagement of private certifiers)

Clause 212 amends section 5.3.11(1) to expand the application of the section dealing with discontinuing the engagement of private certifiers to include for example, the resignation, disqualification, bankruptcy, insolvency, death or deregistration of the private certifier.

Amendment of s 5.3.16 (Liability insurance and performance bonds)

Clause 213 amends section 5.3.16 (1) to allow a regulation to state the type and limits of liability insurance a private certifier must have. The previous provision allowed a regulation to only state "minimum" limits of liability insurance a private certifier must have.

Clause 213(2) amends section 5.3.16 (2) to clarify a private certifier must not carry out certification work unless the private certifier has the insurance or has given the bond or security required under a regulation under this or another Act.

Amendment of section 6.1.20 (Planning scheme policies for infrastructure)

Clause 214 amends subsection (4) to extend a sunset date (due to take effect in March 2003) by a further two years, to allow for local governments to continue to make planning scheme policies for

infrastructure contributions, pending the commencement of new charging and cost recovery arrangements contained in the *Integrated Planning and Other Legislation Amendment Act 2001.*

Amendment of section 6.1.31 (Conditions about infrastructure for applications)

Clause 215 amends subsection (3)(b), and is related to the amendment to section 6.1.20(4) in *Clause 222*. The amendment extends by two years a sunset date(also due to take effect in March 2003) on provisions allowing local governments to continue levying conditions on development approvals for infrastructure contributions in accordance with planning scheme policies made under section 6.1.20.

Amendment of section 6.1.46 (Local Government (Robina Central Planning Agreement) Act 1992)

Clause 216 amends section 6.1.46 by omitting subsection (2) of that section. This has the effect of removing a 5 year sunset on the operation of the *Local Government (Robina Central Planning Agreement) Act 1992* (LGRCPA), which due to have effect in March 2003.

The LGRCPA was originally to be replaced entirely by the IPA, however after further consideration it has been concluded it would be more efficient to continue the LGRCPA, but amend it to operate effectively under the IPA without the need for a supporting transitional arrangement. Until these amendments are finalised, the existing transitional arrangements should continue to apply.

Amendment of sch 10 (Dictionary)

Clause 217 deletes the definition of "accrediting body" from Schedule 10.

Division 4—Other amendments

Amendment of section 6.1.52 (Transitional provisions)

Clause 218 amends section 6.1.52 by providing for this section to expire on 31 March 2003. Because various provisions of the Act commenced at different times this amendment clarifies when this section expires.

PART 13—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2001

Division 1—Preliminary

Act amended in pt 13

Clause 219 provides this part amends the *Integrated Planning And Other Legislation Amendment Act 2001* (IPOLA).

Division 2—Amendments for plumbing and drainage

Amendment of s 48 (Replacement of ss 4.2.17 and 4.2.18)

Clause 220 amends the IPOLA by inserting an amendment that corresponds to the IPA amendment that allows appeals on plumbing and drainage matters to be heard by the Building and Development Tribunal.

Amendment of s 85 (Replacement of sch 10 (Dictionary))

Clause 221 amends the Schedule 10 definitions by inserting a new definition of the "*Standard Plumbing and Drainage Regulation*," and replacing the current definitions of "plumbing work" and "drainage work", with definitions that refer directly to "*Plumbing and Drainage Act 2002*."

Division 3—Amendments for building

Amendment of s 27 (Replacement of ch 3 (Integrated development assessment system (IDAS))

Clause 222 amends section 27, in replaced chapter 3, section 3.5.15(6) to require the assessment manager to give the owner of the land to which an approval attaches where the owner is prescribed under a regulation, the documents prescribed under a regulation. This must be done within 5 business days after the day the decision is made. The regulation may be a regulation made under the IPA or the BA.

Amendment of s 78 (Amendment of s 6.1.31 (Conditions about infrastructure for applications))

Clause 223 amends section 78(2), in amended s 6.1.31(3)(b) to extend a sunset date (due to take effect in March 2003) by a further two years, to allow for local governments to continue to make planning scheme policies for infrastructure contributions, pending the commencement of new charging and cost recovery arrangements contained in the *Integrated Planning and Other Legislation Amendment Act 2001.*

Amendment of s 85 (Replacement of sch 10 (Dictionary))

Clause 224 amends section 85, in replaced schedule 10, to omit the redundant definition of "accrediting body".

