



Queensland

# **Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014**

**Includes amendments agreed during Consideration**





Queensland

# Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014

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# 2014

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## A Bill

for

**An Act to amend the *Housing Act 2003*, the *Queensland Building and Construction Commission Act 1991*, the *Residential Tenancies and Rooming Accommodation Act 2008* and the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013* for particular purposes, to repeal the *Domestic Building Contracts Act 2000*, and to make minor and consequential amendments to the legislation mentioned in the schedule**

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014*.

### **2 Commencement**

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- (a) sections 34 and 35;
- (b) parts 3, 4 and 5.

## **Part 2 Amendment of Queensland Building and Construction Commission Act 1991**

### **3 Act amended**

This part amends the *Queensland Building and Construction Commission Act 1991*.

*Note—*

See also the amendments in schedule 1.

### **4 Amendment of s 3 (Objects of Act)**

Section 3—

*insert—*

- (d) to regulate domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners.

## **5 Amendment of s 19 (Board's policy)**

Section 19(2)(b), 'or completion of building work'—

*omit, insert—*

of building work or remediation of consequential damage

## **6 Replacement of s 37 (When licences to be renewed)**

Section 37—

*omit, insert—*

### **37 Period of renewal**

A licensee for any of the following licences may choose to renew the licence for a period of either 1 year or 3 years—

- (a) a contractor's licence;
- (b) a nominee supervisor's licence;
- (c) a site supervisor's licence;
- (d) a fire protection occupational licence.

## **7 Amendment of s 37A (Commission to advise licensee before licence due for renewal)**

Section 37A(2)(d) and (e)—

*omit, insert—*

- (d) for a contractor's licence, when the documentary evidence required by the

financial requirements stated in the board's policies must be given to the commission.

**8 Amendment of s 37B (Applications for renewal of licence)**

Section 37B(2)(b), from 'renewal plus'—

*omit, insert—*

renewal; and

**9 Omission of s 37C (Renewal fee increased if directions given)**

Section 37C—

*omit.*

**10 Amendment of s 38 (Suspension for non-payment of fee)**

Section 38(4)—

*omit.*

**11 Insertion of new pt 3, div 6**

Part 3—

*insert—*

**Division 6 Restoration of licences**

**39 Restoration of licence**

- (1) This section applies if a licence has been cancelled under section 38(3).
- (2) The licensee may request that the commission restore the licence.
- (3) The commission must restore the licence if the request—



- (a) is made within 3 months of the licence being cancelled; and
- (b) is accompanied by the fee prescribed by regulation.

**12 Amendment of s 42C (Unlawful carrying out of fire protection work)**

Section 42C(3)—

*insert—*

- (d) a student who, for work experience, personally carries out fire protection work as part of a pre-vocational course.

**13 Amendment of s 49B (Suspension or cancellation for failure to comply with tribunal's orders and directions)**

(1) Section 49B(3)—

*omit.*

(2) Section 49B(4)—

*renumber* as section 49B(3).

**14 Amendment of s 50A (Approved audit program)**

(1) Section 50A(1), 'Minister'—

*omit, insert—*

commissioner

(2) Section 50A(1)(b) and (c)—

*omit, insert—*

- (b) to find out if they have been complying with part 4A, part 5 or schedule 1B.

(3) Section 50A(3)—

*omit.*

**15 Omission of s 50B (Notice of proposed audit program)**

Section 50B—

*omit.*

**16 Amendment of s 50C (Supply of financial records and other documents under approved audit program or for other reason)**

(1) Section 50C(1)(b)(ii)—

*omit, insert—*

(ii) the licensee is not, or has not been, complying with part 4A, part 5 or schedule 1B.

(2) Section 50C(2)(b)—

*omit, insert—*

(b) the documents described in the notice that relate to the licensee's obligations under part 4A, part 5 or schedule 1B.

(3) Section 50C(3)(b)—

*omit, insert—*

(b) the documents the commission reasonably requires for deciding whether the licensee is, or has been, complying with part 4A, part 5 or schedule 1B.

**17 Amendment of s 51B (Licensed contractor must not contract with unlicensed person)**

(1) Section 51B(1), note, 'section 42(5) to (8)'—

*omit, insert—*

schedule 1A

(2) Section 51B(1), note, 'in the subsections'—

*omit, insert—*

in the schedule

**18 Amendment of pt 3A, hdg (Excluded and permitted individuals and excluded companies)**

Part 3A, heading, ‘and permitted’—

*omit.*

**19 Amendment of s 56AC (Excluded individuals and excluded companies)**

- (1) Section 56AC(1)(a), ‘after the commencement of this section,’—

*omit.*

- (2) Section 56AC(1)(b) and (2)(b), ‘5 years’—

*omit, insert—*

3 years

- (3) Section 56AC(2)(a), ‘after the commencement of this section, a company’—

*omit, insert—*

a construction company

- (4) Section 56AC(2)(c) and (6), ‘the company’—

*omit, insert—*

the construction company

- (5) Section 56AC(2)(c)(ii), ‘at any time after the commencement of this section and’—

*omit.*

- (6) Section 56AC—

*insert—*

- (7) In this section—

*construction company* means a company that directly or indirectly carries out building work or building work services.

**20 Omission of pt 3A, div 2 (Categorisation as permitted individual)**

Part 3A, division 2—

*omit.*

**21 Amendment of s 56AF (Procedure if licensee is excluded individual)**

(1) Section 56AF(2)(b)—

*omit, insert—*

- (b) that the individual may make a submission to the commission about the relevant event within the reply period;

(2) Section 56AF(3)—

*omit, insert—*

- (3) The commission must cancel the individual's licence, by written notice given to the individual, if—

- (a) after considering any submission about the notice made by the individual within the reply period, the commission still considers the individual is an excluded individual for a relevant event; or

- (b) the individual does not make a submission about the notice within the reply period.

(3) Section 56AF—

*insert—*

- (5) In this section—

*reply period*, for a written notice given under subsection (2), means 28 days after the commission gives an individual the written notice.

**22 Amendment of s 56AG (Procedure if licensee is excluded company)**

(1) Section 56AG(2)(c)—

*omit, insert—*

(c) within 28 days after the commission gives the company the written notice, the relevant individual must stop being a director, secretary or influential person;

(2) Section 56AG(3)—

*omit, insert—*

(3) The commission must cancel the company's licence by written notice given to the company if, within the 28 days mentioned in subsection (2)(c), the relevant individual does not stop being a director or secretary of, or an influential person for, the company.

(3) Section 56AG(4) to (6)—

*omit, insert—*

(4) Section 49 does not apply to a cancellation under subsection (3).

**23 Amendment of s 58 (Meaning of *permanently excluded individual*)**

(1) Section 58(1)(b)(ii) and (iii)—

*omit, insert—*

(ii) why the commission considers the individual is an excluded individual for the relevant event.

(2) Section 58(1)(c)—

*omit.*

**24 Amendment of s 61 (When individual no longer permanently excluded individual)**

Section 61, from ‘if the individual’—

*omit, insert—*

if the individual applies to the tribunal under section 86(1)(k) for a review of the commission’s decision under section 56AF that a person is an excluded individual, and the tribunal reverses or annuls the commission’s decision.

**25 Omission of s 67AP (Relationship of this part with pt 7, div 4)**

Section 67AP—

*omit.*

**26 Amendment of s 67AQ (Definitions for pt 3E)**

(1) Section 67AQ, definition *conviction*, paragraph (e)—

*omit, insert—*

(e) a decision of the commission to take disciplinary action against the person if the disciplinary action has taken effect under section 74G.

(2) Section 67AQ, definition *conviction*, editor’s note—

*omit.*

**27 Replacement of s 67AR (Meaning of *demerit offence*)**

Section 67AR—

*omit, insert—*

**67AR Meaning of *demerit offence***

A *demerit offence* is—

- (a) an offence against a provision prescribed by regulation; or
- (b) a contravention of a requirement imposed under this Act and prescribed by regulation.

**28 Amendment of s 67AW (Demerit points for demerit matters)**

Section 67AW(2)(a)—

*omit, insert—*

- (a) for a conviction for a demerit offence—the number of points allocated to the offence under a regulation;

**29 Amendment of s 67AX (When demerit points allocated for demerit offences)**

(1) Section 67AX(2)(f)—

*omit, insert—*

- (f) if the commission decides to take disciplinary action against the person—on the day the disciplinary action takes effect under section 74G.

(2) Section 67AX—

*insert—*

- (5) In this section—

*appeal* includes a review of a decision of the commission by the tribunal under section 86.

**30 Amendment of s 67AZB (Limit on demerit points from single audit or investigation)**

(1) Section 67AZB, heading, ‘or investigation’—

*omit.*

- (2) Section 67AZB(2), ‘6’—

*omit, insert—*

20

- (3) Section 67AZB(3), ‘another 6’—

*omit, insert—*

more

- (4) Section 67AZB(4), ‘However other’—

*omit, insert—*

However, more

**31 Omission of s 67AZG (Notice that not a fit and proper person to individual who is not a licensee)**

Section 67AZG—

*omit.*

**32 Amendment of s 67AZM (Terms of disqualifications)**

- (1) Section 67AZM(1), (5), (6) and (7), ‘67AZG,’—

*omit.*

- (2) Section 67AZM(8), ‘or 67AZG(3)’—

*omit.*

**33 Insertion of new pt 4**

After section 67AZM—

*insert—*



## **Part 4                      Domestic building contracts**

### **67AZN Domestic building contracts**

- (1) Domestic building contracts are regulated under schedule 1B.
- (2) The provisions of schedule 1B apply to domestic building contracts and the parties to those contracts.

### **34            Insertion of new s 71AC**

Part 5—

*insert—*

#### **71AC Tenders for rectification work**

- (1) The commission may seek tenders for carrying out building work if the commission is of the opinion that a person may be entitled to assistance under the statutory insurance scheme.
- (2) The commission may accept any tender that it considers appropriate, whether or not the tender was for the lowest cost.
- (3) Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the commission to be reasonable in the circumstances.
- (4) If the estimate to rectify the building work is less than \$20,000, or another amount prescribed by regulation, the commission need only seek a tender for carrying out the building work from 1 licensed contractor.
- (5) The commission may authorise any of the following persons to act for the commission in

seeking the tenders for carrying out building work—

- (a) the person for whom the building work requiring rectification was, or was to be, carried out;
  - (b) a claims management consultant.
- (6) The commission may only have work carried out under this section to the extent that the cost of the work is covered by the assistance under the statutory insurance scheme that the person may be entitled to.

### **35 Omission of ss 73 and 74**

Sections 73 and 74—

*omit.*

### **36 Replacement of pt 5 (The statutory insurance scheme)**

Part 5—

*omit, insert—*

## **Part 5                      The statutory insurance scheme**

### **Division 1              Preliminary**

#### **67WA Definitions for pt 5**

In this part—

*appropriate insurance premium*, for residential construction work, means the insurance premium set for the work under section 68D.

*assistance* includes arranging and paying for the rectification or completion of residential

construction work by a licensed contractor appointed by the commission.

***associated insurable work*** see section 67WD(1).

***consumer***, for residential construction work—

- (a) means a person who contracts with a licensed contractor to carry out the work; and
- (b) includes a person who purchases the work, once completed, if the work is primary insurable work.

***incomplete***, in relation to residential construction work—

- (a) means work that has not reached practical completion; but
- (b) does not include—
  - (i) work that does not comply with the contract because of a cosmetic difference; or

*Example of a cosmetic difference—*

a different shade of paint

- (ii) work that is defective.

***insurable value***, of residential construction work, means an amount representing the reasonable cost to the insurer of having the work carried out by a licensed contractor on the basis that all building and other materials are to be supplied by the contractor (whether or not the work is carried out by a licensed contractor on that basis).

*Examples of residential construction work the insurer may have to have carried out—*

- relocating, transporting and resiting of an existing residence to another site

- the construction, off-site, of a residence or related roofed building and transportation of the residence or building to the relevant building site
- the erection of scaffolding required to carry out the residential construction work
- transporting labour and materials to the relevant building site.

***optional additional cover*** see section 67Z(4).

***other materials***, for residential construction work, includes appliances if included as part of the contract for carrying out the residential construction work.

***primary insurable work*** see section 67WC.

***related roofed building*** see section 67WF.

***residence*** see section 67WE.

***residential construction work*** is—

- (a) primary insurable work; or
- (b) associated insurable work.

***speculative residential construction work*** means residential construction work carried out by a building contractor if—

- (a) the work is not carried out under a contract with a consumer; and
- (b) the work is carried out on land owned by the building contractor; and
- (c) the work is a single detached dwelling or a multiple dwelling of not more than 3 storeys; and
- (d) the dwelling has been sold, or is intended for sale, to another person.

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**67WB Work not covered under the statutory insurance scheme**

- (1) The following work is not eligible for assistance from the statutory insurance assistance scheme—
- (a) building work on, or on the site of, a building or proposed building that is or forms part of any of the following—
    - (i) a backpacker's accommodation, boarding house, caravan park, guest house, holiday accommodation, hostel, hotel, lodging house or motel;
    - (ii) a correctional centre, lockup, prison, reformatory or watchhouse;
    - (iii) a hospital, nursing home or other health care building;
    - (iv) an orphanage or children's home;
    - (v) a retirement village under the *Retirement Villages Act 1999*;
    - (vi) an educational institution;
    - (vii) group accommodation for persons with a physical or mental disability;
    - (viii) commercial or industrial premises;
  - (b) building work carried out by a building contractor for a person who is the holder of an owner-builder permit covering the work;
  - (c) loading, unloading or transporting a building that, if it were fixed to land, could be a residence, or a related roofed building, regardless of whether the transport is within the boundaries of land where the building is located or otherwise;
  - (d) off-site prefabrication of the whole of a building that could be a residence, or a

related roofed building, whether or not the building is in its final form or in parts;

- (e) loading, unloading or transporting a completed prefabricated building that could be a residence or a related roofed building, whether the building is transported whole or in parts, regardless of whether the transport is within the boundaries of land where the building is prefabricated, or to be located, or otherwise;

*Example of a building transported in parts—*

A building is too large to be transported as a completed unit, and is transported on 3 trucks, then joined together on the land where it is to be used.

