

# **Queensland Building Services Authority and Other Legislation Amendment Bill 2007**

## **Explanatory Notes**

### **Short Title**

Queensland Building Services Authority and Other Legislation  
Amendment Bill 2007

### **General Outline**

#### **Objective of the Legislation**

The objective of the Queensland Building Services Authority and Other Legislation Amendment Bill 2007 (the Bill) is to amend the *Queensland Building Services Authority Act 1991* (QBSA Act), the *Domestic Building Contracts Act 2000* (DBC Act) and the *Professional Engineers Act 2002* consistent with the prescribed purposes specified in each of the Acts.

The QBSA Act establishes a licensing regime for building contractors and supervisors and a permit system for owner-builders. The QBSA Act also establishes a Statutory Insurance Scheme to assist consumers who have suffered loss due to defective or incomplete residential construction work. These functions are administered by the Queensland Building Services Authority (BSA).

The DBC Act regulates domestic building contracts for the carrying out or management of domestic building work.

The *Professional Engineers Act 2002* provides for registration of engineers by the Board of Professional Engineers of Queensland.

#### **Reasons for the Bill**

##### ***Licensing of fire protection work***

The 'Building Fire Safety in Queensland Budget Accommodation Report 2000' (the Childers Report), which was released following the Palace

Backpackers Hostel fire in Childers, made a range of recommendations to improve fire industry standards. One of these recommendations was for the introduction of fire protection contractor licensing, which was implemented on 1 January 2001 pursuant to amendments to the QBSA Act.

An outstanding recommendation of the Childers Report is the establishment of an occupational licensing regime for the fire protection industry. The Bill amends the QBSA Act to provide the statutory framework to implement this recommendation.

The benefits to the community of an occupational licensing system for fire protection workers include:

- improved compliance with building fire safety regulations leading to reduced costs for owners, occupiers, government, emergency services and local government;
- better training and improved worker safety for fire protection workers;
- greater community confidence that work is performed by appropriately skilled workers to the prescribed standards; and
- reduced risk to fire fighters responding to fire emergencies.

### ***Supervision of building work***

Under the QBSA Act, building work carried out by a licensed contractor must be carried out under the personal supervision of:

- the licensee or an appropriately licensed employee, if the licensed contractor is an individual; or
- an appropriately licensed officer or employee of the company, if the licensee is a company.

Contractors have a statutory obligation to ensure building work is adequately supervised. In the case of a company licensee, the licensed nominee for the company also has this obligation.

The Queensland Building Services Board, in consultation with wider industry, has identified that there is a substantive shortage of licensed supervisors to carry out on-site supervision of building work. Research conducted by the BSA indicates that lack of appropriate on-site supervision is significantly impacting on the quality of building work in the State.

The Bill implements initiatives to better address supervision in the QBSA Act. These include widening the pool of licensees who may personally

supervise building work and providing more guidance as to the factors relevant to determining whether building work is adequately supervised.

### ***Offences and penalties***

A review of the maximum penalties in the QBSA Act and DBC Act in 2005-06 indicates that some of the maximum penalties in the Acts are disproportionately low when compared to other comparable legislation. To ensure sufficient deterrence for non-compliance with the QBSA Act and the DBC Act, it is proposed that maximum penalties, particularly for the more serious offences under the Acts (e.g. unlawful carrying out of building work) be increased.

It has also been identified that a number of new offences should be inserted in the QBSA Act to address building contractors who:

- provide false documents or information to the BSA;
- fail to have an appropriately licensed nominee;
- obstruct a BSA inspector;
- advertise to carry out building work without a licence; or
- fail to keep documents relevant to obligations under the QBSA Act or DBC Act.

Demerit points are imposed on licensees who commit specified offences (demerit offences) against various sections of the QBSA Act and DBC Act. Demerit points are removed three years after the date they take effect. A licensee who accumulates 30 demerit points over a three-year period may be banned for three years. If they return to the industry, and within 10 years of the first ban, accumulate 30 demerit points over three years, they face a life-time ban.

To assist improvement of key building work and contractual standards in the industry, it is proposed that demerit offences should be expanded to include offences relating to:

- failure to rectify defective building work under a BSA direction;
- failure to pay a statutory insurance premium;
- failure of a company to have a nominee;
- failure to have a contract in writing or comply with contractual content requirements under the DBC Act.

### ***Audit powers – insurance***

Under section 50A of the QBSA Act, the Minister may approve an audit program permitting the BSA to audit licensees to find out if they continue to satisfy the Board's 'Financial Requirements for Licensing Policy' and if they have been complying with contractual requirements under the QBSA Act and the DBC Act. Further, section 50C of the QBSA Act allows the BSA to require licensees to give copies of, or access to, financial records or documents if the BSA is satisfied there are reasonable grounds for concern that the licensee does not satisfy the 'Financial Requirements for Licensing Policy', or is not complying with Part 4A of the QBSA Act or the DBC Act.