PART 14—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Division 1—Preliminary

Act amended in pt 14

Clause 225 declares part 14 amends the LGA

Division 2—Amendments for stormwater drainage

Insertion of new ch 13, pt 7

Clause 226 inserts a new part 7 in chapter 13 containing sections 956 to 956F. These sections preserve the intent of the provisions in the repealed *Standard Sewerage Law* and provide local governments with necessary powers for the protection and operation of their stormwater drainage infrastructure.

PART 7—STORMWATER DRAINAGE

New Section 956 Local government may require stormwater to discharge to its stormwater drainage

Section 956 provides that in areas where the local government provides stormwater drainage infrastructure, the local government may issue a notice requiring a landowner to make specific and reasonable arrangements to discharge stormwater from the premises to the local government's stormwater drainage. The maximum penalty for an owner not complying with a notice is 165 penalty units.

New Section 956A Approval required to connect

Section 956A provides that a person cannot discharge stormwater into the local government's stormwater drainage without either the prior approval of the local government (which may be subject to conditions) or the local government requiring that discharge (under a notice issued pursuant to section 956). A person must comply with a local government approval, including any conditions imposed. The maximum penalty for breaching this provision is 165 penalty units.

New Section 956B Sanitary drainage must not connect to stormwater drainage

Section 956B prohibits landowners from allowing any sewage to be discharged into a stormwater system. It ensures that sewage can only be discharged into the sewerage system and not through the stormwater water system to the environment with the attendant environmental contamination and public health problems. It provides that landowners may not allow an on-site sewerage system, sanitary drainage or property sewer for the premises to be connected into the stormwater installation for the premises, or into the local government's stormwater drainage.

Where an owner becomes aware that any such connection of sewage from their premises into stormwater systems, either on the premises or into the local government's stormwater system, the owner must within the shortest practical time disconnect from the stormwater system.

New Section 956C Owner may be directed to do certain work

Section 956C provides a local government may issue a notice directing the owner of premises to undertake work to rectify any connection of sanitary plumbing, sanitary drainage or discharge from an on-site sewerage treatment plant to the local government's stormwater drainage (ie, in contravention of section 964B).

The notice must state a reasonable time within which work is to be done. A notice in relation to stopping a serious health risk or a connection which is damaging a local government's stormwater drainage may require work to be completed in a time between 48 hours and 1 month from receipt of the notice. A notice in relation to another situation may not set a time that is less than one month from receipt of the notice.

The notice may only require work that is reasonably necessary to rectify the situation, including remedying a contravention of this Act or to disconnect a connection made to the local government's stormwater drainage without the local government's approval.

The owner must comply with a notice unless there is a reasonable excuse. The maximum penalty for contravening this section is 165 penalty units.

New Section 956D Prohibition on discharge of prohibited substances and trade waste into stormwater drainage

Section 956D prohibits a person discharging a prohibited substance or a trade waste into stormwater drainage. This ensures that stormwater drainage systems designed to handle rainwater run-off are not polluted by other substances such as sewage or wastes from the commercial or industrial activities (trade wastes), that could damage the stormwater drainage infrastructure, harm the environment or endanger public health and safety.

Prohibited substances and trade waste are defined in the schedule. A prohibited substance is defined in the schedule to include:

- a quantity or size of solid or viscous substances that can obstruct or interfere with the operation of sewerage;
- flammable or explosive substances;
- floodwater, rainwater, stormwater, roof water, seepage water, subsoil water and surface water;

- a quantity of substances that could interfere or endanger sewerage or sewerage treatment, endanger humans or animals, create a public nuisance, create hazard in waters to which it is discharged, or contaminate the environment where a sewerage treatment plant's treated wastes are discharge; or
- a substance over a specified temperature.

Trade waste is defined in the schedule as water-borne waste from a business, trade or manufacturing premises, but does not include human waste or a prohibited substance.

The maximum penalty for contravening this section is 1,000 penalty units.