- (f) other work prescribed by regulation.
- (2) Any work mentioned in subsection (1) is taken not to be primary insurable work or associated insurable work.
  - (3) Associated insurable work is not eligible for assistance from the statutory insurance assistance scheme unless carried out under a contract for primary insurable work and—
    - (a) for primary insurable work relating to a residence—the work is carried out on the site of the residence or proposed residence and is for residential purposes; or
    - (b) for primary insurable work relating to a related roofed building—the work is carried out on the site of the building or proposed building and is for residential purposes.
  - (4) In this section—  
***completed prefabricated building*** includes a prefabricated building—

- (a) that has not been placed on land where it is to be used; or
- (b) to which services have not been connected, including, for example, electricity or plumbing and drainage.

### **67WC Meaning of *primary insurable work***

- (1) ***Primary insurable work*** is any of the following building work if carried out by a licensed contractor and the insurable value of the work is more than the regulated amount—
  - (a) the erection or construction of a residence or related roofed building;
  - (b) building work within the building envelope of a residence or related roofed building;
  - (c) building work for anything attached or connected to a residence or related roofed building that requires building or plumbing approval;
  - (d) the erection, construction or installation of a swimming pool within the meaning of the *Building Act 1975*, schedule 2;
  - (e) other building work prescribed by regulation.
- (2) However, the following is not primary insurable work, but may be associated insurable work—
  - (a) fencing;
  - (b) landscaping;
  - (c) electrical work under the *Electrical Safety Act 2002*;
  - (d) installation, renovation, repair or replacement of any of the following—
    - (i) airconditioning;

- (ii) driveways or paths;
- (iii) units for heating water regardless of the source of energy for heating, and including units for heating swimming pools;
- (iv) refrigeration;
- (v) roller shades and shutter screens;
- (vi) security doors and grills;
- (vii) solar power units and associated electrical components;
- (viii) water tanks that are not part of a primary water supply for a residence or related roofed building;
- (e) other work prescribed by regulation.

(3) In this section—

***building envelope***, for a residence or related roofed building, means the outermost sides of the aggregation of the components of a building that have the primary function of separating the internal part of the residence or related roofed building from the external environment.

*Example of a building envelope—*

the slab and footings system, an external wall and a roof

***regulated amount*** means \$3300 or the higher amount, if any, prescribed by a regulation.

### **67WD Meaning of *associated insurable work***

- (1) ***Associated insurable work*** is any additional work that may be contracted to be carried out under a contract for primary insurable work if—
  - (a) for primary insurable work relating to a residence—the work is carried out on the



site of the residence or proposed residence  
and is for residential purposes; or

- (b) for primary insurable work relating to a related roofed building—the work is carried out on the site of the building or proposed building and is for residential purposes.
- (2) To remove any doubt, it is declared that associated insurable work may include work that is not building work.

*Examples for subsection (2)—*

electrical work under the *Electrical Safety Act 2002*,  
erecting scaffolding, or earthmoving and excavation  
work

## **67WE Meaning of *residence***

- (1) Each of the following structures is a ***residence*** if the structure is fixed to land and used for residential purposes—
  - (a) a single detached dwelling;
  - (b) 1 or more attached dwellings that are separated by a common wall;

*Examples—*

a row house, terrace house, townhouse or villa unit

- (c) a building, of not more than 3 storeys, containing 2 or more separate residential units.
- (2) Part of a structure is also a ***residence*** if the structure is fixed to land and the part is designed to be used, and is used, for residential purposes.
- (3) A manufactured home fixed to land in a residential park (whether or not it is permanently fixed) is also a ***residence***.

- (4) For subsection (1)(c), a regulation may prescribe how to calculate the number of storeys of a building.
- (5) Each of the following things is not a **residence**—
  - (a) boats, caravans, motor vehicles, tents, trailers, trains and similar things;
  - (b) a building designed as a temporary building, including, for example, a demountable building.
- (6) In this section—
  - manufactured home** see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.
  - residential park** see the *Manufactured Homes (Residential Parks) Act 2003*, section 12.
  - storey** means a space within a building which is situated between one floor level and the next floor level, or if there is no floor above, the ceiling or roof above, but is not a mezzanine or space that contains only—
    - (a) a lift, shaft, stairway or meter room; or
    - (b) a bathroom, shower room, laundry, water closet or other sanitary compartment; or
    - (c) accommodation intended for not more than 3 vehicles; or
    - (d) any combination of a thing mentioned in paragraphs (a) to (c).

### **67WF Meaning of *related roofed building***

- (1) A **related roofed building** means a building that—
  - (a) has a roof designed to be—
    - (i) part of the building; and

- (ii) impervious to water or wind; and
- (b) is, or is proposed to be, on the site of a residence or proposed residence; and
- (c) is used, or proposed to be used, for a purpose related to the use of a residence or proposed residence.

*Example of related roofed building—*

A private garage, shed, carport, toilet building or change room on, or proposed to be placed on, the site of an existing or proposed residence.

- (2) However, a building is not a ***related roofed building*** if—
  - (a) the building is a residence; or
  - (b) the roof of the building is a sail, umbrella or similar thing.

## **Division 2            Statutory insurance                                  scheme**

### **67X Statutory insurance scheme**

- (1) The statutory insurance scheme previously established under this Act is continued.
- (2) The purpose of the statutory insurance scheme is to provide assistance to consumers of residential construction work for loss associated with work that is defective or incomplete.
- (3) Assistance can not be provided under the scheme to a consumer unless the consumer has suffered loss as a consequence of residential construction that is defective or incomplete.
- (4) The statutory insurance scheme may operate under, and be referred to as, the name prescribed by regulation.

## **Division 3            Assistance**

### **67Y Assistance available under statutory insurance scheme**

The terms of cover under which a person is entitled to assistance under the statutory insurance scheme are prescribed by regulation.

### **67Z Optional additional cover**

- (1) A consumer may obtain optional additional cover for residential construction work if a licensed contractor paid an insurance premium for the work under section 68B(2).
- (2) A licensed contractor who carries out speculative residential construction work may obtain optional additional cover for the work if the contractor paid an insurance premium for the work under section 68B(3).
- (3) However, optional additional cover is only obtainable by paying the insurance premium—
  - (a) for a consumer—by the earlier of the following—
    - (i) 30 business days after the day the consumer enters the relevant contract;
    - (ii) the day the residential construction work, to be carried out under the relevant contract, starts; or
  - (b) for a licensed contractor who carries out speculative residential construction work—before the work starts.
- (4) A regulation may provide for other matters relating to optional additional cover, including, for example—

- (a) the circumstances under which a person is entitled to optional additional cover; or
  - (b) any limitations or exclusions that may apply in relation to optional additional cover.
- (5) In this section—
- optional additional cover*** means additional assistance provided to a person, or the additional compensation to be paid under the statutory insurance scheme, as prescribed by regulation.
- relevant contract***, for a consumer, means a contract with a licensed contractor for residential construction work.

## **68 Persons not entitled to assistance under statutory insurance scheme**

- (1) A licensed contractor who carries out speculative residential construction work is not entitled to assistance under the statutory insurance scheme for the work.

*Note—*

See section 68A (Licensed contractor pays insurance premium on behalf of consumer).

- (2) If a person enters into 1 or more building contracts, in force at the same time, to construct 3 or more living units, the person is not entitled to assistance under the statutory insurance scheme for the work carried out under the contracts.
- (3) For subsection (2)—
- (a) a single detached dwelling is taken to be 1 living unit; and
  - (b) a residential unit is taken to be 1 living unit; and
  - (c) a duplex is taken to be 2 living units.

- (4) A regulation may prescribe other circumstances under which a person is not entitled to assistance under the statutory insurance scheme.
- (5) Nothing in section (1), (2) or (4) affects the right of a subsequent owner of residential construction work mentioned in this section to make a claim for assistance under the statutory insurance scheme.

## **Division 4 Insurance premiums**

### **68A Licensed contractor pays insurance premium on behalf of consumer**

- (1) A licensed contractor who pays an insurance premium under this division pays the premium on behalf of a consumer.
- (2) A construction manager who pays an insurance premium under this division pays the premium on behalf of the principal who engages the manager.
- (3) The licensed contractor and construction manager are not entitled to assistance under the statutory insurance scheme because the contractor or manager pays the insurance premium under this division.

### **68B When insurance premium is payable by licensed contractor**

- (1) Subsection (2) applies to a licensed contractor who is to carry out residential construction work under a contract with a consumer unless the work is the subject of a construction management contract.
- (2) The licensed contractor must collect from the consumer, and pay to the commission, the

appropriate insurance premium before the first of the following to happen—

- (a) 10 business days elapse from the day the contract was entered into;
- (b) the residential construction work starts.

Maximum penalty—100 penalty units.

- (3) A licensed contractor who is to carry out residential construction work that is speculative residential construction work must pay the appropriate insurance premium for the work before the work starts.

Maximum penalty—100 penalty units.

### **68C When insurance premium is payable by construction manager**

- (1) This section applies to a construction manager if a principal engages the manager under a construction management contract to manage the carrying out of residential construction work.
- (2) If the construction manager holds a contractor's licence of the relevant class for the construction management contract, the manager must collect from the principal, and pay to the commission, the appropriate insurance premium before the first of the following to happen—
  - (a) 10 business days elapse from the day the manager is engaged under the contract;
  - (b) the residential construction work starts.

Maximum penalty—100 penalty units.

### **68D Setting of insurance premiums**

- (1) This section provides for setting the different insurance premiums payable under the statutory insurance scheme.

*Note—*

Insurance premiums differ depending on the type of cover or type of work to which the premium relates.

- (2) The commission must state the insurance premiums, or the way the premiums are calculated, in the gazette.
- (3) Before stating the different insurance premiums, or the way the premiums are calculated, the commission must—
  - (a) have regard to the commission's obligation under section 26A; and
  - (b) ensure insurance premiums are sufficient to meet the costs mentioned in section 26(3); and
  - (c) have regard to any regulation made under section 26(4); and
  - (d) obtain the Minister's approval for the premium.
- (4) The commission must review the different insurance premiums at least once every 12 months.
- (5) A regulation may prescribe the way the insurable value of residential construction work is calculated for stating an insurance premium.
- (6) Subsection (7) applies if a principal engages a construction manager under a construction management contract to provide building work services for the carrying out of residential construction work.



- (7) For calculating the insurance premium payable by the construction manager, the amount paid by the principal to the construction manager under the contract must be added to the insurable value of the residential construction work.

**68E Obligation of assessment manager or compliance assessor in relation to insurance premium**

- (1) An assessment manager or compliance assessor must not, under the *Sustainable Planning Act 2009*, issue a development approval or a compliance permit for building work in relation to residential construction work unless—
- (a) the assessment manager or compliance assessor has written information from the commission showing that the appropriate insurance premium has been paid; or
  - (b) the applicant produces satisfactory evidence that no insurance premium is payable.

Maximum penalty—20 penalty units.

- (2) In this section—

***assessment manager*** includes a private certifier who is acting as an assessment manager.

**Division 5                      Notice and  
   commencement of cover**

**68F Notice of cover**

- (1) If the commission accepts an insurance premium for residential construction work, the commission must issue a notice of cover for the work.
- (2) The notice of cover must include the matters prescribed by regulation.

- (3) The notice of cover may be revoked by the commission if the commission becomes aware, after the issuing of the notice, that the work for which the notice was issued is not residential construction work.

### **68G Refund of insurance premium if notice of cover is revoked**

If the commission revokes a notice of cover under section 68F, the commission must refund any insurance premium paid in relation to the work for which the notice was issued.

### **68H Cover of residential construction work**

- (1) Cover under the statutory insurance scheme comes into force if—
  - (a) a consumer enters into a contract for the carrying out of residential construction work and—
    - (i) the contract bears the licence number of a licensed contractor and, under the licensed contractor's licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
    - (ii) the contract is with a licensed contractor and, under the licensed contractor's licence, the licensed contractor may enter into contracts with consumers to carry out residential construction work covered by the statutory insurance scheme; or
  - (b) a consumer enters into a contract for the carrying out of residential construction work with a building contractor and, at or before

the time the contract is entered into, the building contractor makes a representation that would cause a reasonable person to believe that the residential construction work is covered by the statutory insurance scheme; or

- (c) the work is speculative residential construction work carried out by a licensed contractor and, under the contractor's licence, the contractor may carry out residential construction work covered by the statutory insurance scheme.
- (2) Subsection (1) applies whether or not an insurance premium has been paid, or a notice of cover has been issued, for residential construction work under this part.
  - (3) Subsection (1) does not apply to optional additional cover.
  - (4) If cover under the statutory insurance scheme comes into force for particular residential construction work under subsection (1) and the insurance premium has not been paid for the cover under sections 68B or 68C, the commission may recover the amount of the premium, as a debt, from—
    - (a) if the premium was required to be paid under section 68B(2)—the consumer required to pay the premium; or
    - (b) if the premium was required to be paid under section 68B(3)—the licensed contractor required to pay the premium; or
    - (c) if the premium was required to be paid under section 68C—the principal required to pay the premium.

## **68I Commencement of cover**

- (1) For residential construction work carried out under a contract with a consumer (other than work that is the subject of a construction management contract), cover under the statutory insurance scheme for the work comes into force on the earliest of the following to happen—
  - (a) a licensed contractor pays the appropriate insurance premium for the work under section 68B(2);
  - (b) the consumer enters into the contract with a licensed contractor for the carrying out of the work;
  - (c) a licensed contractor starts carrying out the work.
- (2) For speculative residential construction work, cover under the statutory insurance scheme for the work comes into force on the earlier of the following to happen—
  - (a) the licensed contractor who is to carry out the work pays the appropriate insurance premium for the work under section 68B(3);
  - (b) the contractor starts carrying out the work.
- (3) For residential construction work managed by a construction manager under a construction management contract, cover under the statutory insurance scheme for the work comes into force on the earlier of the following to happen—
  - (a) the construction manager pays the appropriate insurance premium for the work under section 68C(2);
  - (b) a licensed contractor starts carrying out the work.
- (4) Optional additional cover comes into force when the appropriate insurance premium for the

relevant residential construction work is paid under section 67Z(3).