The current matters that may be subject to audit in sections 50A and 50C of the QBSA Act do not include compliance with the requirements of the QBSA Act for contractors to pay insurance where they carry out residential construction work. Given there is a consistent pattern of non-compliance by some parts of the industry with this obligation, an expansion of the audit powers in the QBSA Act is considered warranted.

### ***National Competition Policy Review of QBSA Act***

A review of the QBSA Act under National Competition Policy was completed in April 2003. However, not all matters were able to be dealt with at that time and a further review dealing with these outstanding matters was conducted in 2004–05 by an Interdepartmental Steering Committee comprising representatives from the Department of the Premier and Cabinet, Queensland Treasury, the Department of Public Works, the Department of Housing and the BSA. In 2005, the Steering Committee appointed an independent consultant to assist with the review.

Following its review of issues under the QBSA Act, the consultant, with endorsement of the steering committee, recommended the implementation of a differential in the BSA's pricing structure to provide an incentive for licensees to perform adequate work, or bear the cost of using the dispute and insurance schemes.

The options for implementing a pricing differential were through either the insurance or licensing functions of the BSA. In view of the difficulties with applying a differential to the insurance function, the preferred option is for a differential to be applied to the licensing function of the BSA.

### ***Developers***

A number of instances have occurred in recent years where property developers have intentionally entered into an agreement with a building

contractor to carry out defective work to the substantial detriment of the consumer. It is considered that in these circumstances both the building contractor and developer should be held accountable for rectifying the defective work. The Bill amends the QBSA Act to allow the BSA to issue a direction to rectify building work to a developer in relevant circumstances and also record the direction on the public register maintained by the BSA.

Other amendments in the Bill also ensure that developers and speculative builders cannot claim against the Statutory Insurance Scheme. The purpose of the Statutory Insurance Scheme is to protect home owners and like consumers, not commercial building enterprises.

### ***Review of QBSA Act and DBC Act***

Ongoing review of the QBSA Act and the DBC Act over the last three years indicates that various amendments are required to both Acts to ensure that they continue to remain relevant to the industry, improve consumer protection and promote quality building work and contractual practices. In addition, amendments are also necessary to better articulate and provide guidance to building contractors, nominees, construction managers, owner-builders and consumers as to their rights and responsibilities.

This review also identified that the owner-builder permit provisions in the QBSA Act require amendment to minimise the risk of permit holders carrying out defective building work, clarify ambiguities in the existing provisions and generally improve the administrative framework for the permit system.

### ***Registration of Professional Engineers***

Following Crown Law advice, administrative amendments are required to the *Professional Engineers Act 2002* to correct an administrative oversight with respect to professional engineer registrations made under transitional provisions which apply the provisions of the repealed *Professional Engineers Act 1988*.

## **Achievement Of Policy Objectives**

The objectives of the Bill with respect to the QBSA Act are achieved primarily by making amendments to the Act as follows:

- creating a fire protection occupational licensing system to be administered by the BSA;
- introducing a two-tier licensing system for supervisors and widening the pool of persons who may personally supervise building work to

include licensed contractors other than officers or employees of the contractor;

- increasing the maximum penalties for offences in line with similar offences under Queensland legislation;
- creating a number of new offences to address such matters as provision of misleading or false information to the BSA, failing to have an appropriately licensed nominee, failing to keep documents and obstructing an inspector;
- expanding the range of demerit offences;
- expanding the audit powers of the BSA to include compliance with responsibilities of contractors with respect to payment of insurance;
- implementing a licensing fee differential to provide an incentive for licensees to perform adequate work;
- allowing the issue of a direction to rectify building work in appropriate circumstances to a developer and record the direction on the public register maintained by the BSA;
- inserting provisions in the QBSA Act specifically dealing with the responsibilities of construction managers to be licensed, to supervise, to pay insurance and to rectify defective building work;
- expanding the matters listed on the public register for licensees and creating an owner–builder permit register;
- enhancing owner–builder permit requirements to ensure building work carried out under a permit is of an appropriate standard;
- allowing notice by way of gazettal for insurance premiums; and
- imposing restrictions on the issue and renewal of licences and permits where the applicant or licensee fails to take steps to discharge infringement notices for offences under the QBSA Act or the DBC Act.

A small number of amendments are also proposed to the DBC Act. These amendments increase the maximum penalties for a number of offences, expand the range of demerit offences, insert an offence provision for failing to keep prescribed documents and clarify the types of contracts intended to be covered by the Act.

The Bill also amends the *Professional Engineers Act 2002* to correct an administrative oversight with respect to professional engineer registrations

made under transitional provisions which apply the provisions of the repealed *Professional Engineers Act 1988*.