New Section 956E Cost of repairing damaged stormwater drainage

Section 956E empowers local governments to recover the cost of repairs to their stormwater drainage system resulting from discharges of prohibited substances or trade waste under section 956D. This is in addition to any penalty imposed. This allows local governments to deal with the problem that that stormwater drainage systems may sustain damage if prohibited substances or trade waste are discharged to them.

New Section 956F Interference with path of stormwater

Section 956F prohibits a person restricting or redirecting stormwater flow across land where this may cause the water to collect and become stagnant. However, the section permits a person to collect stormwater in dams, wetlands, tanks and ponds, provided no offensive material is allowed to accumulate. This deals with the problem that ponded or stagnant water may cause public health or nuisance problems such as breeding areas for mosquitoes or unpleasant odours. The maximum penalty for contravening this section is 165 penalty units.

Amendment of s 1077 (Indictable and summary offences)

Clause 227 amends section 1077, which sets out which offences under the LGA are indictable or summary offences. It adds to the list of indictable offences, an offence against section 956D, ie, discharging prohibited substances and trade waste to stormwater drainage.

Amendment of s 1122 (Ownership of things in local government's control)

Clause 228 amends section 1122(4) by removing the references to obsolete terms that are no longer needed in the Act.

Amendment of schedule (dictionary)

Clause 229 amends the schedule to the LGA by including new definitions of words required for Part 7—Stormwater Drainage. These definitions are:

"common effluent drainage",
"on-site sewage treatment plant",
"on-site sewerage facility",
"premises group",
"prohibited substance",
"property sewer",
"sanitary drain",
"sanitary drainage",
"sanitary plumbing",
"septic tank",
"sewage treatment plant",
"sewerage system",
"stormwater drainage",
"stormwater installation", and
"trade waste".

In addition, this clause replaces the definition of "local government Act", which is altered by including the *Plumbing and Drainage Act 2002* in the list of Acts under which a local government may exercise the jurisdiction of local government.

Division 3—Amendments for building

This Division amends the LGA to allow complaints concerning local government building certification businesses and the performance of statutory building functions to be provided for in the same manner as complaints concerning the roads business activities of local governments. This provision will only apply to those local governments specified under a regulation where sufficient market competition for building certification

services warrants the imposition of a competitive neutrality complaints mechanism.

The key elements of the Queensland Government's policy on the application of national competition policy to local government were given effect through the *Local Government Legislation Amendment Act 1996* and the *Local Government Legislation Amendment Act 1997* which sets the framework for applying competitive neutrality reforms to the business activities of local government.

Chapter 9 of the LGA provides that local governments can chose to apply the Code of Competitive Conduct to their smaller business activities where these activities compete directly with the private sector. The Code of Competitive Conduct sets out how the local government is to apply full cost pricing to a business activity, which ensures that the business activity is competing fairly in the market. In other words, the Code provides for a local government business activity to operate in a competitive neutral way, by removing so far as possible the competitive advantages arising from the local government ownership of the business activity.

For business activities to which the Code of Competitive Conduct applies, a local government must also provide a process to deal with allegations from private sector competitors or prospective competitors that the local government business activity is breaching competitive neutrality. Chapter 11 of the Act provides that the local government is to establish an in-house complaints mechanism with an independent referee to investigate and report on such allegations. The referee's report is provided to the local government for a decision, with a copy provided to the complainant.

For larger scale business activities to which higher-level competitive neutrality reforms have been applied, the local government can still chose to establish an in-house complaints process. However, for these business activities, a dissatisfied complainant can refer the outcome of a referee's investigation to the Queensland Competition Authority for a further investigation and report. If the local government does wish to establish an in-house complaints process for a business, it can appoint the Queensland Competition Authority as its referee to hear complaints in the first instance.

For smaller business activities, there is no access to the Queensland Competition Authority either as referee or as reviewer of a referee's investigation.

In the case of building certification businesses, the most recent Annual Report to the National Competition Council noted that twenty-one local governments have applied the Code of Competitive Conduct to these

business activities. While these local governments have introduced a code of competitive conduct for their building certification businesses, no complaints have been made under the complaints process established in the Act. This may be because the LGA provides only for an in-house complaint process for building certification businesses, without provision for an appeal to be heard by an external body independent of local government. It is also likely that private sector businesses competing with local government business activities are not aware of the availability of the competitive neutrality appeal mechanisms, although local governments are obliged to provide information on their complaints processes.