## **Division 6                      Cancellation of cover**

### **69    Cancellation of cover and return of premium**

- (1) Cover under the statutory insurance scheme for residential construction work, for which a licensed contractor paid the insurance premium on behalf of a consumer, may be cancelled by the contractor if—
  - (a) the contractor asks the commission in writing to cancel the cover; and
  - (b) the contract for the work has ended; and
  - (c) a deposit under the contract for the work has been refunded, less any amounts that may be lawfully deducted from the deposit; and
  - (d) the work covered has not started; and
  - (e) not more than 1 year has elapsed from the day the contract for the work was entered into.
- (2) Cover under the statutory insurance scheme, including optional additional cover, for speculative residential construction work for which a licensed contractor paid the insurance premium on behalf of a consumer, may be cancelled by the contractor if—
  - (a) the contractor asks the commission in writing to cancel the cover; and
  - (b) development approval has not been granted for the work, or has been rescinded; and
  - (c) the work covered has not started; and

- (d) not more than 1 year has elapsed from the day the premium was paid.
- (3) Cover under the statutory insurance scheme for residential construction work, for which a construction manager paid the insurance premium on behalf of a principal, may be cancelled by the construction manager if—
  - (a) the construction manager asks the commission in writing to cancel the cover; and
  - (b) the relevant construction management contract and all the construction management trade contracts for the work have ended; and
  - (c) deposits paid under the relevant construction management contract and all the construction management trade contracts have been refunded, less any amounts that may be lawfully deducted from the deposits; and
  - (d) the work covered has not started; and
  - (e) not more than 1 year has elapsed from the day the construction management contract for the work was entered into.
- (4) Optional additional cover obtained by a consumer may be cancelled by the consumer if—
  - (a) the consumer asks the commission in writing to cancel the cover; and
  - (b) the contract between the consumer and a licensed contractor relevant to the cover (the ***relevant contract***) has ended; and
  - (c) a deposit under the relevant contract has been refunded, less any amounts that may be lawfully deducted from the deposit; and
  - (d) the work covered has not started; and

- (e) not more than 1 year has elapsed from the day the relevant contract was entered into between the consumer and the licensed contractor.
- (5) On cancellation of cover under this section, the commission must refund the insurance premium paid for the cover to—
  - (a) if the cover was cancelled under subsection (1), (2) or (3)—the licensed contractor or construction manager, or a person nominated in writing by the contractor or manager; or
  - (b) if the cover was cancelled under subsection (4)—the consumer.
- (6) A fee, prescribed by regulation, may be deducted from any refund made under this section.

## **Division 7      Variations**

### **70 Residential construction work carried out under a contract with a consumer**

- (1) This section applies if—
  - (a) the residential construction work to be carried out under a contract with a consumer is to be varied; and
  - (b) the commission is satisfied that the value of the residential construction work will change because of the variation.
- (2) If the value of the residential construction work will increase by \$5000 or more because of the variation, the licensed contractor carrying out the work must pay an additional insurance premium on behalf of the consumer for the work to the

commission before any work relating to the variation starts.

Maximum penalty—100 penalty units.

- (3) If the value of the residential construction work will decrease because of the variation, the commission may refund part of the insurance premium paid for the work to the consumer.

### **70A Speculative residential construction work**

- (1) This section applies if—
- (a) a licensed contractor is carrying out residential construction work that is speculative residential construction work; and
  - (b) the residential construction work is to be varied after the licensed contractor paid the insurance premium for the work under section 68B(3); and
  - (c) the commission is satisfied that the value of the residential construction work will change because of the variation.
- (2) If the value of the residential construction work will increase by \$5000 or more because of the variation, the licensed contractor must pay the additional insurance premium for the work to the commission before any work relating to the variation starts.

Maximum penalty—100 penalty units.

- (3) If the value of the residential construction work will decrease because of the variation, the commission may refund part of the insurance premium paid for the work to the person who paid the premium.



### **70B Optional additional cover**

- (1) This section applies if—
- (a) a consumer for a contract for the carrying out of residential construction work obtained optional additional cover for the work; and
  - (b) the residential construction work is to be varied after the consumer obtained the optional additional cover; and
  - (c) the commission is satisfied that the value of the residential construction work will change because of the variation.
- (2) If the value of the residential construction work will increase by \$5000 or more because of the variation, the consumer must pay the additional insurance premium for the work to the commission before any work relating to the variation starts.
- (3) If the value of the residential construction work will decrease because of the variation, the commission may refund part of the insurance premium paid for the work to the consumer.
- (4) If the consumer fails to pay the additional insurance premium under subsection (2), the commission may recover the amount of the premium, as a debt, from the consumer.

### **70C Partial refunds of insurance premiums**

A regulation may provide how part of an insurance premium refunded under this division is calculated.

## **Division 8            Recovery from licensed contractor**

### **71   Recovery from licensed contractor etc.**

- (1) If the commission makes any payment on a claim under the statutory insurance scheme, the commission may recover the amount of the payment, as a debt, from the building contractor by whom the relevant residential construction work was, or was to be, carried out or any other person through whose fault the claim arose.
- (2) For subsection (1)—
  - (a) a building contractor by whom the relevant residential construction work was, or was to be, carried out is taken to include—
    - (i) a licensed contractor whose licence card is imprinted on the contract for carrying out the work; and
    - (ii) a licensed contractor whose name, licence number and address are stated on the contract; and
    - (iii) a licensed contractor whose name is stated on the contract for carrying out the work; and
    - (iv) a licensed contractor whose name is stated on an insurance notification form for the work; and
    - (v) a licensed contractor whose licence number is stated on the contract for carrying out the work; and
    - (vi) a licensed contractor whose licence number is stated on an insurance notification form for the work; and

- (vii) a licensed contractor whose PIN was used for putting in place, for the work, insurance under the statutory insurance scheme; and
  - (viii) a building contractor by whom the work was, or was to be, carried out; and
  - (ix) a person who, for profit or reward, carried out the work; and
- (b) a person through whose fault the claim arose is taken to include a person who performed services for the work if the services were performed without proper care and skill.
- (3) The commission is subrogated, to the extent of any payment that the commission has made, or has undertaken to make, to the rights of a person to whom, or for whose benefit, the payment has been, or is to be, made in respect of the matter out of which the insurance claim arose.
- (4) In a proceeding brought by the commission under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(i), it is a defence for the licensed contractor to prove that—
  - (a) the licensed contractor's licence card was imprinted on the contract for carrying out the work without the licensed contractor's authority; and
  - (b) the licensed contractor took all reasonable steps to ensure that the licence card was imprinted on contracts only with the licensed contractor's authority.
- (5) In a proceeding brought by the commission under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(ii), it is a defence for the licensed contractor to prove that—

- (a) the licensed contractor's name, licence number and address were stated on the contract for carrying out the work without the licensed contractor's authority; and
  - (b) the licensed contractor took all reasonable steps to ensure that the licensed contractor's name, licence number and address were stated in contracts only with the licensed contractor's authority.
- (6) In a proceeding brought by the commission under subsection (1) against a licensed contractor mentioned in subsection (2)(a)(iii), (iv), (v), (vi) or (vii), it is a defence for the licensed contractor to prove—
  - (a) for a licensed contractor mentioned in subsection (2)(a)(iii)—that the licensed contractor's name was stated on the contract for carrying out the work without the licensed contractor's authority; and
  - (b) for a licensed contractor mentioned in subsection (2)(a)(iv)—that the licensed contractor's name was stated on the insurance notification form for the work without the licensed contractor's authority; and
  - (c) for a licensed contractor mentioned in subsection (2)(a)(v)—that the licensed contractor's licence number was stated on the contract for carrying out the work without the licensed contractor's authority; and
  - (d) for a licensed contractor mentioned in subsection (2)(a)(vi)—that the licensed contractor's licence number was stated on the insurance notification form for the work without the licensed contractor's authority; and

- (e) for a licensed contractor mentioned in subsection (2)(a)(vii)—
  - (i) that the licensed contractor's PIN was used for putting in place, for the work, insurance under the statutory insurance scheme without the licensed contractor's authority; and
  - (ii) that the licensed contractor took all reasonable steps to ensure the licensed contractor's PIN was kept and used in accordance with the commission's requirements for the keeping and use of the PIN.

## **Division 9            Rectification work**

### **71A Tenders for rectification work**

- (1) The commission may seek tenders for carrying out building work if the commission is of the opinion that a person may be entitled to assistance under the statutory insurance scheme.
- (2) The commission may accept any tender that it considers appropriate, whether or not the tender was for the lowest cost.
- (3) Tenders for carrying out the building work must be sought from the number of licensed contractors considered by the commission to be reasonable in the circumstances.
- (4) If the estimate to rectify the building work is less than the amount prescribed by regulation, the commission need only seek a tender for carrying out the building work from 1 licensed contractor.
- (5) The commission may authorise any of the following persons to act for the commission in

seeking the tenders for carrying out building work—

- (a) the person for whom the building work requiring rectification was, or was to be, carried out;
  - (b) a claims management consultant.
- (6) The commission may only have work carried out under this section to the extent that the cost of the work is covered by the assistance under the statutory insurance scheme that the person may be entitled to.

## **Division 10      Other**

### **71B Statutory insurance scheme not to affect licensing decisions**

In deciding the action to be taken in relation to a licensee's licence, the commissioner must not have regard to the implications for the statutory insurance scheme.

### **71C Notice of entitlement to assistance under the statutory insurance scheme**

A person claiming to be entitled to assistance under the statutory insurance scheme must give notice of the claim to the commission in compliance with the requirements prescribed by regulation.

### **71D Multiple contracts for the same residential construction work**

- (1) This section applies if a licensed contractor and a consumer enter into 2 or more separate contracts that—

- (a) could be the subject of a single contract to carry out residential construction work; and
  - (b) if they were the subject of a single contract, would be a contract to carry out residential construction work.
- (2) For this part, the separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.

*Example of separate contracts—*

A licensed contractor that manufactures and installs kitchens enters into one contract with a building owner for the manufacture of a kitchen and a second contract for its installation.

## **71E Protection of expressions associated with statutory insurance scheme**

- (1) A person must not use a declared expression in connection with selling the right to participate in any warranty or insurance scheme unless—
  - (a) the scheme is that to which this Act relates; and
  - (b) the person does so on behalf of the commission.

Maximum penalty—100 penalty units.

- (2) A person must not—
  - (a) use any variation of a declared expression; or
  - (b) use any word (either alone or in conjunction with any other word) similar in sight or sound to a declared expression;

in connection with selling the right to participate in any insurance or warranty scheme, being a use likely to afford reasonable grounds for believing

the scheme is or is associated with the scheme to which this Act relates, unless—

(c) the scheme in question is one to which this Act relates; and

(d) the person does so on behalf of the commission.

Maximum penalty—100 penalty units.

(3) In this section—

*declared expression* means the name prescribed under section 67X or another name prescribed by regulation.

## **71F When work is taken to have started**

A regulation may prescribe when residential construction work is taken to start for the purpose of this part.

## **37 Replacement of pt 6 (Rectification of building work)**

Part 6—

*omit, insert—*

# **Part 6                      Rectification of building work and remediation of consequential damage**

## **Division 1              Preliminary**

## **71G Definition for pt 6**

In this part—



***direction to rectify or remedy*** means a direction given under section 72(2).

### **71H What is *consequential damage***

- (1) ***Consequential damage*** is damage—
- (a) caused by, or as a consequence of, carrying out building work at a building site (the ***relevant site***), regardless of any intention, negligence or recklessness of the person carrying out the work; and
  - (b) to a residential property at the relevant site, containing the relevant site or adjacent to the relevant site.

- (2) In this section—

***building work*** includes any work prescribed by regulation.

***damage***, to a residential property, includes any of the following—

- (a) the impairment of drainage at the property;
- (b) the undermining of a fence, retaining wall or other structure along the boundary of the property;
- (c) the compromising of the structural integrity of a building, swimming pool or wall on the property;
- (d) the cracking, lifting or cratering of a driveway or pathway on the property;
- (e) water penetration of the property;
- (f) infestation of the property by termites.

***residential property*** includes—

- (a) a single detached dwelling or a duplex; or

- (b) a lot or the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (c) a lot or the common property for a building units plan or a group titles plan under the *Building Units and Group Titles Act 1980*.

#### **71I Who is taken to carry out building work for this part**

- (1) A person who carries out building work is taken, for this part, to include—
  - (a) a building contractor whose licence card is imprinted on the contract for carrying out the building work; and
  - (b) a building contractor whose name, licence number and address are stated on the contract; and
  - (c) a building contractor whose name is stated on the contract for carrying out the building work; and
  - (d) a building contractor whose name is stated on an insurance notification form for the building work; and
  - (e) a building contractor whose licence number is stated on the contract for carrying out the building work; and
  - (f) a building contractor whose licence number is stated on an insurance notification form for the building work; and
  - (g) a building contractor whose PIN was used for putting in place, for the building work, a term of cover under the statutory insurance scheme; and

- (h) a building contractor by whom the building work was carried out; and
- (i) a person who, for profit or reward, carried out the building work; and
- (j) a person who is a building contractor under a domestic building contract who managed the carrying out of the building work; and
- (k) a construction manager engaged under a construction management contract to provide building work services for the building work; and
- (l) a principal who was the contracting party for a building contract for building work for a building, or part of a building, intended for sale if—
  - (i) the building, or part of a building, is not, and has never been, the principal place of residence of the principal; and
  - (ii) the principal engages a building contractor or a construction manager to carry out the building work in a way, or using materials, likely to result in the work being defective or incomplete; and
  - (iii) the principal knew, or ought to have known, that the way the work was to be carried out, or the materials to be used, was likely to result in the work being defective or incomplete; and

*Example of principal knowing that work or materials were likely to result in defective or incomplete building work—*

A principal may know materials are likely to result in work being defective because of advice received from a building contractor or construction manager.