### **Assessment Of Administrative Cost To Government**

The amendments are not expected to have any significant administrative cost implications for Government other than the BSA.

The BSA is a statutory authority funded by industry, primarily through licence fees. The BSA has indicated that aside from the implementation and administration of an occupational licensing system for fire practitioners, all costs associated with the amendments can be absorbed without an increase in existing licensing fees. Costs associated with the occupational licensing of fire protection workers will be recovered through licensing fees for the new licence class set by regulation.

In accordance with the *Statutory Instruments Act 1992*, fees will be set following release of a regulatory impact statement.

### **Consistency With Fundamental Legislative Principles**

It is not considered that the Bill raises any substantive fundamental legislative principles issues. While the amendment to the *Professional Engineers Act 2002* is retrospective in effect, it does not adversely affect rights or liberties and does not impose obligations retrospectively.

### **Extent Of Consultation**

All Government departments have been consulted in the preparation of the Bill.

Wide industry consultation has been undertaken with respect to the policy proposals contained in the Bill. This consultation has occurred through BSA Industry Planning Conferences, the Queensland Building Services Board and its various policy committees comprising industry and consumer representatives. Extensive individual consultation with major industry contractor and trade associations has also been undertaken.

## Notes On Provisions

### Part 1 Preliminary

Clause 1 states the short title.

Clause 2 states the commencement date will be fixed by proclamation, other than Part 4 (*Amendment of Professional Engineers Act 2002*).

### Part 2 Amendment of Queensland Building Services Authority Act 1991

Clause 3 states the Act to be amended by Part 2 is the QBSA Act.

Clause 4 omits section 4AA (*Note in text*) of the QBSA Act. This amendment is of a technical drafting nature and does not represent a policy change.

Clause 5 amends section 30 (*Classes of licence*) of the QBSA Act to remove all references to a supervisor's licence. In other amendments made by the Bill, supervisors' licences are specifically dealt with under separate provisions.

Clause 6 inserts section 30A (*Nominee supervisor's licence*) and section 30B (*Site Supervisor's licence*). The effect of these sections is that supervisors' licences may now be issued in two categories namely, a nominee supervisor's licence and a site supervisor's licence. The new sections 30A and 30B allow for a nominee supervisor's licence and a site supervisor's licence to be issued and specify what these licences authorise the holder to do.

Clause 6 inserts section 30C (*Fire protection occupational licence*) into the QBSA Act. The new section allows for a fire protection occupational licence to be issued and specifies what the licence authorises the holder to do.

Clause 6 also inserts provisions to allow for nominee supervisors' licences, site supervisors' licences and fire protection occupational licences to be divided into classes by regulation.

Clause 7 amends section 31 (*Entitlement to contractor's licence*) of the QBSA Act. The amendment inserts additional criteria of which the BSA must be satisfied before issuing a contractor's licence. The only substantive policy change, however, are those criteria which require the BSA to be satisfied that the applicant may lawfully work in Queensland and does not have an unpaid judgment debt for an amount that may be recovered under section 71 of the QBSA Act. The other additional criteria inserted by *Clause 7* were already relevant criteria but were located in other provisions of the QBSA Act.

Clause 7 redrafts section 31(2)(a) of the QBSA Act. However, the amendment is not intended to be a policy change and merely updates the wording of the existing section to accommodate modern drafting practices.

Clause 7 inserts an additional matter in section 31(3) of which the BSA may have regard in deciding whether a person is fit and proper to hold a contractor's licence or exercise control or influence over a company that holds a contractor's licence. The additional matter concerns the circumstance where the person is an enforcement debtor under an enforcement order for an infringement notice offence for the QBSA Act or the DBC Act. The amendment allows the BSA to have regard to whether the person has taken steps in accordance with the *State Penalties Enforcement Act 1999* to discharge the amount stated in the order.

Clause 8 omits section 32 (*Entitlement to supervisor's licence*) of the QBSA Act and inserts new sections 32 (*Entitlement to a nominee supervisor's licence*), 32AA (*Entitlement to a site supervisor's licence*) and 32AB (*Entitlement to a fire protection occupational licence*). The new sections provide the criteria for which the BSA must be satisfied before an individual applicant is entitled to each of the respective licences.

Clause 9 amends section 33 (*Application for licence*) of the QBSA Act to provide that an application for a licence must be accompanied by two recent passport-size photographs of the applicant.

Clause 10 amends section 34 (*Grant of a licence*) to insert additional matters that must be included on a licence card. These include a recent photograph of the licensee (if the licensee is an individual) and a statement of when the licence is due for renewal.

Clause 11 renames Part 3, Division 5 to make it more descriptive of the contents of the Division.

Clause 11 omits the existing section 37 (*Annual licence fee*) of the QBSA Act and inserts a new section 37 (*When licences to be renewed*). The new section is more precisely drafted than the existing section and has been expanded in its ambit to address the renewal of site supervisors' licences and fire protection occupational licences.