However the situation is different for one category of smaller business activities. In the case of a local government's "roads business activities", application of the Code of Competitive Conduct is mandatory and complaints may be heard by the Queensland Competition Authority. If the local government choses to set up an in-house complaints process instead, the Queensland Competition Authority has a review role. This situation recognises that a local government's "roads business activity" competes directly with road construction and maintenance businesses operated by the State Government, other local governments and the private sector.

Similarly, local government building certification services will always be competing directly with private building certification services. The Bill therefore provides for building certification business activities of all local governments (including Brisbane City Council) to be treated similarly to "roads business activities" of local governments. Not all local governments will be obliged to apply the Code of Competitive Conduct (and hence, a complaints process) to their building certification activities. It is intended that a regulation set a threshold triggering the application of these provisions, which will ensure only those local governments with an appropriate level of building activity are required to apply the Code and a complaints process.

The implementation of these provisions will be staged to allow those local governments, not previously affected, to apply the Code and put in place competitively neutral arrangements. Also, the staged implementation will to enable the Government to develop the enhanced competitive neutrality guidelines recommended by the NCP review.

Amendment of Section 502 (Issue of standards)

Clause 230 amends section 502 which is the provision that empowers the Minister to make the *Local Government Finance Standards* which

provide standards on financial management and accounting with which local governments must comply. The Standards contain the Code of Competitive Conduct. *Clause 230* amends section 506(1)(h) to provide that the Code of Competitive Conduct in the *Local Government Finance Standards* may contain specific provisions for applying the competitive neutrality principles to building certification business activities.

Amendment of s 758 (Object of ch 9)

Clause 231 amends section 758(a) to expand the object of chapter 9 (Conduct of Competitive Business Activities) to include the application of competitive neutrality principles to certain building certification business activities of local governments.

Amendment of s 759 (Competitive neutrality principles)

Clause 232 amends section 759(b) to expand the definition of competitive neutrality principles to allow for its application to building certification business activities of local governments. The principles will provide for, among other things, that wherever possible and appropriate, for the removal of any advantages and disadvantages that arise because a building certification business activity is part of a local government. This would include a local government choosing to apply different standards, procedures or fee structures to its building certification business activity than it applies to private sector certifiers completing with the local government business activity.

Amendment of s 761 (Definitions for ch 9)

Clause 233 inserts in section 761 a new definition of "building certification business activity" of a local government to apply in Chapter 9. It is limited to the building certification business activities of a local government where the activity is competing with the private sector, and the activity is prescribed under a regulation.

The term "building certifying functions" is defined in section 3 of the BA as the functions performed by a building certifier in:

- assessing and deciding development applications for building work;

- inspecting or accepting certification on the building or demolishing of buildings and structures for compliance with the *BA*;
- issuing certificates or statements of classification; and
- taking enforcement action in relation to development approvals issued by the building certifier.

Amendment of s 762 (Meaning of "business activity")

Clause 234 amends section 762 which defines business activity to ensure that building certification business activity which has a specific definition under section 761, is not caught in the general definition of business activity under section 762.

Insertion of new section 763A (Code must be applied to building certification business activities)

Clause 235 inserts a new section 763A in Part 3 – Code of Competitive Conduct. Part 3 (sections 763 and 764) provides that local governments may chose to apply the Code of Competitive Conduct to general business activities but must apply the code to roads business activities. The new section 763A provides for those local governments that have a building certification business activity (which is those local governments identified in a regulation that carry out building certifying functions), must in the following financial year apply the Code of Competitive Conduct to the activity.

In the annual report for a financial year, the local government must state whether it had a building certification business activity during the financial year. This provides for public knowledge of which local government have applied competitive neutrality to their building certification business activities.

Amendment of s 790 (Definitions for ch 11)

Clause 236 amends the definition of "competitive advantage" in section 790 by expanding the examples of financial, regulatory, and procedural advantages to include situations that would be applicable to building certification business activities.