- (m) a person who was the nominee for a licensed contractor that is a company, for work carried out by the company while the person was the company's nominee.
- (2) For the purposes of subsection (1)(h) and (i)—
  - (a) a person carries out building work whether the person—
    - (i) carries it out personally; or
    - (ii) directly or indirectly causes it to be carried out; and
  - (b) a person is taken to carry out building work if the person provides administration services, advisory services, management services or supervisory services for the work.

## **Division 2            Direction to rectify or remedy**

### **71J Requests for rectification of building work or remediation of consequential damage**

- (1) A consumer may ask the commission to give a direction to rectify building work the consumer considers is defective or incomplete.
- (2) The owner or occupier of a residential property adjacent to a building site may ask the commission to give a direction to remedy any consequential damage to the property.
- (3) A person making a request under subsection (1) or (2) must give the commission—
  - (a) details of—
    - (i) for a request under subsection (1)—the building work the consumer considers is defective or incomplete; or

- (ii) for a request under subsection (2)—the consequential damage to the property; and
- (b) other details the commission reasonably requires to consider the request; and
- (c) the fee prescribed by regulation.

## **72 Power to require rectification of building work and remediation of consequential damage**

- (1) This section applies if the commission is of the opinion that—
  - (a) building work is defective or incomplete; or
  - (b) consequential damage has been caused by, or as a consequence of, carrying out building work.
- (2) The commission may direct the person who carried out the building work to do the following within the period stated in the direction—
  - (a) for building work that is defective or incomplete—rectify the building work;
  - (b) for consequential damage—remedy the damage.
- (3) In deciding whether to give the direction, the commission may take into consideration all the circumstances it considers are reasonably relevant and, in particular, is not limited to a consideration of the terms of the contract for carrying out the building work (including the terms of any warranties included in the contract).
- (4) The period stated in the direction must be at least 28 days unless the commission is satisfied that, if the direction is not required to be complied with within a shorter period—

- (a) a substantial loss will be incurred by, or a significant hazard will be caused to the health or safety of, a person because of the defective or incomplete building work or consequential damage; or
  - (b) the defective or incomplete building work, or consequential damage, will cause a significant hazard to public safety or the environment generally.
- (5) The commission is not required to give the direction if the commission is satisfied that, in the circumstances, it would be unfair to the person to give the direction.

*Example for subsection (5)—*

The commission might decide not to give a direction for the rectification of building work because an owner refuses to allow a building contractor to return to the owner's home or because an owner's failure to properly maintain a home has exacerbated the extent of defective building work carried out on the home.

- (6) The commission may, before it considers whether building work is defective or incomplete, require the consumer for the building work comply with a process established by the commission to attempt to resolve the matter with the person who carried out the work.
  - (7) In subsection (3), a reference to a contract for carrying out building work includes a reference to a domestic building contract for managing the carrying out of building work.
  - (8) To remove any doubt, it is declared that the commission may act under this section in relation to consequential damage whether or not an owner or occupier has made a request under section 71J.

### **72A Powers and limitations of directions to rectify or remedy**

- (1) A direction to rectify or remedy may be given to more than 1 person for the same building work.
- (2) A direction to rectify or remedy may require that a building, or part of a building, be demolished and building work be recommenced if, in order to rectify building work, it is necessary to do so.
- (3) If a direction to rectify or remedy is given to a person who is not currently licensed to carry out the required work, the person must have the work carried out by a licensed contractor.
- (4) A direction to rectify or remedy cannot be given more than 6 years and 3 months after the building work to which the direction relates was completed or left in an incomplete state unless the tribunal is satisfied, on application by the commission, that there is in the circumstances of a particular case sufficient reason for extending the time for giving the direction and extends the time accordingly.
- (5) The fact that a direction is given under section 72(2) does not prevent the commission from taking additional action against a person under this Act for the building work to which the direction relates.

## **Division 3            Offences and defences**

### **73    Offence to fail to comply with direction to rectify or remedy**

A person must not fail to rectify building work that is defective or incomplete, or to remedy consequential damage, as required by a direction given to the person under section 72(2).

Maximum penalty—250 penalty units.

## **74 Defences for failure to comply with direction to rectify or remedy**

- (1) This section applies for—
  - (a) a prosecution of a licensed contractor for an offence against section 73; or
  - (b) taking disciplinary action against a licensed contractor under part 6A on the ground that the contractor failed to comply with a direction given to the contractor under section 72(2).
- (2) It is a defence for the licensed contractor to prove that—
  - (a) for a licensed contractor mentioned in section 71I(1)(a)—
    - (i) the contractor's licence card was imprinted on the contract for carrying out the building work without the contractor's authority; and
    - (ii) the contractor took all reasonable steps to ensure that the licence card was imprinted on contracts only with the contractor's authority; or
  - (b) for a licensed contractor mentioned in section 71I(1)(b)—
    - (i) the contractor's name, licence number and address were stated on the contract for carrying out the building work without the contractor's authority; and
    - (ii) the contractor took all reasonable steps to ensure that the contractor's name, licence number and address were stated



in contracts only with the contractor's authority; or

- (c) for a licensed contractor mentioned in section 71I(1)(c)—the contractor's name was stated on the contract for carrying out the building work without the contractor's authority; or
- (d) for a licensed contractor mentioned in section 71I(1)(d)—the contractor's name was stated on the insurance notification form for the building work without the contractor's authority; or
- (e) for a licensed contractor mentioned in section 71I(1)(e)—the contractor's licence number was stated on the contract for carrying out the building work without the contractor's authority; or
- (f) for a licensed contractor mentioned in section 71I(1)(f)—the contractor's licence number was stated on the insurance notification form for the building work without the contractor's authority; or
- (g) for a licensed contractor mentioned in section 71I(1)(g)—
  - (i) the contractor's PIN was used for putting in place, for the building work, insurance under the statutory insurance scheme without the contractor's authority; and
  - (ii) the contractor took all reasonable steps to ensure the contractor's PIN was kept and used in accordance with the commission's requirements for the keeping and use of the PIN.

**38 Insertion of new pt 6A**

Before part 7—

*insert—*

**Part 6A                      Disciplinary  
proceedings**

**74A Commission may investigate grounds for  
taking disciplinary action**

The commission may investigate whether proper grounds exist for taking disciplinary action against a person under this part.

**74B Proper grounds for taking disciplinary action  
against a licensee and former licensees**

- (1) Proper grounds exist for taking disciplinary action against a licensee or former licensee if—
  - (a) the licensee contravenes a requirement imposed under this Act or the *Building Act 1975*; or
  - (b) the licensee is convicted of an indictable offence; or
  - (c) if the licensee is a corporation—a director or secretary of, or an influential person for, the company is not a fit and proper person to exercise control or influence of the company's affairs; or
  - (d) the licensee is carrying on business under the licence in partnership with a person who is not a fit and proper person to have an interest in the business; or
  - (e) the licensee is bankrupt or insolvent; or

- (f) the licensee has committed an offence involving fraud or dishonesty relating to the business carried on under the licence; or
- (g) the licensee knowingly helps a person to carry out building work in contravention of this Act; or
- (h) the licensee contravenes or is taken to have contravened the *Fair Trading Act 1989* in relation to building work carried out under the licence; or

*Note—*

A contravention of the *Fair Trading Act 1989* includes a contravention of the Australian Consumer Law (Queensland) which forms part of that Act.

- (i) the licensee is negligent or incompetent in carrying out building work under the licence; or
  - (j) the licensee fails to comply with a direction of the commission to rectify building work that is defective or incomplete, or to remedy consequential damage; or
  - (k) the licensee contravenes a condition of the licence; or
  - (l) the licensee owes an amount to the commission and fails to comply with a demand by the commission to pay the amount; or
  - (m) the licensee fails to comply with an order of the tribunal; or
  - (n) the licensee fails to pay a subcontractor in compliance with a building contract that is a subcontract under section 67D.
- (2) However, proper grounds exist for taking disciplinary action against a former licensee only

if the former licensee was a licensee at the time the grounds first existed.

(3) In this section—

*former licensee* means a person who was a licensee.

#### **74C Proper grounds for taking disciplinary action against person not a licensee**

(1) Proper grounds exist for taking disciplinary action against a person who is not a licensee if the person—

- (a) carries out, or undertakes to carry out, building work for which a licence is required without holding a licence of the appropriate class; or
- (b) has committed an offence involving fraud or dishonesty relating to the performance of building work; or
- (c) contravenes or is taken to have contravened the *Fair Trading Act 1989* in relation to building work carried out by the person; or

*Note—*

A contravention of the *Fair Trading Act 1989* includes a contravention of the Australian Consumer Law (Queensland) which forms part of that Act.

- (d) is negligent or incompetent in carrying out building work for which a licence is required; or
- (e) fails to comply with a direction of the commission to rectify building work that is defective or incomplete, or to remedy consequential damage.

(2) In this section—

*undertakes to carry out*, building work, means enters into a contract to carry out building work or submits a tender or makes an offer to carry out building work, unless the contract, submission or offer is conditional on the person obtaining a licence of the appropriate class.

#### **74D Types of disciplinary action that may be taken**

The types of disciplinary action the commission may take against a person are—

- (a) for defective or incomplete building work carried out by the person for a building owner—directing the person pay, within a stated period, the building owner an amount sufficient to rectify the work; or
- (b) for consequential damage caused by, or as a consequence of, building work carried out by the person—directing the person pay, within a stated period, the owner of the residence affected by the consequential damage an amount sufficient to remedy the damage; or
- (c) directing the person to pay, within a stated period, compensation to someone else who has suffered loss or damage because of the act or omission that resulted in the disciplinary action; or
- (d) imposing a penalty on the person of not more than—
  - (i) for an individual—an amount equivalent to 200 penalty units; or
  - (ii) for a corporation—an amount equivalent to 1000 penalty units; or
- (e) if the person is a licensee—
  - (i) reprimanding the licensee; or

- (ii) suspending the licence; or
- (iii) imposing conditions on the licence; or
- (iv) cancelling the licence.

#### **74E Notice of proposed disciplinary action**

If, after conducting an investigation, the commission believes that appropriate grounds exist for taking disciplinary action against a person, the commission must give the person a written notice of—

- (a) the grounds the commission believe exist for taking disciplinary action against the person; and
- (b) the disciplinary action the commission proposes to take against the person; and
- (c) that the person may, within the period stated in the notice, make written submissions to the commission about the matters mentioned in paragraphs (a) and (b).

#### **74F Taking disciplinary action**

- (1) If the commission has given a person a notice under section 74E, the commission must consider all submissions made by the person within the period stated in the notice and decide to—
  - (a) take no further action; or
  - (b) take 1 or more of the types of disciplinary action mentioned in section 74D.
- (2) Subsection (3) applies if—
  - (a) the decision is to take disciplinary action of a type mentioned in section 74D(a), (b) or (c); and
  - (b) the disciplinary action takes effect under section 74G; and

- (c) the person does not comply with the disciplinary action as required.
- (3) The commission may immediately decide to take another type of disciplinary action against the person.
- (4) As soon as practicable after making a decision to take no further action under subsection (1), the commission must give the person written notice of the decision.
- (5) As soon as practicable after making a decision to take disciplinary action against the person under subsection (1) or (3), the commission must give the person written notice of the decision that—
  - (a) complies with the QCAT Act, section 157(2); and
  - (b) informs the person of their option of applying to the commission for an internal review of the decision under section 86A.

#### **74G When disciplinary action takes effect**

- (1) If the commission decides to take disciplinary action against a person under section 74F, the action takes effect from the later of the following days—
  - (a) the day that is 29 days after the person is given notice of the decision under section 74F(5);
  - (b) the day stated in the notice of the decision under section 74F(5).
- (2) However, the decision to take the disciplinary action is stayed if—
  - (a) the disciplinary action relates to any matter other than a matter mentioned in section 74B(1)(j) or 74C(1)(e); and

- (b) the person applies to the commission to have the decision reviewed under section 86A.
- (3) The stay under subsection (2) is only for the period of a proceeding to decide the review.
- (4) The person need not comply with the disciplinary action if—
  - (a) the person applied to the tribunal for a review of the decision under section 87; and
  - (b) the tribunal orders a stay of the decision.
- (5) The commission may recover an amount imposed as a penalty, as a debt, from the person on whom the penalty is imposed.
- (6) Subsection (7) applies if the decision to take the disciplinary action is stayed under subsection (2) or the tribunal orders a stay of the decision.
- (7) The decision to take the disciplinary action is taken not to have taken effect for the duration of the stay.

#### **74H Filing of certificate as judgment debt**

- (1) This section applies if—
  - (a) the commission decides to take disciplinary action, against a person, of a type mentioned in section 74D(a), (b) or (c); and
  - (b) the disciplinary action takes effect under section 74G.
- (2) The commission may prepare a certificate stating the following matters—
  - (a) the name of the person entitled to the payment of an amount (the *claimant*);
  - (b) the name of the person who is liable to pay the amount (the *respondent*);



- (c) the amount;
  - (d) the date on which payment of the amount was required to be paid to the claimant.
- (3) The certificate may be filed by the commission as a judgment for a debt for the claimant, and the judgment may be enforced by the claimant, in a court of competent jurisdiction.
- (4) The certificate can not be filed under this section unless it is accompanied by an affidavit by the commission stating that the whole or a part of the amount has not been paid at the time the certificate is filed.
- (5) If the affidavit states that part of the amount has been paid, the judgment is for the unpaid part of the amount only.
- (6) If the respondent commences proceedings to have the judgment set aside, the respondent—
  - (a) is not, in those proceedings, entitled—
    - (i) to bring any counterclaim against the commission or claimant; or
    - (ii) to challenge the commission's decision to take disciplinary action against the respondent; and
  - (b) is required to pay into the court as security the unpaid portion of the amount pending the final decision in those proceedings.

**39 Amendment of s 77 (Tribunal may decide building dispute)**

(1) Section 77—

*insert—*

- (1A) However, the person may not apply to the tribunal unless the person has complied with a

process established by the commission to attempt to resolve the dispute.

(2) Section 77(1A) and (2)—

*renumber* as section 77(2) and (3).