Clause 11 inserts a new section 37A (*Authority to advise licensee before licence due for renewal*). Under the new section the BSA must give a licensee a notice 28 days before the due date of renewal and must advise of the renewal date and other prescribed matters.

Clause 11 inserts a new section 37B (*Applications for renewal of licence*) which deals with an application for a renewal of a licence and its contents. The new section also allows the BSA to give a licensee a written notice to provide further information or evidence to the BSA which it requires to decide whether the applicant continues to be entitled to hold a licence under the QBSA Act.

Clause 11 inserts a new section 37C (*Renewal fee increased if directions given*) into the QBSA Act. Under the section a licence renewal fee is to be increased by a one-off amount equivalent to the value of one penalty unit for each direction given to the licensee under section 72 of the QBSA Act. The maximum amount by which a renewal fee may be increased is an amount equivalent to 10 penalty units. The provision includes safeguards to ensure the increased renewal fee is not applied if the direction of the BSA is the subject of a successful review or if a proceeding for a review has not been finalised.

Clause 12 amends section 38(3) of the QBSA Act to provide that the term "licence fee" as used in the section includes any amount by which the renewal fee is increased under the new section 37C (*Clause 11* refers).

Clause 13 omits Part 3, Division 6 (*The register*). Under the Bill provisions dealing with the register of licensees have been moved to Part 8 of the QBSA Act.

Clause 14 inserts a number of notes in section 42 (*Unlawful carrying out of building work*) to cross-reference other sections in the QBSA Act.

Clause 14 inserts two new sub-sections into section 42 namely section 42(8A) and section 42(8B). The intent of section 42(8A) is to ensure that a consumer who engages one or more licensed contractors to carry out building work does not require a contractor's licence if the consumer does

not provide building work services for the work. The intent of section 42(8B) is to ensure that a person who lawfully carries out building work under a licence under the QBSA Act other than a contractor's licence, does not also require a contractor's licence to carry out the work.

Clause 14 increases the maximum penalty for contravening section 42.

Clause 14 inserts a new definition of licensed trade contractor in section 42. The new definition better aligns the meaning of licensed trade contractor with the classes of licence provided under the *Queensland Building Services Authority Regulation 2003*. Under the definition a completed building inspection cannot be carried out by an unlicensed subcontractor under section 42(5A).

Clause 15 inserts 3 new offence provisions, namely section 42B (*Carrying out building work without a nominee*), section 42C (*Unlawful carrying out of fire protection work*) and 42D (*Licensed contractor must not engage or direct unauthorised person for fire protection work*).

The new section 42B makes it an offence for a company licensee to carry out or undertake to carry out building work unless the licensee has a nominee who holds a contractor's licence or nominee supervisor's licence of the relevant class. However, a licensee does not commit an offence against the section if the period the licensee has not had a nominee is less than 28 days.

The new section 42C makes it an offence for an individual to personally carry out or personally supervise fire protection work unless the individual holds a fire protection occupational licence of the relevant class for the work or otherwise holds a licence, registration or authorisation under the QBSA Act or another Act to carry out or supervise the work. The provision excludes from its ambit persons who carry out fire protection work as apprentices, trainees or students. In addition, there is provision for a regulation to be made to allow prescribed types of fire protection work to be lawfully carried out by unlicensed persons if they hold prescribed technical qualifications and carry out the work for an appropriately licensed contractor.

The new section 42D makes it an offence for a licensed contractor to engage or direct an employee to carry out fire protection work unless the employee is authorised to carry out the work under the QBSA Act or another Act.

Clause 16 omits and replaces section 43 (*Supervision of building work*) of the QBSA Act with four new sections.

The new section 43 (*Licensed contractor must ensure building work is personally supervised*) reflects the existing section 43(1) of the QBSA Act to the extent that there continues to be an obligation on contractors and nominees to ensure that work carried out under a contractor's licence is personally supervised by an appropriately licensed person. However, the new section 43 widens the scope of persons who may lawfully supervise building work carried out under a contractor's licence. Specifically, the new section allows employees or officers of a contractor to personally supervise building work for a contractor if they hold a relevant nominee supervisor's licence, site supervisor's licence, fire protection occupational licence, or an occupational licence under another Act that authorises supervision of the work. Holders of a relevant contractor's licence may also personally supervise building work for a contractor, regardless of whether they are an employee or officer of the contractor.

Clause 16 inserts a new section 43A (*Licensed contractor must ensure building work is adequately supervised*). This section redrafts the existing requirement in section 43 for contractors and nominees to ensure that building work carried out under a contractor's licence is adequately supervised. The new section is drafted in plain English and provides greater guidance as to the factors relevant to determining what constitutes adequate supervision.