Amendment of s 807 (Contents of reports)

Clause 237 amends section 807 which provides for the contents of a report by a referee on the outcome of the investigation of a compliant that a local government business activity has breached competitive neutrality principles. The amendment specifically provides that where a referee is reporting on a complaint about a building certification business activity that has been substantiated, the referee's report can address issues about conduct of the business entity as well as local government actions in undertaking statutory building functions. Statutory building functions are functions that only local governments can provide and on which private and local government building certifiers rely (eg, providing site or town planning information to building certifiers, or receiving and processing documents from a building certifier).

Amendment of s 815 (Local government may resolve Queensland Competition Authority to be referee)

Clause 238 amends section 815(1)(b) to empower a local government to use the Queensland Competition Authority as its referee for a building certification business activity. The local government must make a resolution to use the Queensland Competition Authority and must notify the Queensland Competition Authority in writing of its resolution.

Where a local government becomes aware a person intends to make a complaint about the building certification business activity, the local government must advise the person to make the complaint to the Queensland Competition Authority and provide them with information to enable them to make the complaint.

Amendment of s 821 (Application of pt 3)

Clause 239 amends section 821, which sets out the types of business activity to which Part 3 applies, ie, the business activities for which a complainant dissatisfied with the outcome of a complaint investigated by a local government's in-house complaints process can seek a review by the Queensland Competition Authority. The amendment to section 821(1)(b) provides that building certification business activity is an activity to which Part 3 applies, and therefore allows for the outcome of a competitive neutrality complaint about a local government building certification business activity to be referred to the Queensland Competition Authority. However, where the Queensland Competition Authority was the referee for

a complaint (under section 815) there is no right to a further review by the Queensland Competition Authority under Part 3.

Amendment of s 832 (Application of pt 4)

Clause 240 amends section 832(b) to ensure that Part 4 applies to building certification business activities. Part 4 provides for a process by which local governments can have their business activities accredited by the Queensland Competition Authority as operating in accordance with the relevant principles of competitive neutrality for that activity. Once an activity is accredited, there is no requirement for a local government to have a complaints process to hear complaints about breaches of competitive neutrality.

PART 15—AMENDMENT OF WATER ACT 2000

This part transfers to the WA, certain provisions previously contained in the repealed *Standard Sewerage Law* and *Standard Water Supply Law* that are relevant to service providers under the WA. The penalty levels for the various offences have been altered to make them consistent with the penalty levels applying to other offences transferred from the repealed *Standard Sewerage Law* and the *Standard Water Supply Law* to the WA.

Act amended in pt 15

Clause 241 declares Part 15 amends the *Water Act 2000*.

Amendment of s 432 (No charge for water for fire fighting purposes)

Clause 242 amends section 432 of the WA to allow service providers to require the use of seals on private fire fighting systems, as well as meters. Some local governments have indicated that they consider seals to be more cost effective than meters in certain situations. Some local governments also wish to use a combination of seals and meters on private fire fighting systems.

If a seal is broken, this clause requires the occupier of the premises to notify the service provider of the breaking, within 24 hours.

Amendment of s 452 (Access to service in service area)

Clause 243 amends section 452 of the WA to clarify that a property service, whether it relates to a water service or a sewerage service of a service provider, is part of the service provider's infrastructure. This ensures a service provider can, if necessary, exercise powers under the WA in relation to a property service, for example, the power to enter a place to inspect, maintain, repair or replace infrastructure.

Any on-premises plumbing and drainage work that a property service connects to is not part of a service provider's infrastructure. Responsibility for any on-premises works rests with the owner of the premises, not the service provider.

Amendment of s 784 (Proceedings for orders)

Clause 244 amends section 784 of the WA to clarify who is able to commence enforcement order proceedings for certain offences under the WA of relevance to service providers. Relevant offences include the offences being transferred to the WA by this Act.

The previous section limited the ability to commence enforcement order proceedings for certain offences to local governments. This disadvantaged those service providers who were not local governments. Section 784 now permits any service provider to commence an enforcement order proceeding that could previously only be instituted by a local government.