**40 Replacement of s 83 (Proceeding in tribunal stops unilateral action by commission)**

Section 83—

*omit, insert—*

**83 Proceeding in tribunal does not affect action by commission**

- (1) If a proceeding about a building dispute is started in, or removed from, a court to the tribunal, the commission is not prevented from acting in relation to the dispute.
- (2) Without limiting subsection (1), the commission may—
  - (a) decide whether or not to give a direction to rectify or remedy; or
  - (b) decide to allow or disallow a claim under the statutory insurance scheme.

**41 Omission of s 84 (Action by commission while proceeding in tribunal)**

Section 84—

*omit.*

**42 Amendment of s 86 (Reviewable decisions)**

(1) Section 86(1)(e) and (f)—

*omit, insert—*

- (e) a decision to give a direction to rectify or remedy or not to give the direction;

- (f) a decision that building work undertaken at the direction of the commission is or is not of a satisfactory standard;
- (2) Section 86(1)(j)—  
*omit, insert—*
  - (j) a decision of the commission to take disciplinary action against a person under section 74F;
- (3) Section 86(1)(p), ‘67AZG,’—  
*omit.*

**43 Amendment of s 86F (Decisions that are not reviewable decisions)**

Section 86F(1)(b)—  
*omit, insert—*

- (b) a decision to give a person a direction to rectify or remedy, and any finding by the commission in arriving at the decision if—
  - (i) 28 days have elapsed from the date the direction was served on a person and the person has not, within that time, applied to the tribunal for a review of the decision; and
  - (ii) the commission has—
    - (A) started a disciplinary proceeding against the person under part 6A; or
    - (B) served a notice on the person advising a claim under the statutory insurance scheme has been approved in relation to the building work relevant to the direction; or

- (C) started a prosecution, or served an infringement notice, for an offence against section 73 in relation to the direction;

#### **44 Insertion of new s 87A**

Part 7, division 3, subdivision 2—

*insert—*

##### **87A No stay by QCAT of particular decisions of commission**

- (1) This section applies if a person applies to the tribunal for a review under section 87 of any of the following decisions of the commission—
  - (a) a decision to give a direction to rectify or remedy or not to give the direction;
  - (b) a decision that building work undertaken at the direction of the commission is or is not of a satisfactory standard;
  - (c) a decision about the scope of works to be undertaken under the statutory insurance scheme to rectify building work that is defective or incomplete;
  - (d) a decision to disallow a claim under the statutory insurance scheme wholly or in part;
  - (e) a decision that a domestic building contract has been validly terminated having the consequence of allowing a claim for non-completion under the statutory insurance scheme.
- (2) QCAT must not grant a stay of the decision.

**45 Omission of pt 7, div 4 (Disciplinary proceedings)**

Part 7, division 4—

*omit.*

**46 Amendment of s 97B (Stop orders)**

(1) Section 97B(1), ‘this Act’—

*omit, insert—*

a prescribed provision

(2) Section 97B—

*insert—*

(6) In this section—

***prescribed provision*** means a provision of—

(a) this Act; or

(b) the *Building Act 1975*; or

(c) the Building Code of Australia.

**47 Amendment of s 99 (Licensee register)**

(1) Section 99(2)(d)—

*omit, insert—*

(d) any disciplinary action taken against the licensee that has taken effect under section 74G and is not the subject of an internal review or review by the tribunal;

(e) any particulars required by regulation.

(2) Section 99(3)(a), after ‘rectify building work’—

*insert—*

or to remedy consequential damage

(3) Section 99(3)(b) and (c)—

*omit.*

- (4) Section 99(3)(d), ‘or the *Domestic Building Contracts Act 2000* and the provision of the Act’—

*omit, insert—*

and the provision of this Act

- (5) Section 99(3)(e), ‘or the *Domestic Building Contracts Act 2000*’—

*omit.*

- (6) Section 99(3)—

*insert—*

- (j) the number and cost of claims approved under the statutory insurance scheme that relate to residential construction work for which the licensee paid, or ought to have paid, an insurance premium.

**48 Amendment of s 101 (Licensees must advise change of circumstances)**

Section 101(1)—

*insert—*

Maximum penalty—20 penalty units.

**49 Amendment of s 103E (Publication of registers)**

Section 103E, editor’s note, ‘<www.bsa.qld.gov.au>’—

*omit, insert—*

<www.qbcc.qld.gov.au>

**50 Amendment of s 105 (Inspector to produce identity card and provide information)**

Section 105—

*insert—*

- (4) This section does not apply to an inspector making a requirement of a person under section 106A if—
  - (a) the inspector makes the requirement in a document given to the person; and
  - (b) the document—
    - (i) generally advises the person of the nature of the power to be exercised; and
    - (ii) provides the person with sufficient information to enable the person to contact the inspector; and
    - (iii) is signed by the inspector.

**51 Amendment of s 106 (Inspector's power to require name and address)**

- (1) Section 106(1)—

*omit, insert—*

- (1) An inspector who suspects on reasonable grounds that a person has committed an offence against a relevant Act may require the person to state the following information (*identifying information*)—
  - (a) the person's name and address;
  - (b) the person's date and place of birth.
- (1A) If the inspector has reasonable grounds to believe that the identifying information stated by a person is false, the inspector may require the person to give evidence of its correctness.
- (2) Section 106(2), 'the person's name and address'—

*omit, insert—*

identifying information

- (3) Section 106(2)(b), ‘a false name or address’—

*omit, insert—*

false identifying information

- (4) Section 106(3), ‘(1)’—

*omit, insert—*

(2)

- (5) Section 106(3), ‘a name or address’—

*omit, insert—*

identifying information

- (6) Section 106(4), ‘subsection (1)’—

*omit, insert—*

this section

- (7) Section 106(1A) to (4)—

*renumber* as section 106(2) to (5).

- (8) Section 106—

*insert—*

- (6) In this section—

***relevant Act*** means this Act, the *Building Act 1975*, the *Building and Construction Industry Payments Act 2004* or the *Subcontractors’ Charges Act 1974*.

## **52 Amendment of s 106A (Power to require production of documents)**

- (1) Section 106A(1)—

*omit, insert—*

- (1) An inspector may require a person who the inspector suspects on reasonable grounds has possession or control of a document relevant to any of the following matters to make the



document available to the inspector for inspection at a reasonable time and place nominated by the inspector—

- (a) the commission of an offence against a relevant Act;
- (b) a breach of a condition of licence held under this Act;
- (c) an investigation into whether an individual is an influential person for a company that holds, or is applying for, a licence under this Act.

(2) Section 106A—

*insert—*

(7) In this section—

***relevant Act*** means this Act, the *Building Act 1975*, the *Building and Construction Industry Payments Act 2004* or the *Subcontractors' Charges Act 1974*.

## 53 Insertion of new pt 9B

After section 108AC—

*insert—*

# Part 9B Injunctions

## 108AD Grounds for injunction

The Supreme Court may grant an injunction against a person if the court is satisfied that the person (a ***respondent***) has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of this Act or the *Building Act 1975*; or

- (b) an attempt to contravene this Act or the *Building Act 1975*; or
- (c) the aiding, abetting, counselling or procuring of another person to contravene this Act or the *Building Act 1975*; or
- (d) the inducement of, or attempt to induce, whether by threats, promises or otherwise, another person to contravene this Act or the *Building Act 1975*; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by another person of this Act or the *Building Act 1975*; or
- (f) conspiring with other persons to contravene this Act or the *Building Act 1975*.

### **108AE Commissioner may apply for injunction**

The commissioner may apply to the Supreme Court for an injunction granted under this division.

### **108AF When injunction may be granted**

An injunction may be granted under this division by the Supreme Court against a respondent at any time.

### **108AG Court's powers for injunctions**

- (1) The power of the Supreme Court to grant an injunction restraining a respondent from engaging in conduct may be exercised—
  - (a) whether or not it appears to the court that the respondent intends to engage again, or to continue to engage, in conduct of that kind; and

- (b) whether or not the respondent has previously engaged in conduct of that kind.
- (2) The power of the court to grant an injunction requiring a respondent to do an act or thing may be exercised—
  - (a) whether or not it appears to the court that the respondent intends to fail again, or to continue to fail, to do the act or thing; and
  - (b) whether or not the respondent has previously failed to do the act or thing.
- (3) An interim injunction may be granted under this division until the application of the commissioner is finally decided.
- (4) The Supreme Court may rescind or vary an injunction granted under this division at any time.

### **108AH Terms of injunction**

- (1) The Supreme Court may grant an injunction on the terms the court considers appropriate.
- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a respondent from carrying on a business (whether or not the respondent is a building contractor or the business is carried on as part of, or incidental to, the carrying on of another business)—
  - (a) for a stated period; or
  - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a respondent to take stated action, including action to disclose information or publish advertisements, to remedy any adverse

consequences of the respondent's contravention of this Act or the *Building Act 1975*.

**54 Amendment of s 108D (Contracting out prohibited)**

Section 108D—

*insert—*

- (2) A domestic building contract is void to the extent to which it—
  - (a) is contrary to this Act; or
  - (b) purports to annul, exclude or change a provision of this Act.
- (3) An agreement (other than a domestic building contract) is void to the extent to which it seeks to exclude, change or restrict a right conferred under this Act in relation to a domestic building contract.
- (4) Nothing in this section prevents the parties to a domestic building contract from including provisions in the contract that impose greater or more onerous obligations on a building contractor than are imposed under this Act.
- (5) Subsections (2) and (3) apply subject to any contrary intention in this Act.

**55 Amendment of s 109A (Service of documents)**

Section 109A—

*omit, insert—*

- (3) In this section—  
*address* includes a postal address.

**56 Amendment of s 111 (Prosecutions for offences)**

Section 111—

*insert—*

- (4) Subsection (1) does not limit the *State Penalties Enforcement Act 1999*, section 32.

**57 Amendment of s 111C (Liability of directors for amounts)**

Section 111C(2)(a) and (b)—

*omit, insert—*

- (a) a penalty is imposed on a company as the outcome of disciplinary action taken against the company; and
- (b) the disciplinary action takes effect under section 74G; and

**58 Amendment of s 116 (Regulations)**

Section 116(2)—

*insert—*

- (d) provide for the continuing professional development to be undertaken by a building contractor; and
- (e) fix the number of demerit points for demerit offences, including the differing number of demerit points for any repeat of a demerit offence by a person.

**59 Insertion of new sch 1, pt 11**

Schedule 1—

*insert—*

## **Part 11**

# **Transitional provisions for the Queensland Building and Construction Commission and Other Legislation Amendment Act 2014**

## **Division 1**

### **Preliminary**

#### **53 Definitions for pt 11**

In this part—

***Amendment Act*** means the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014*.

***commencement*** means the commencement of the provision in which the term is used.

***former***, in relation to a provision, means the provision as in force immediately before the amendment of the provision under the Amendment Act.

## **Division 2**

### **General**

#### **54 Continuation of particular reviews**

- (1) This section applies if, before the commencement, a person could have applied to the commission or tribunal for a review of any of the following decisions under former part 7, division 3—

- (a) a decision to direct or not to direct rectification or completion of tribunal work;
  - (b) a decision that tribunal work undertaken at the direction of the commission is or is not of a satisfactory standard;
  - (c) a decision not to categorise an individual as a permitted individual for a relevant event.
- (2) If the person had not applied before the commencement, the person may make the application in compliance with the requirements of former part 7, division 3 and the commission or tribunal may review the decision.
  - (3) If the person had applied before the commencement, the commission or tribunal may start, continue and decide the review of the decision.
  - (4) For the purpose of starting, continuing or deciding a review to which this section applies, this Act, as in force immediately before the commencement, has effect as if this Act had not been amended by the Amendment Act.
  - (5) A decision of the commission or tribunal made after reviewing a decision under subsection (2) or (3) has effect despite the amendment of this Act by the Amendment Act.
  - (6) A decision of the commission made after reviewing a decision under subsection (2) or (3) is taken to be a reviewable decision for part 7, division 3, subdivision 2 and a person affected by the decision may apply to the tribunal under section 87 for a review of the decision.

## **55 Existing disciplinary proceedings**

- (1) This section applies if—

- (a) the commission had applied to the tribunal under former section 88 to conduct a proceeding to decide whether proper grounds exist for taking disciplinary action against a person before the commencement; and
  - (b) the tribunal had not started or completed the disciplinary proceeding before the commencement.
- (2) The tribunal may start, continue and complete the disciplinary proceeding as if former part 7, division 4 had not been repealed by the Amendment Act.

## **56 Allocation of demerit points**

- (1) This section applies if, before the commencement of this section, the commission—
  - (a) had an obligation to allocate demerit points to a person under former part 3E; but
  - (b) had not allocated the demerit points.
- (2) The commission must allocate the demerit points to the person, as required under former part 3E, despite—
  - (a) any amendment of this Act under the Amendment Act; or
  - (b) the repeal of the *Domestic Building Contracts Act 2000*.

## **57 Categorisation as excluded individual or permanently excluded individual continues**

- (1) An individual who, immediately before the commencement, was an excluded individual for a relevant bankruptcy or company event under



former section 56AC continues to be an excluded individual for the relevant bankruptcy or company event under former section 56AC as if that section had not been amended by the Amendment Act.

*Note—*

The individual would continue under former section 56AC to be an excluded individual until 5 years had elapsed from the day the relevant bankruptcy or company event happened.

- (2) An individual who, immediately before the commencement, was a permanently excluded individual under former section 58 continues to be a permanently excluded individual despite any amendment of parts 3A or 3B under the Amendment Act.
- (3) However, section 61 continues to apply to the person.

## **58 Becoming a permitted individual after the commencement**

- (1) Subsection (2) applies if—
  - (a) the commission gave an individual a written notice under former section 56AF(2) before the commencement; and
  - (b) at the commencement, 28 days have not elapsed from the day the commission gave the person the notice mentioned in paragraph (a).
- (2) The person may apply to the commission, and the commission may consider and decide the application, under former section 56AD, as if that section had not been repealed under the Amendment Act.
- (3) Subsection (4) applies if, before the commencement, an individual applied to the

commission under former section 56AD and the commission had not finally dealt with the application.