Clause 16 also inserts new sections 43B (*Construction manager must ensure building work is personally supervised*) and 43C (*Construction manager must ensure building work is adequately supervised*). These sections specify the supervision obligations of construction managers who provide building work services under a construction management contract. These obligations are similar to those imposed on building contractors who carry out building work under a contract other than a construction management contract. The supervision-related obligations of construction managers have been separately dealt with to provide greater clarity in the legislation with respect to building work carried out under this type of contractual arrangement.

Clause 16 also increases the maximum penalties for supervision-related offences.

Clauses 17 and 18 replace section 44 (*Permits for owner-builders*) of the QBSA Act and provide for a more comprehensive owner-builder permit system than is currently contained in the QBSA Act.

Clause 17 inserts section 43D (*Definitions for div 8*) which provides definitions for Division 8 of the QBSA Act.

Clause 17 inserts section 43E which specifies when an owner-builder permit is required.

Clause 18 omits section 44 of the QBSA Act. *Clause 18* further inserts sections which set out the administrative provisions relevant to applications for owner-builder permits, the consideration of applications, the criteria for granting an owner-builder permit, the form of a permit, commencement of a permit, surrender of a permit and the replacement of a lost, stolen, destroyed or missing permit. The relevant sections are 44, 44A, 44B, 44C, 44F, 44J and 45.

Clause 18 also provides for permits to be issued subject to specified statutorily imposed conditions, as well as other reasonable conditions the BSA considers appropriate and stated in the permit (see section 44E). Further, Clause 18 inserts new sections 44G and 44H which specify the circumstances when a permit may be suspended or cancelled by the BSA and the procedures for cancellation or suspension of a permit. The term of a permit is prescribed as six years from its issue or an earlier date stated in the permit (section 44D).

Clause 19 makes minor administrative drafting amendments to section 46 (*Notification on certificate of title*).

Clause 20 provides an additional circumstance for suspending or cancelling a licence under section 48 of the QBSA Act.

Clause 20 also expands section 48(j) of the Act to take into account fit and proper requirements associated with a nominee supervisor's licence, a site supervisor's licence and a fire protection occupational licence.

Clause 21 omits an outdated reference in the heading of section 49B.

Clause 22 amends section 50A(1) (*Approved audit program*) to allow an approved audit program for the purposes of finding out if licensees have been complying with Part 5 (*The statutory insurance scheme*) of the QBSA Act.

Clause 23 amends the notice provisions in section 50C (*Supply of financial records or other documents under approved audit program or for other reason*) to include references to Part 5 of the QBSA Act.

Clause 24 inserts a new section 50D (*Person must not pretend to be a licensee*) which makes it an offence for a person to pretend to be a licensee.

Clause 24 increases the maximum penalties for a breach of section 51 (*Improper use of licence card, certificate, number or PIN*). Clause 24 also

redrafts section 51 to widen its scope to include all licensees under the QBSA Act. Currently, the section is restricted to licensed contractors.

Clause 25 amends section 51A (*Other offences relating to unlawful carrying out of building work*) to increase the maximum penalty.

Clause 25 also omits section 51A(3). The insertion of a new definition in Schedule 2 (*Definitions*) of the QBSA Act in relation to what is meant by the term ‘carry out building work’ (see Clause 82 of the Bill) removes the need for this section.

Clause 26 omits section 51B(5). The insertion of a new definition in Schedule 2 (*Definitions*) of the QBSA Act in relation to what is meant by the term ‘carry out building work’ (see Clause 82 of the Bill) removes the need for this section.

Clause 27 expands the ambit of section 53B (*False or misleading documents about financial requirements*) to include the provision of false or misleading information other than in document form.

Clause 28 inserts a new section 53C (*Advertising by unlicensed person*) which makes it an offence for a person who does not hold a contractor’s licence to advertise to carry out building work unless the person states in the advertisement the value of the work that the person is entitled to carry out without a licence. Clause 28 also makes provision for a regulation to prescribe the way the advertisement is presented and the words to be included in the advertisement.

Clause 29 increases the maximum penalty for the breach of a licensing condition under section 56(1)(d) (*Partnerships*).

Clause 30 inserts a new section 56A (*Authority may request photographs for licence*) which allows the BSA to request a licensee who is an individual to give the BSA two passport-size photographs of the applicant within 28 days of receiving the request. The provision requires the photographs must be recent, certified in a way prescribed by regulation and suitable for inclusion in the licensee’s licence.

Clause 31 amends section 56AB (*Operation of pt 3A*) to exclude a site supervisor’s licence and a fire protection occupational licence from the application of Part 3A (*Excluded and permitted individuals and excluded companies*).

Clause 32 inserts section 56AD(8A) which provides a non-exhaustive list of the circumstances which the BSA must have regard for the purposes of section 56(8) of the QBSA Act. Clause 32 also provides for permitted

individual applications under the section to be in a form approved by the Queensland Building Services Board.