If a person other than the chief executive of the Department of Natural Resources and Mines brings an enforcement order proceeding, the section requires a notice of the proceeding to be given to the chief executive.

Amendment of section 822 (Connecting to service provider's infrastructure without approval)

Clause 245 amends section 822 of the WA to require a person to obtain a service provider's written consent before disconnecting from that provider's infrastructure. Service providers need to be made aware of disconnections from their infrastructure, to ensure appropriate action is taken to effectively seal the relevant connection point.

Amendment of section 823 (Interfering with service provider's infrastructure)

Clause 246 amends section 823 of the WA to require a person to obtain a service provider's written consent before building over their infrastructure, interfering with access to their infrastructure, changing the amount of cover over their infrastructure, or changing the surface of land in a way causing ponding of water over an access chamber for their infrastructure. Construction of, for example, a driveway over a water main or sewerage system may adversely impact on a service provider's ability to later access and service that infrastructure. Service providers made aware of activities covered by this clause can take action to ensure those activities do not later have a detrimental effect on service provision.

Amendment of s 824 (Discharging certain materials)

Clause 247 amends section 824 of the WA to prevent a person from discharging surface water, soil, sand or rock into a service provider's infrastructure. The amendment provides greater protection for service providers who supply water services, as the definition of prohibited substances in the WA relates only to sewerage.

The clause also makes it an offence for a person to discharge water from a swimming pool or ornamental pond, or water used to clean a swimming pool's filtration system, into a service provider's infrastructure without the provider's consent. Uncontrolled discharge of this water into a service provider's infrastructure can have severe impacts, including hydraulic overload and high salt levels which would make effluent unsuitable for reuse and recycling.

Insertion of new ss 824A and 824B

Clause 248 inserts two new offence sections into the WA.

New Section 824A Polluting water

Section 824A makes it an offence for a person to do anything likely to pollute water in a service provider's water service. This is important for public health reasons.

New Section 824B Taking water without approval

Section 824B makes it an offence for a person to take water from a service provider's infrastructure without the service provider's consent, unless the taking is for fire fighting purposes or the water has been supplied for general public use.

Amendment of s 932 (Proceedings for offences)

Clause 249 amends section 932 of the WA to clarify who is able to commence offence proceedings for certain offences under the WA of relevance to service providers. Relevant offences include the offences being transferred to the WA by this Act.

The previous section limited the ability to commence offence proceedings for certain offences to local governments. This disadvantaged those service providers who were not local governments. Section 932 now permits any service provider to commence an offence proceeding that could previously be instituted by a local government.

If a person other than the chief executive of the Department of Natural Resources and Mines brings an offence proceeding, section 931 requires notice of the proceeding to be given to the chief executive.

Amendment of schedule 4

Clause 250 amends the dictionary in Schedule 4 of the WA to ensure the definition of "property service" is adequate for both water services and sewerage services. It also adds definitions of:

"graded jump up",
"jump up",
"premises group",
"property sewer",
"sanitary drain".

SCHEDULE

DICTIONARY

The schedule contains the dictionary defining the following words for the Act:

"appropriately qualified",
"approved form",
"AS/NZS 1546",
"backflow prevention device",
"board",
"built item",
"chairperson",
"common effluent drainage",
"compliance assessment",
"compliance certificate",
"compliance permit",
"deputy chairperson",
"deputy member",
"drainage",
"drainage work",
"enforcement notice",
"foreign licensing authority",
"information notice",
"inspector",
"interstate or New Zealand licence",
"interstate or the New Zealand licensing authority",
"licence",
"member",
"minor work",
"model approval",
"occupier",
"on-site facility conditions",
"on-site sewage treatment plant",
"on-site sewerage code",
"on-site sewerage facility",
"owner",
"original decision",
"plan",
"plumbing",

"plumbing work",
"public sector entity";
"prefabricated item",
"prohibited substance",
"register",
"regulated work",
"repealed Act",
"review decision",
"review notice",
"review period",
"sanitary drain",
"secretary",
"septic tank",
"sewer",
"sewage treatment plant",
"sewerage system",
"show cause notice",
"Standard Plumbing and Drainage Regulation",
"stormwater installation",
"trade",
"type specification approval", and
"unregulated work".