- (4) The commission may continue to consider and decide the application, under former section 56AD, as if that section had not been repealed under the Amendment Act.
- (5) To remove any doubt it is declared that the commission may categorise the person as a permitted individual despite the repeal of former section 56AD by the Amendment Act.

## **59 Categorisation as permitted individual continues**

- (1) A permitted individual for a relevant event continues to be taken not to be an excluded individual for the relevant event.
- (2) The relevant event must not be counted in deciding, under section 61, whether the individual is or continues to be a permanently excluded individual.
- (3) In this section—

*permitted individual* means—

- (a) an individual categorised as a permitted individual for a relevant event under former section 56AD if—
  - (i) the person continued to be categorised as a permitted individual immediately before the commencement; or
  - (ii) the person is categorised as a permitted individual after the commencement because of schedule 1, section 58; or
- (b) an individual categorised as a permitted individual for a relevant event as result of

the tribunal reversing the commission's decision not to categorise the individual as a permitted individual for the relevant event after a review of the decision by the tribunal.

### **Division 3            Rectification of building work**

#### **60 Outstanding applications for rectification of building work that is defective or incomplete**

- (1) This section applies if, before the commencement—
  - (a) a consumer applied to the commission under former section 71A for a direction to rectify building work that was defective or incomplete; and
  - (b) the commission had not finally dealt with the application.
- (2) The commission may deal with the application under former section 71A despite the repeal of that section by the Amendment Act.
- (3) Former section 72 continues to apply for the purpose of subsection (2) as if that section had not been repealed by the Amendment Act.

#### **61 Outstanding directions to rectify building work that is defective or incomplete**

- (1) This section applies if, before the commencement—
  - (a) the commission directed a person to rectify building work that was defective or incomplete under former section 72; and
  - (b) the direction had not been complied with in full.

- (2) The direction continues to apply to the person, and former section 72 continues to apply for that purpose, as if the section had not been replaced by the Amendment Act.
- (3) The direction is taken, for section 73, to be a direction of the commission to rectify building work that is defective or incomplete, or to remedy consequential damage.

## **Division 4            Repeal of the Domestic Building Contracts Act 2000**

### **62 Domestic building contracts entered into before repeal**

- (1) Despite the repeal, the *Domestic Building Contracts Act 2000*, as in force immediately before the repeal, continues to apply—
  - (a) for a domestic building contract entered into before the repeal; and
  - (b) to the parties to a domestic building contract mentioned in paragraph (a).

- (2) In this part—

***domestic building contract*** means a domestic building contract within meaning of the *Domestic Building Contracts Act 2000* as in force immediately before its repeal.

***repeal*** means the repeal of the *Domestic Building Contracts Act 2000*.

**63 Continued reference to conduct under the repealed *Domestic Building Contracts Act 2000***

- (1) The repeal of the *Domestic Building Contracts Act 2000* (the ***repealed Act***) does not—
  - (a) cause or require—
    - (i) the licensee register kept under section 99 to be amended to remove notes relating to the repealed Act; or
    - (ii) the cancellation of any demerit points relating to the repealed Act; and
  - (b) prevent the consideration of—
    - (i) any past contravention of a requirement imposed under the repealed Act; or
    - (ii) any conviction of an offence against the repealed Act; or
    - (iii) a person having been served with an infringement notice relating to the repealed Act.
- (2) For the purpose of subsection (1)(b), a provision of this Act that includes a reference to a provision of schedule 1B is taken to include a reference to the equivalent provision of the repealed Act.

**64 Past contraventions of repealed Act**

- (1) This section applies if a person is alleged to have committed an offence against the repealed *Domestic Building Contracts Act 2000* (the ***repealed Act***) before its repeal.
- (2) Proceedings for the offence may be started, continued or completed, and the Court may hear and decide the proceedings, as if the repealed Act had not been repealed.

- (3) This section applies despite the Criminal Code, section 11.

## **Division 5            Statutory insurance                                  scheme**

### **65 Continuation and finalisation of matters under former part 5**

- (1) This section applies if, before the commencement, a right, privilege or liability was acquired, accrued or incurred by the commission or a person under former part 5 and—
- (a) the right or privilege had not been exhausted; or
  - (b) the liability had not been released.
- (2) The right, privilege or liability may be exercised or enforced under former part 5 despite the replacement of that part by the Amendment Act.
- (3) To remove any doubt, it is declared that—
- (a) a person continues to be liable for any contravention of a provision of former part 5 that happened before the commencement; or
  - (b) a person who, before the commencement, was liable to pay an insurance premium under former part 5 continues to be liable to pay the premium; or
  - (c) a liability of the commission to issue a certificate of insurance under former part 5 that had not been issued before the commencement must be issued in compliance with former section 69(1); or
  - (e) a proceeding to recover an amount under former section 71 may be started, continued or completed and any defence available to a

person under that section may be relied upon.

- (4) In this section—

*liability* includes an obligation of the commission or a person to take particular action under former part 5.

## 66 Existing policies of insurance

- (1) A policy of insurance that came into force under former part 5 continues in force on the terms stated in the board's policies for that purpose.
- (2) Despite the replacement of part 5 by the Amendment Act, former part 5 continues to apply to a contract for residential construction work if the contract was entered into before the replacement day.
- (3) To remove any doubt, it is declared that subsection (2)—
  - (a) applies to a contract even if an insurance premium is paid in relation to the contract on or after the replacement day; and
  - (b) does not prevent the consumer for the contract from obtaining optional additional cover under section 67Z.
- (4) The board's policies that are relevant for this section continue for that purpose despite the replacement of part 5 by the Amendment Act or the repeal of the policies under schedule 1, section 67.
- (5) In this section—

*board's policies* means the policies of the board made for the purposes of section 19 and relating to the statutory insurance scheme.

*replacement day* means the day former part 5 was replaced under the Amendment Act.

## **67 Repeal of board's policies about statutory insurance scheme**

On the commencement all policies of the board made, for the purposes of section 19, about the terms of cover under the statutory insurance scheme are repealed.

## **Division 6 Transitional regulation**

### **68 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision of a savings or transitional nature to allow or facilitate the change from either of the following Acts to the operation of this Act—
  - (a) the former Act;
  - (b) the repealed Act.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the commencement.
- (3) A transitional regulation must declare that it is a transitional regulation.
- (4) This division and any transitional regulation expire 1 year after the commencement.
- (5) In this section—

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

*repealed Act* means the *Domestic Building Contracts Act 2000* as in force immediately before its repeal.



**60 Insertion of new sch 1B**

After schedule 1A—

*insert—*

## **Schedule 1B      Domestic building contracts**

section 67AZN

### **Part 1                      Interpretation**

#### **1      Definitions for sch 1B**

In this schedule—

*building* includes—

- (a) a structure, including a temporary building and other temporary structure; and
- (b) a part of a structure.

*building contractor* means a person who—

- (a) carries out domestic building work; or
- (b) manages the carrying out of domestic building work; or
- (c) has carried out, or managed the carrying out of, domestic building work; or
- (d) intends to carry out, or to manage the carrying out of, domestic building work.

*building owner* means the person for whom domestic building work has been, is being, or is to be, carried out.

*building site* means a place where domestic building work has been, is being, or is to be, carried out.

*certificate of inspection*, for a regulated contract, means a certificate that—

- (a) is issued under an Act following an inspection of the subject work or a part of the subject work; and
- (b) contains a certification to the effect that the subject work, or a stated stage of the subject work, has been satisfactorily completed.

***contract price***, for a domestic building contract, see schedule section 2.

***consumer building guide*** means a statement prepared and published by the commission under schedule section 46(1).

***contracted services***, for a domestic building contract, means the thing done, being done or to be done by the building contractor under the contract in relation to domestic building work, being either—

- (a) the carrying out of the work; or
- (b) the managing of the carrying out of the work.

***cost plus contract*** means a domestic building contract under which the amount the building contractor is to receive under the contract can not be accurately calculated when the contract is entered into, even if prime cost items and provisional sums are ignored.

***defects document***, for a domestic building contract, means a document that—

- (a) lists the minor defects and minor omissions in the subject work that the building contractor and building owner agree exist; and
- (b) states when the building contractor is to remedy the minor defects and minor omissions mentioned in paragraph (a); and

- (c) lists the minor defects and minor omissions that the building owner claims exist and the building contractor does not agree exist; and
- (d) is signed by the building contractor.

***detached dwelling*** means—

- (a) a single detached dwelling; or
- (b) a duplex.

***development approval*** means a development approval under the *Sustainable Planning Act 2009*.

***domestic building contract*** see schedule section 3.

***domestic building work*** see schedule section 4.

***draftsperson*** means a person who holds a contractor's licence authorising the person to prepare plans and specifications for domestic building work.

***excluded building work*** means any of the following work—

- (a) work relating to any of the following buildings—
  - (i) a farm building, or proposed farm building, that is not a home;
  - (ii) a building intended to be used only for business purposes;
  - (iii) a building intended to be used only to accommodate animals;
- (b) design work carried out by an architect, engineer or draftsperson;
- (c) the preparation of plans, specifications or bills of quantity for the carrying out of domestic building work;

- (d) work involved in obtaining foundations data about a building site;
- (e) transporting a building or kit home;
- (f) work declared under a regulation to be excluded building work if there are reasonable grounds for considering the work to be excluded building work.

***farm building*** means a building that—

- (a) is constructed on land used entirely or mainly for agricultural or pastoral purposes; and
- (b) is used, or intended to be used, for agricultural or pastoral purposes.

***foundations data*** see schedule section 8.

***home*** see schedule section 9.

***level 1 regulated contract*** see schedule section 6.

***level 2 regulated contract*** see schedule section 7.

***manage***, the carrying out of domestic building work, includes the provision of supervisory, advisory or administrative services for carrying out the work.

***mixed-purpose contract*** means a contract entered into between a building contractor and building owner that entitles the building contractor to be paid for both of the following—

- (a) carrying out, or managing the carrying out of, domestic building work;
- (b) additional services.

***practical completion***, for a domestic building contract, means the day when the subject work is completed—

- (a) in compliance with the contract, including all plans and specifications for the work and

all statutory requirements applying to the work; and

- (b) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect occupation; and
- (c) if the building owner claims there are minor defects or minor omissions—the building contractor gives the building owner a defects document for the minor defects or minor omissions.

***prime cost item***, for a domestic building contract, means an item, including, for example, a fixture or fitting—

- (a) that has not been selected, or the price of which is not known, when the contract is entered into; and
- (b) for the cost of supply and delivery of which a reasonable allowance is, or is to be, made in the contract by the building contractor.

***progress payment***, for a regulated contract, means a payment of an amount that is a part of the contract price for the contract, but does not include a payment of an amount that is, or is in the nature of, a deposit under the contract.

***provisional sum***, for a domestic building contract, see schedule section 10.

***reasonably believes*** means believes on grounds that are reasonable in all the circumstances.

***regulated amount*** means \$3300 or the higher amount, if any, prescribed by a regulation.

***regulated contract*** see schedule section 5.

***resident owner***, under a domestic building contract, means a building owner who—

- (a) is an individual; and

- (b) intends to reside in the building—
  - (i) on completion of the domestic building work; or
  - (ii) within 6 months after the completion of the work.

***schedule section***, in relation to a reference, means the section of this schedule corresponding to the reference.

*Example—*

Schedule section 14 means section 14 of this schedule.

***statutory warranties*** means the warranties that are part of a regulated contract because of schedule section 19.

***subcontractor*** means a person who enters into a contract with a building contractor to carry out domestic building work to be carried out under a domestic building contract.

***subject work***, for a domestic building contract, means—

- (a) the domestic building work carried out, being carried out or to be carried out under the contract; or
- (b) the domestic building work the carrying out of which has been, is being or is to be managed under the contract.

***written form***, for a regulated contract, means—

- (a) in handwritten or typewritten form; or
- (b) in a combination of handwritten and typewritten forms.

## **2 Meaning of *contract price***

- (1) ***Contract price***, for a domestic building contract, means the total amount payable under the contract to carry out domestic building work and includes—
  - (a) an amount the building contractor is entitled to receive and keep under the contract; and
  - (b) an amount the building contractor is entitled to receive under the contract for payment to another person.
- (2) However, the ***contract price*** does not include an amount a person, other than the building contractor, is entitled to receive directly from the building owner for any of the following matters if the matter for which it is payable relates to the carrying out of the subject work—
  - (a) conveying services to the building site;
  - (b) connecting or installing services for use at the building site;

*Examples of services—*

gas, electricity, telephone, water and sewerage

  - (c) issuing a development approval or similar authorisation.

## **3 Meaning of *domestic building contract***

- (1) A ***domestic building contract*** is—
  - (a) a contract to carry out domestic building work; or
  - (b) a construction management contract for the provision of building work services for domestic building work; or
  - (c) another contract to manage the carrying out of domestic building work.



- 
- (2) However, a ***domestic building contract*** does not include—
- (a) a contract between a building contractor and subcontractor; or
  - (b) a contract between a building contractor and a building owner for the construction of 2 or more detached dwellings; or
  - (c) a contract between the holder of an owner-builder permit and a building contractor; or
  - (d) a contract under which the building owner is the State, an entity representing the State or a local government.
- (3) Subsection (4) applies if—
- (a) a building contractor and building owner enter into 2 or more separate contracts, each for the construction of 1 detached dwelling; and
  - (b) the separate contracts could be the subject of a single contract for the construction of 2 or more detached dwellings.
- (4) The separate contracts are taken to be a contract between a building contractor and a building owner for the construction of 2 or more detached dwellings.