Clause 33 amends section 57 (*Operation of pt 3B*) to exclude a site supervisor's licence and a fire protection occupational licence from the application of Part 3B (*Permanently excluded individuals*).

Clause 34 amends section 62 (*Operation of pt 3C*) to exclude a site supervisor's licence and a fire protection occupational licence from the application of Part 3C (*Convicted company officers*).

Clause 35 amends a definition in section 67AQ (*Definitions for pt 3E*).

Clause 36 amends section 67AR (*Meaning of demerit offence*) to expand the meaning of demerit offence to include offences against or contraventions of sections 42B, 68(1), 72(10) of the QBSA Act and sections 26 and 27(2)(f) of the DBC Act.

Clause 37 amends section 67AV (*Operation of pt 3E*) to exclude a site supervisor's licence and a fire protection occupational licence from the application of Part 3E (*Disqualified individuals*).

Clause 38 amends section 67AX (*When demerit points allocated for demerit offences*) to align the section with amendments made by Clause 36.

Clause 39 amends the definition of a construction management trade contract in section 67B (*Meaning of construction management trade contract*) to align it with definitions inserted by the Bill of construction manager and construction management contract in Schedule 2 (*Dictionary*). The amendment is not intended to substantially change the definition of a construction management trade contract other than to be more precise in excluding a contract with a construction manager from its ambit.

Clause 40 increases the maximum penalties specified in section 67G (*Building contracts to be in writing*).

Clause 41 increases the maximum penalties specified in section 67I (*Directions given under building contracts*).

Clause 42 increases the maximum penalty in section 67V (*Offence of not warning that contract is construction management trade contract*).

Clause 43 inserts section 67X (*Statutory insurance scheme may be called Queensland Home Warranty Scheme*) which allows the Statutory Insurance Scheme to operate under the name *Queensland Home Warranty Scheme* or another name prescribed by regulation.

Clause 43 also inserts section 67Y (*Protection of expressions associated with statutory insurance scheme*) which makes it an offence in the circumstances specified in the section for a person to use a declared expression, a variation of a declared expression, or use any word similar in sight or sound to a declared expression associated with the Statutory Insurance Scheme.

Clause 44 amends the heading of section 68 of the QBSA Act to make it more descriptive of the provision.

Clause 44 amends section 68 to specify who must pay the insurance premium set under the QBSA Act for residential construction work and when the premium must be paid. Unlike the existing provision the amendments specifically recognise the obligations of a licensed construction manager to pay the relevant insurance premium. The maximum penalty for failing to pay the appropriate insurance premium has also been increased.

Clause 45 inserts section 68A (*Multiple contracts for the same residential construction work*). The section is intended to prevent contractors from splitting contracts to perform residential construction work so as to avoid paying insurance.

Clause 45 inserts section 68B (*When insurance premium is payable by licensed contractor*) which specifies when a licensed contractor (other than a construction manager) who carries out residential construction work must pay an insurance premium for the work.

Clause 45 inserts section 68C (*When insurance premium is payable by construction manager*) which specifies when a construction manager must pay an insurance premium.

Clause 45 inserts clause 68D (*Setting of insurance premiums for residential construction work*). The new section provides that the premium for residential construction work, or the way it is to be calculated, must be stated in a notice published in the Government Gazette. Section 68D further specifies the factors that the BSA must have regard to and comply with before stating the premium or the way it is to be calculated. Section 68D also places an obligation on the BSA to review premiums payable at least once every 12 months and states how the premium payable is to be determined for a construction manager.

Clause 46 omits and replaces section 69(2). The new section provides that a policy of insurance comes into existence if the work involves speculative residential construction work carried out by an appropriately licensed

contractor. In all other respects the new provision is intended to reflect the content of the omitted section 69(2), subject to technical amendments made for drafting reasons.

Clause 47 inserts section 69A (*Commencement of insurance cover*). The new section specifies when a policy of insurance comes into force.

Clause 48 amends section 70 (*Insurance claims*) to the effect that, in a claim for indemnity under the Statutory Insurance Scheme, if regulations do not state the way a notice of claim is to be given, a person who has applied to the BSA under section 71A is taken to have given notice under section 70.

Clause 49 inserts a new section 70A (*Persons not entitled to indemnity under insurance scheme*) into the QBSA Act. The section specifies persons who are not entitled to indemnity under the Statutory Insurance Scheme.

Clause 50 inserts a new section 71AA (*Cancellation of policy of insurance*) which specifies when a policy of insurance may be cancelled by the BSA and the premium refunded.

Clause 51 amends section 72 (*Power to require rectification of building work*) to expressly state the circumstances when a construction manager, a developer or a nominee is taken to have carried out building work for section 72(1).

Clause 51 also inserts section 72(5AA) to the effect that a direction to rectify may be given to more than one person for the same building work. The section does not represent a policy change and is merely included to provide greater clarity in drafting.