#### **4 Meaning of *domestic building work***

- (1) Each of the following is ***domestic building work***—
- (a) the erection or construction of a detached dwelling;
  - (b) the renovation, alteration, extension, improvement or repair of a home;

- (c) removal or resiting work for a detached dwelling;
  - (d) the installation of a kit home at a building site.
- (2) However—
  - (a) removal work for a detached dwelling is ***domestic building work*** only if the dwelling is intended to be resited at another place and used, at the place, as a residence; and
  - (b) resiting work for a detached dwelling is ***domestic building work*** only if the dwelling is intended to be used at the place at which it is being resited as a residence.
- (3) ***Domestic building work*** includes—
  - (a) work (***associated work***) associated with the erection, construction, removal or resiting of a detached dwelling; and
  - (b) work (***associated work***) associated with the renovation, alteration, extension, improvement or repair of a home.
- (4) Without limiting subsection (3), associated work includes—
  - (a) landscaping; and
  - (b) paving; and
  - (c) the erection or construction of a building or fixture associated with the detached dwelling or home.

*Examples of buildings and fixtures—*

retaining structures, driveways, fencing,  
garages, carports, workshops, swimming pools  
and spas

- (5) For the erection or construction of a detached dwelling, ***domestic building work*** includes the provision of services or facilities to the dwelling

or the property on which the dwelling is, or is to be, situated.

- (6) For the renovation, alteration, extension, improvement or repair of a home, ***domestic building work*** includes the provision of services or facilities to the home or the property on which the home is situated.

*Examples of services and facilities for subsections (5) and (6)—*

lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage

- (7) Also, ***domestic building work*** includes—
- (a) site work relating to work mentioned in subsection (1), (3), (5) or (6); and
  - (b) work declared under a regulation to be domestic building work if there are reasonable grounds for considering the work to be domestic building work.
- (8) However, ***domestic building work*** does not include excluded building work.
- (9) In this section—
- (a) a reference to a detached dwelling includes a reference to any part of a detached dwelling; and
  - (b) a reference to a home includes a reference to any part of a home; and
  - (c) a reference to site work includes a reference to work required to be carried out to gain access, or to remove impediments to access, to a site.
- (10) In this section—

***kit home*** means a set of building components offered for sale on the basis that the components are sufficient for the construction of 1 of the

following if constructed in compliance with a plan or instruction provided by the seller—

- (a) a detached dwelling;
- (b) a garage;
- (c) a carport;
- (d) another structure prescribed by regulation.

**removal work**, for a detached dwelling, means work relating to the dwelling carried out at the place at which the dwelling is located for relocating the dwelling to another place.

**resiting work**, for a detached dwelling, means work relating to the dwelling carried out at a place for resiting the dwelling at the place following its removal from another place.

## 5 Meaning of *regulated contract*

- (1) Each of the following is a **regulated contract**—
  - (a) a domestic building contract for which the contract price is more than the regulated amount;
  - (b) a cost plus contract under which the total amount payable for the contracted services is reasonably estimated to be more than the regulated amount;
  - (c) a mixed-purpose contract under which the amount referable to the contracted services is more than the regulated amount.
- (2) However, a contract mentioned in subsection (1)(c) is a **regulated contract** only to the extent to which the contract relates to the contracted services.
- (3) In this section—

***additional services*** means 1 or more of the following—

- (a) carrying out work that is not domestic building work;
- (b) managing the carrying out of work that is not domestic building work;
- (c) another matter.

***amount referable to contracted services***, for a mixed-purpose contract, means—

- (a) the amount the building contractor is entitled to receive under the contract for the contracted services; or
- (b) a reasonable estimate of the amount the building contractor is entitled to receive under the contract based on a fair and reasonable apportionment between the contracted services and the additional services.

## **6 Meaning of *level 1 regulated contract***

(1) ***A level 1 regulated contract*** is—

- (a) a domestic building contract for which the contract price is more than the regulated amount but less than the level 2 amount; or
- (b) a cost plus contract for which the total amount payable for the contracted services is reasonably estimated to be more than the regulated amount but less than the level 2 amount; or
- (c) a mixed-purpose contract for which the amount referable to the contracted services is more than the regulated amount but less than the level 2 amount.

(2) In this section—

***level 2 amount*** means the amount prescribed under schedule section 7(2).

## **7 Meaning of *level 2 regulated contract***

(1) A ***level 2 regulated contract*** is—

- (a) a domestic building contract for which the contract price is equal to or more than the level 2 amount; or
- (b) a cost plus contract for which the total amount payable for the contracted services is reasonably estimated to be equal to or more than the level 2 amount; or
- (c) a mixed-purpose contract for which the amount referable to the contracted services is equal to or more than the level 2 amount.

(2) In this section—

***level 2 amount*** means the amount prescribed by regulation.

## **8 Meaning of *foundations data***

(1) ***Foundations data*** is the information about a building site a building contractor exercising reasonable care and skill would need to have to prepare—

- (a) an appropriate footings design for the site and, if appropriate, an appropriate concrete slab design for the site; and
- (b) an adequate estimate of the cost of constructing the footings and, if appropriate, concrete slab.

(2) The information mentioned in subsection (1) includes—

- (a) relevant information contained in, or obtainable from, reports, surveys, test results, plans, specifications or calculations prescribed under a regulation; and
- (b) other information prescribed under a regulation.

## 9 Meaning of *home*

- (1) A *home* is a building or portion of a building that is designed, constructed or adapted for use as a residence.

*Examples—*

a detached or semi-detached dwelling, transportable house, terrace or townhouse, duplex, villa home, strata or community title home unit or residential unit

- (2) However, a *home* does not include a building or a part of a building declared under a regulation not to be a home.

## 10 Meaning of *provisional sum*

- (1) A *provisional sum*, for a domestic building contract, is an amount that is an estimate of the cost of providing particular contracted services.
- (2) However, subsection (1) applies only to contracted services for which the building contractor, after making all reasonable enquiries, can not state a definite amount when the contract is entered into.
- (3) The reference in subsection (1) to the cost of providing the contracted services includes a reference to the cost of supplying materials needed for the subject work.

## **11 Multiple contracts for the same domestic building work**

- (1) This section applies if a building contractor and building owner enter into 2 or more separate contracts that—
  - (a) could be the subject of a single contract for carrying out domestic building work; and
  - (b) if they were the subject of a single contract, would be a contract for carrying out domestic building work.
- (2) The separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.

*Example for this section—*

A building contractor that manufactures and installs kitchens enters into one contract with a building owner for the manufacture of a kitchen and a second contract for its installation.

## **12 References to particular terms**

In this schedule—

- (a) a reference to a building contractor in association with a reference to a domestic building contract is a reference to the building contractor under the contract; and
- (b) a reference to a building owner in association with a reference to a domestic building contract is a reference to the building owner under the contract; and
- (c) a reference to contracted services in association with a reference to a domestic building contract is a reference to the contracted services for the contract; and
- (d) a reference to subject work in association with a reference to a domestic building



contract is a reference to the subject work for the contract; and

- (e) a reference to a building site in association with a reference to a domestic building contract is a reference to the building site for the contract.

## **Part 2                      Contracts and related documents**

### **Division 1              The contract**

#### **13 Requirements for contract—level 1 regulated contract**

- (1) This section applies to a level 1 regulated contract.
- (2) The contract must be in a written form, dated and signed by or on behalf of each of the parties to it.
- (3) The contract must contain all of the following—
  - (a) the names of the parties to it, including the name of the building contractor as it appears on the contractor's licence;
  - (b) the building contractor's licence number as it appears on the building contractor's licence;
  - (c) a description of the subject work;
  - (d) any plans and specifications for the subject work;
  - (e) the contract price or the method for calculating it, including the building contractor's reasonable estimate;

- (f) a provision that states the date for practical completion or how the date is to be determined;
  - (g) a conspicuous notice advising the building owner of the right the owner may have to withdraw from the contract under schedule section 35.
- (4) The contract must also comply with all other requirements prescribed by regulation.
- (5) The contract has effect only if it complies with subsection (2).

#### **14 Requirements for contract—level 2 regulated contract**

- (1) This section applies to a level 2 regulated contract.
- (2) The contract must be in a written form, dated and signed by or on behalf of each of the parties to it.
- (3) The contract must contain all of the following—
  - (a) the names of the parties to it, including the name of the building contractor as it appears on the contractor's licence;
  - (b) the building contractor's licence number as it appears on the building contractor's licence;
  - (c) a description of the subject work;
  - (d) any plans and specifications for the subject work, including all plans and specifications required for carrying out the work in compliance with any development approvals or similar authorisations that are required by law for carrying out the work;

- 
- (e) the contract price or the method for calculating it, including the building contractor's reasonable estimate;
  - (f) a provision that states the date for the start of the subject work at the building site, or how the date is to be determined;
  - (g) a provision that states the date for practical completion or how the date is to be determined;
  - (h) a statement of each of the statutory warranties that apply to the subject work;
  - (i) a conspicuous notice advising the building owner of the right the owner may have to withdraw from the contract under schedule section 35.
- (4) If the contract price is fixed, it must be stated in a prominent position on the first page of the contract schedule.
  - (5) If the contract price is not fixed, the method for calculating it, including any allowances, must be stated in the contract schedule.
  - (6) If the contract price may be changed under a provision of the contract, the contract must also contain—
    - (a) a warning to that effect; and
    - (b) a brief explanation of the effect of the provision allowing change to the contract price.
  - (7) The warning and explanation mentioned in subsection (6) must be in a prominent position on the first page of the contract schedule.
  - (8) The contract must not state the name of any person—
    - (a) as the building contractor; or
-

- (b) so it may reasonably be mistaken to be the building contractor;

unless the person is the building contractor under the contract.

*Example—*

a domestic building contract stating a company name as the building contractor if an individual is actually the building contractor under the contract

- (9) The contract must also comply with all other requirements prescribed by regulation.
- (10) The contract has effect only if it complies with subsection (2).

## **Division 2            Copies of documents**

*Note—*

The Australian Consumer Law (Queensland) also contains provisions regulating unfair terms of standard form contracts as defined under that law.

### **15 Copy of contract for building owner**

Within 5 business days after entering into a regulated contract, the building contractor must give the building owner a readily legible signed copy of the contract, including any plans and specifications for the subject work.

Maximum penalty—60 penalty units.

### **16 Copy of commencement notice**

- (1) This section applies to a level 2 regulated contract.
- (2) Within 10 business days of starting the subject work at the building site, the building contractor

must give the building owner a commencement notice signed by the contractor and stating—

- (a) the date the subject work started at the building site; and
- (b) the date for practical completion.

Maximum penalty—40 penalty units.

## **17 Copies of certificate of inspection**

- (1) This section applies if the building contractor under a regulated contract is responsible for engaging a building certifier for the subject work under regulated contract (whether personally or as agent for the building owner).
- (2) The building contractor must give the building owner a copy of each certificate of inspection issued by the building certifier for the subject work as soon as practicable after receiving the certificate.

Maximum penalty—20 penalty units.

- (3) In a proceeding for a contravention of subsection (2) in relation to a certificate of inspection, it is a defence for the building contractor to prove that the contractor did not comply with the subsection because the contractor reasonably believed the building owner already had a copy of the certificate of inspection.

## **18 Copy of consumer building guide**

- (1) This section applies to a level 2 regulated contract.
- (2) The building contractor must give the building owner a copy of the consumer building guide before the owner signs the contract.

Maximum penalty—20 penalty units.

- (3) The consumer building guide may be given to the building owner separate from, or attached to, the contract.

## **Part 3                      Warranties**

### **Division 1                      Incorporation of warranties**

#### **19 Implied warranties**

- (1) The warranties mentioned in division 2 are part of every regulated contract.
- (2) A warranty mentioned in a section of division 3 is part of each regulated contract that is a contract of the type to which the section applies.

*Note—*

The Australian Consumer Law (Queensland) also provides particular statutory consumer guarantees if a person supplies, in trade or commerce, goods or services to a consumer as defined under that law.

### **Division 2                      Implied warranties for all contracts**

#### **20 Suitability of materials**

- (1) The building contractor warrants that all materials to be supplied for use in the subject work—
  - (a) will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and

- (b) unless otherwise stated in the contract, will be new.
- (2) Subsection (1) applies to the building contractor for materials only if the materials are supplied by the responsible person for the contract.
- (3) Despite subsection (2), if the contract is being administered by an architect engaged by the building owner, subsection (1) does not apply to the building owner for materials if the responsible person is subject to the direction of the architect for supplying the materials.
- (4) Also, despite subsection (2), subsection (1) does not apply to the building contractor for materials if—
  - (a) the building owner is responsible for nominating the materials for use in the subject work; and
  - (b) either—
    - (i) there are no reasonable grounds for not using the materials; or
    - (ii) if there are reasonable grounds for not using the materials—the building owner insists on the materials being used despite written advice to the contrary given to the building owner by the building contractor.
- (5) A building owner is responsible for nominating materials for use in the subject work only if—
  - (a) the building owner nominates the materials specifically; and
  - (b) the nomination is made without any recommendation, representation, suggestion or other approach being made to the building owner by the building contractor—

- (i) supporting, or approving, the use of the materials; or
  - (ii) criticising, or disapproving the use of, other materials that could be considered to be appropriate for use for the purpose for which the materials nominated by the building owner are to be used.
- (6) In this section—
  - relevant criteria*, for materials, means—
    - (a) generally accepted practices or standards applied in the building industry for the materials; or
    - (b) specifications, instructions or recommendations of manufacturers or suppliers of the materials.
  - responsible person*, for a regulated contract, means—
    - (a) if the contract is a contract for carrying out the subject work—the building contractor; or
    - (b) if the contract is a contract for managing the carrying out of the subject work—the person responsible for carrying out the work.

## 21 Compliance with legal requirements

The building contractor warrants the subject work will be carried out in accordance with all relevant laws and legal requirements, including, for example, the *Building Act 1975*.



## **22 Standard of work and exercise of care and skill**

The building contractor warrants the subject work will be carried out—

- (a) in an appropriate and skilful way; and
- (b) with reasonable care and skill.

## **Division 3 Implied warranties for particular contracts**

### **23 Adherence to plans and specifications**

- (1) This section applies to a regulated contract if plans and specifications form part of the contract.
- (2) The building contractor warrants the subject work will be carried out in accordance with the plans and specifications.

### **24 Suitability of premises for occupation**

- (1) This section applies to a regulated contract if the subject work—
  - (a) consists of the erection or construction of a detached dwelling to a stage suitable for occupation; or
  - (b) is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation.
- (2) The building contractor warrants the detached dwelling or home will be suitable for occupation when the work is finished.