Clause 51 increases the penalty for the offence under section 72(10).

Clause 52 removes an outdated reference in the heading of section 75 and expands the definition of tribunal work to include fire protection work.

Clauses 53 to 62 amend the headings of sections 76-85 to remove outdated references to the repealed *Queensland Building Tribunal Act 2000*.

Clause 63 amends section 86(1) to provide for a review by the Commercial and Consumer Tribunal of a decision by the BSA to refuse an application for renewal of a licence and a decision to suspend or cancel an owner-builder permit.

Clause 63 also amends section 86(2) to place beyond doubt that the section prescribes when the Tribunal must not review a decision. This amendment is of a clarifying nature only and does not represent a policy change.

Clause 63 amends section 86(2)(b)(ii) by inserting a new sub-paragraph (C) which has the effect of extending the ambit of the section to include the circumstance of where the BSA has started a prosecution or served an infringement notice for an offence under section 72(10) of the QBSA Act.

Clauses 64 - 68 amend the headings of sections 87–91 of the QBSA Act to remove outdated references to the repealed *Queensland Building Tribunal Act 2000*.

Clause 69 amends section 92(b)(iii) of the QBSA Act to remove the outdated reference to a nominated supervisor and replace it with the word “nominee”, correct a typographical error in subsection 92(b)(iii) and remove an outdated reference in the heading of the section.

Clauses 70 - 74 amend the headings of sections 93, 94, 95, 96 and 97 to remove outdated references to the repealed *Queensland Building Tribunal Act 2000*.

Clause 75 inserts a new Part 8 (*Registers*) into the QBSA Act. Prior to the amendments made by the Bill, provisions dealing with the licensee register were dealt with in Part 3, Division 6 (*The register*).

Clause 75 inserts a new section 98 (*Definitions for pt 8*) which specifies the location of key definitions used in Part 8.

Clause 75 inserts a new section 99 (*Licensee register*) which provides that a register of licensees must be kept by the BSA. Section 99 also specifies the information that must be kept on the licensee register.

Clause 75 inserts a new section 100 (*When information may be included in the licensee register*) which provides circumstances when information may be included on the licensee register.

Clause 75 inserts a new section 101 (*Licensees must advise change of circumstances*) which imposes an obligation on a licensee to advise the BSA of changes of particulars relevant to the licensee register.

Clause 75 inserts a new section 102 (*When notes must be removed from the licensee register*). This section specifies when a note or other details on the licensee register must be taken off.

Clause 75 inserts a new section 103 (*Register of holders of owner–builder permits*). This section provides that the BSA must keep a register of persons holding owner–builder permits. The section specifies what particulars must be recorded and also requires permittees to notify the BSA of any changes to the particulars recorded in the register.

Clause 75 inserts a new section 103A (*When particulars must be removed from owner-builder register*). Under this section, particulars of the permittee must be removed from the register when the term of the permit ends.

Clause 75 inserts a new section 103B (*Developer register*) which provides that the BSA must keep a register of relevant developers who have been issued a direction under section 72(1) of the QBSA Act. Under the new section the register must contain a note of each direction issued to a developer and each time the developer is convicted of an offence against section 72(10). However, no information may be included on the register until relevant review and appeal periods have ended or the review or appeal has been finally decided or not proceeded with. Section 103B also provides in prescribed circumstances for the conviction of an executive officer of a company developer to be included on the register.

Clause 75 inserts a new section 103C (*When notes must be removed from developer register*) which specifies that a note in the developer register must be removed 5 years after it is made.

Clause 75 inserts a new section 103D (*Inspection of registers*) which provides for inspection of the registers at the BSA's Offices.

Clause 75 inserts a new section 103E (*Publication of registers*) which provides that a register may be published on the BSA's internet site.

Clause 75 inserts a new section 103F (*Certificates*) which allows for the issuing of a certificate by the BSA, upon payment of the appropriate fee, certifying matters contained in a register.

Clause 76 omits section 105 (*Inspector to produce identity card*) and replaces it with section 105 (*Inspector to produce identity card and provide information*). The new section increases the obligations on an inspector when exercising a power under the QBSA Act to produce an identity card for inspection and provide other information as stated in the section.

Clause 77 inserts a new section 107A (*Obstructing an inspector*). The new section makes it an offence for a person, without reasonable excuse, to obstruct an inspector who is exercising a power under the QBSA Act.

Clause 78 amends section 108 (*Obligation of assessment manager*). The effect of the amendment is to ensure that private certifiers who are acting as assessment managers under the *Integrated Planning Act 1997* are subject to the same requirements as assessment managers under section 108.

Clause 79 inserts a new section 108A (*Documents that must be kept for 7 years*). Section 108A provides that the documents specified in the section must be kept for 7 years. The subject documents are building contracts (plus other related documents specified in the section) and a building contractor's financial records relevant to the *Financial Requirements for Licensing Policy* of the Board.

Clause 79 inserts a new section 108B (*False or misleading statement*). Under the section it is an offence for a person to knowingly state anything to the BSA that is false or misleading in a material particular.

Clause 79 inserts a new section 108C (*False or misleading document*) which provides that it is an offence for a person to give the BSA a document containing information the person knows is false or misleading in a material particular. Under the section it is also an offence for a person to make an entry in a document required or permitted to be made or kept under the QBSA Act which the person knows is false or misleading in a material particular.

Clause 79 provides that section 108B and 108C do not apply to information or documents to which section 53B applies.

Clause 79 inserts a new section 108D (*Contracting out prohibited*). This section has been inserted to expressly state that a person cannot contract out of the provisions of the QBSA Act. The provision is not intended to be a policy change.

Clause 80 amends section 116 (*Regulations*) to allow for the Governor in Council to make a regulation to prescribe the procedure relating to the application for or renewal of licences under the QBSA Act.

Clause 81 inserts Part 8 (*Transitional provisions for the Queensland Building Services Authority and Other Legislation Amendment Act 2007*) into Schedule 1 (*Transitional and validating provisions*) of the QBSA Act.

Clause 81 inserts section 31 (*Transitional provisions for existing supervisors' licences*) into Schedule 1. This section provides a transitional provision for holders of existing supervisors' licences to be taken to hold a nominee supervisor's licence.

Clause 81 inserts section 32 (*Transitional qualifications for site supervisors' licences*) into Schedule 1. This section provides for transitional qualifications for a site supervisor's licence.

Clause 81 inserts section 33 (*Transitional provision for fire protection occupational licences*) into Schedule 1. The section provides that the

offences under section 42C (*Unlawful carrying out of fire protection work*) and 42D (*Licensed contractor must not engage or direct unauthorised person for fire protection work*) do not apply until two years from the commencement of section 30C (*Fire protection occupational licence*) of the QBSA Act.

Clause 81 inserts section 34 (*Transitional provision for certain fire protection work*) into Schedule 1. This section provides that section 42 (*Unlawful carrying out of building work*) of the QBSA Act does not apply to those aspects of fire protection work which were previously not regulated by the QBSA Act, until two years after the commencement of section 34 of Schedule 1.

Clause 81 inserts section 35 (*Transitional provision for photograph on licence*) into Schedule 1. The section provides for transitional provisions of an administrative nature relevant to photographs on licences.

Clause 81 inserts section 36 (*Transitional provision for continuation of register of licensees*) into Schedule 1. The section provides for transitional provisions relevant to continuation of the licensee register.

Clause 82 inserts new definitions and amends a number of existing definitions in Schedule 2 (*Definitions*) of the QBSA Act to accommodate amendments made by the Bill.

### **Part 3**                      **Amendment of Domestic Building Contracts Act 2000**

Clause 83 states the Act to be amended by Part 3 is the DBC Act.

Clause 84 amends section 7 (*Meaning of domestic building contract*) of the DBC Act to clarify that a construction management contract under the QBSA Act for the provision of building work services for domestic building work is a domestic building contract.

Clause 84 also amends section 7 to exclude specified contracts from its ambit. These contracts include a contract between a building contractor and a building owner for the construction of 2 or more detached dwellings, and a contract between the holder of an owner–builder permit and a building contractor.

Clause 85 amends section 9(2) of the DBC Act to correct a typographical error.

Clause 86 increases the maximum penalty for contravening section 26 (*Contracts must be in writing*) of the DBC Act.

Clause 87 amends section 27 (*General contents of contracts*) of the DBC Act to provide that the definition of specification details for a regulated contract includes other details prescribed by regulation.

Clause 88 inserts a new section 31 (*Documents that must be kept for seven years*) into the DBC Act. Under the new section a regulated contract entered into by a building contractor and the plans, specifications and variations relating to the contract must be kept for seven years from the date they are put in writing.

Clause 89 increases the maximum penalty for contravening section 54 (*Mixed –purpose contracts*).

Clause 90 amends section 65 (*Progress payments for contracts other than designated stages contracts*). The amendment is intended to clarify when a progress payment may be demanded or received under a contract other than a designated stages contract.

## **Part 4                      Amendment of Professional Engineers Act 2002**

Clause 91 states the Act to be amended by Part 4 is the *Professional Engineers Act 2002*.

Clause 92 amends the heading of Part 11 *Professional Engineers Act 2002* to make it more descriptive of the content of the Part.

Clause 93 inserts a new section in Part 11, subdivision 2 (*Transitional references*) of the *Professional Engineers Act 2002* to correct an administrative oversight with respect to professional engineer registrations made under transitional provisions which apply the provisions of the repealed *Professional Engineers Act 1988*.