## **25 Carrying out work with reasonable diligence**

The building contractor warrants the subject work will be carried out with reasonable diligence.

## **26 Calculation of provisional sums and prime cost items**

- (1) This section applies to a regulated contract providing for a provisional sum or prime cost item.
- (2) The building contractor warrants the provisional sum or prime cost item has been calculated with reasonable care and skill, having regard to all the information reasonably available when the contract is entered into (including information about the nature and location of the building site).

## **Division 4            General**

## **27 Warranties run with building**

- (1) An associated person for a regulated contract has the same rights for a breach of a warranty mentioned in division 2 or schedule section 23 or 24 as if the person were the building owner.
- (2) However, subsection (1) applies to the associated person—
  - (a) only if, at the relevant time, the person did not know, and could not reasonably have known, of the existence of the breach; and
  - (b) only to the extent the rights are rights that, immediately before the person became an associated person for the contract, were held by—

- (i) the building owner; or
- (ii) another associated person for the contract.

(3) In this section—

***associated person***, for a regulated contract, means a person, other than the building owner, who is the owner for the time being of the building in relation to which, or land on which, the subject work was carried out.

***relevant time***, for an associated person, for a regulated contract, means the time the person entered into the agreement under which the person became an associated person for the contract.

## 28 Protection of rights given by warranties

A provision of an agreement or other document that purports to restrict or take away the rights of a person for a breach of a warranty mentioned in this part is void.

## 29 Proceedings for breach of warranties

- (1) Proceedings for a breach of a statutory warranty must be started before the end of the warranty period for the breach.
- (2) However, if the breach of statutory warranty becomes apparent within the last 6 months of the warranty period, proceedings may be started within a further 6 months after the end of the warranty period.
- (3) The ***warranty period*** for a regulated contract—
  - (a) is 6 years for a breach that results in a structural defect, as prescribed by regulation, or 1 year in any other case; and

- (b) starts—
    - (i) if the subject work is completed—on completion of the work; or
    - (ii) if the subject work is not completed—
      - (A) if the contract is terminated—the date the contract is terminated; or
      - (B) if the contract is not terminated—the date on which work under the contract ceased; or
      - (C) if the contract is not terminated and work under the contract was not started—the date the contract was entered into.
- (4) A breach of a statutory warranty becomes apparent when any person entitled to the benefit of the warranty first becomes aware, or ought reasonably to have become aware, of the breach.
- (5) The fact that a person entitled to the benefit of a statutory warranty has enforced the warranty in relation to a particular deficiency in domestic building work does not prevent the person from enforcing the same warranty for a deficiency of a different kind in the work (the *other deficiency*) if—
  - (a) the other deficiency was in existence when the work to which the warranty relates was completed; and
  - (b) the person did not know, and could not reasonably have been expected to know, of the existence of the other deficiency when the warranty was previously enforced; and
  - (c) the proceedings to enforce the warranty in relation to the other deficiency are brought within the period mentioned in subsection (1).

- (6) In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that—
- (a) the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the written advice of the defendant or the person who did the work; or
  - (b) the defendant was not reasonably given access to rectify the deficiencies of which the plaintiff complains.

## **Part 4                      Restrictions relating to contracts**

### **Division 1                Entering into contracts**

#### **30    Contracted services must not start before regulated contract complies with requirements**

The building contractor for a regulated contract must not start to provide the contracted services before the contract complies with the requirements of—

- (a) for a level 1 regulated contract—schedule section 13; or
- (b) for a level 2 regulated contract—schedule section 14.

Maximum penalty—100 penalty units.

### **31 Foundations data**

- (1) This section applies if the subject work proposed for a regulated contract—
  - (a) requires the construction or alteration of footings, or a concrete slab, for a building; or
  - (b) may adversely affect the footings of a building or a concrete slab forming part of a building.
- (2) Before entering into the contract, the building contractor must obtain the foundations data that is appropriate for the building site, having regard to the following—
  - (a) the Building Code of Australia;
  - (b) the need for a drainage plan;
  - (c) the need for engineer's drawings and computations;
  - (d) the need for information on the fall of the land at the building site.

Maximum penalty—100 penalty units.

- (3) However, subsection (2) does not apply if—
  - (a) the building contractor is not lawfully entitled to enter the land at the building site to obtain the foundations data before entering into the contract; and
  - (b) the contract guarantees that there will be no increase in the contract price because of the foundations data.
- (4) Nothing in subsection (2) requires a building contractor to commission the preparation of foundations data to the extent the data already exists and it is reasonable for the building contractor to rely on the data.

(5) The building contractor must give a copy of any foundations data obtained by the building contractor for this section to the building owner on payment by the building owner of the costs incurred by the building contractor in obtaining the data.

Maximum penalty—10 penalty units.

(6) Subsection (5) does not apply to a building contractor for foundations data if the data is given to the building contractor by the building owner.

(7) In a proceeding for a contravention of subsection (5) in relation to a copy of any foundations data, it is a defence for the building contractor to prove that the building contractor reasonably believes the building owner already has a copy of the data.

(8) The building contractor under a regulated contract can not seek from the building owner an amount not already provided for in the contract if—

(a) the building contractor entered into the contract before obtaining the foundations data under subsection (2); and

(b) the need for the additional amount could reasonably have been established, and the amount calculated, had the building contractor complied with the subsection.

(9) For subsection (8), an amount is not taken to be provided for in a regulated contract only because the contract contains a provision allowing for an increase to be made of the contract price.

(10) Nothing in this section prevents the building contractor from claiming an amount not provided for in the contract if—

(a) the building contractor has complied with subsection (2); and

- (b) the need for the additional amount can not be established from the foundations data obtained by the building contractor.

### **32 Arbitration clauses**

- (1) A provision of a regulated contract, or other agreement, requiring that a dispute under the contract be referred to arbitration is void.
- (2) Subsection (1) does not apply to a provision of an agreement, other than a regulated contract, if the agreement is entered into after a dispute under the contract arises.

## **Division 2                      Payments relating to contracts**

### **33 Deposits**

- (1) The building contractor under a regulated contract must not, before starting to provide the contracted services at the building site, demand or receive a deposit under the contract of more than—
  - (a) for a level 1 regulated contract (other than a contract mentioned in paragraph (c))—10% of the contract price; or
  - (b) for a level 2 regulated contract (other than a contract mentioned in paragraph (c))—5% of the contract price; or
  - (c) for a level 1 or 2 regulated contract under which the value of the off-site work is more than 50% of the contract price—20% of the contract price.

Maximum penalty—100 penalty units.



- (2) In this section, a reference to the contract price for a contract includes, for a cost plus contract, a reference to the estimated amount for the contract.

- (3) In this section—

*deposit*, for a regulated contract, includes any payment for domestic building work demanded or received by the building contractor prior to the contracted services commencing at the building site, including, for example, any insurance premium paid under part 5.

*off-site work*, for a regulated contract, means contracted services performed at a place that is not the place at which the domestic building work is to be finally installed or constructed under the contract.

### **34 Progress payments for regulated contracts**

- (1) The building contractor under a regulated contract must not claim an amount under the contract, other than a deposit, unless the amount—
- (a) is directly related to the progress of carrying out the subject work at the building site; and
  - (b) is proportionate to the value of the subject work that relates to the claim, or less than that value.

*Example for paragraph (b)—*

The claimed amount is for half of the contract price for a regulated contract, less a 5% deposit, and is demanded after the completion of half of the subject work.

Maximum penalty—50 penalty units.

- (2) A regulation may prescribe when an amount is proportionate to the value of subject work under a regulated contract.
- (3) For subsection (1), a building contractor is taken to claim an amount if the contractor demands or receives the amount.
- (4) In this section—  
*building site*, for a regulated contract, does not include a place where the subject work has been, is being, or is to be, carried out if the work is required to later be installed or constructed at another place under the contract.  
*deposit*, for a regulated contract, means the deposit permitted for the contract under schedule section 33(1).

## **Part 5                      Cooling-off period and    withdrawing from    regulated contracts**

### **35    Right of building owner to withdraw from          contract in cooling-off period**

- (1) The building owner under a regulated contract may withdraw from the contract within 5 business days after the day on which the owner receives a copy of the signed contract from the building contractor.
- (2) Also, if the building owner under a level 2 regulated contract does not receive the consumer building guide before receiving a copy of the signed contract, the owner may withdraw from the contract within 5 business days after the day

on which the owner receives the consumer building guide.

- (3) If 5 business days have elapsed from the day the contract was entered into and the owner has not received from the building contractor a copy of the signed contract and, for a level 2 regulated contract, the consumer building guide, the owner may withdraw from the contract.
- (4) Nothing in subsection (3) affects the right of the building owner to withdraw from the contract under subsection (1) or (2) if the owner subsequently receives from the building contractor a copy of the signed contract and, for a level 2 regulated contract, the consumer building guide.

### **36 Restrictions affecting right of withdrawal in cooling-off period**

- (1) This section applies despite schedule section 35.
- (2) A building owner may not withdraw from a regulated contract (the *current contract*) under schedule section 35 if—
  - (a) the building owner and building contractor previously entered into a regulated contract (the *previous contract*); and
  - (b) the terms of the previous contract and current contract are substantially the same; and
  - (c) the contracted services for the previous contract and current contract—
    - (i) are substantially the same; and
    - (ii) relate to the same detached dwelling, home or land.

- (3) Also, a building owner may not withdraw from a regulated contract under schedule section 35 if—
- (a) before entering into the contract, the building owner received formal legal advice about the contract; or
  - (b) when, or after, the contract is entered into, the building owner tells the building contractor that the building owner received formal legal advice about the contract before entering into the contract.

- (4) In this section—

***formal legal advice*** means independent advice—

- (a) given by a practising legal practitioner; and
- (b) for the giving of which an amount is paid, or is payable, to the legal practitioner by the person to whom the advice is given.

***practising legal practitioner*** means a lawyer authorised under a law of the State to practise as a lawyer for purposes including the giving, for reward, of advice, including, for example, advice about domestic building contracts.

### **37 Withdrawal procedure**

- (1) To withdraw from a regulated contract under schedule section 35, the building owner must, within the time allowed under the section for the withdrawal—
- (a) give a withdrawal notice to the building contractor; or
  - (b) leave a withdrawal notice at the address shown as the building contractor's address in the contract; or
  - (c) serve a withdrawal notice on the building contractor in accordance with any provision

in the contract providing for service of notices on the building contractor by the building owner.

(2) In this section—

***withdrawal notice*** means a written notice signed by the building owner under a regulated contract stating—

- (a) that the building owner withdraws from the contract; and
- (b) the section of this schedule under which the withdrawal is made.

### **38 Rights and obligations of parties following withdrawal in cooling-off period**

- (1) This section applies if a building owner withdraws from a regulated contract under schedule section 35.
- (2) If there is a prepaid amount for the contract that is not less than the retainable amount, the building contractor—
  - (a) may keep an amount equal to the retainable amount out of the prepaid amount; and
  - (b) must refund any balance of the prepaid amount to the building owner.
- (3) If there is a prepaid amount for the contract that is less than the retainable amount, the building owner must pay the building contractor an amount equal to the difference between the retainable amount and the prepaid amount.
- (4) If there is no prepaid amount for the contract, the building owner must pay the building contractor an amount equal to the retainable amount.
- (5) If an amount is not paid by a person as required under this section, the person to whom it is

payable may recover the amount from the other person as a debt.

- (6) Except as provided under subsection (3) or (4), the building owner is not liable to the building contractor in any way for withdrawing from the contract.
- (7) In this section, a reference to the prepaid amount for the contract is a reference to the amount paid to the building contractor under the contract by the building owner before the building owner withdrew from the contract.
- (8) Also, in this section, a reference to the retainable amount for the contract is a reference to the sum of—
  - (a) an amount equal to any out-of-pocket expenses reasonably incurred by the building contractor before the building owner withdrew from the contract; and
  - (b) if the building owner withdraws from the contract under schedule section 35(1)—\$100.

### **39 Waiving right of withdrawal**

- (1) The building owner under a repair contract may waive the building owner's right to withdraw from the contract.
- (2) To waive the right, the building owner must—
  - (a) give a waiver notice to the building contractor; or
  - (b) leave a waiver notice at the address shown as the building contractor's address in the contract; or
  - (c) serve a waiver notice on the building contractor in accordance with any provision

in the contract providing for service of notices on the building contractor by the building owner.

- (3) This section has effect despite section 108D.
- (4) In this section—

***repair*** includes an alteration, improvement or replacement that it is necessary or reasonable to carry out instead of effecting a repair.

***repair contract*** means a regulated contract under which the subject work is composed of any 1 or more of the following—

- (a) the repair of a home;
- (b) work associated with the repair of a home;
- (c) the provision, for the repair of a home, of services or facilities to the home or the property on which the home is situated;
- (d) site work relating to work mentioned in paragraph (a), (b) or (c).

***waiver notice*** means a written notice signed by the building owner under a repair contract stating that the building owner waives the building owner's right to withdraw from the contract.

## Part 6 Variations of contracts

### 40 Variations must be in writing

- (1) This section applies if there is to be a variation of a regulated contract.
- (2) The building contractor must give the building owner a copy of the variation in writing before the first of the following happens—

- (a) 5 business days elapse from the day the building contractor and the building owner agree to the variation;
- (b) any domestic building work the subject of the variation starts.

Maximum penalty—20 penalty units.

- (3) The building contractor may give the building owner the variation under subsection (2)—

- (a) personally; or
- (b) by sending it by post, facsimile or email; or
- (c) in accordance with any provision in the contract providing for service of notices on the building owner by the building contractor.

- (4) In a proceeding for a contravention of subsection (2), it is a defence for the building contractor to prove that—

- (a) the variation is for domestic building work that is required to be carried out urgently; and
- (b) it is not reasonably practicable, in the particular circumstances, to produce a copy of the variation in writing before carrying out the work.

- (5) The building contractor must not start to carry out any domestic building work the subject of the variation before the building owner agrees to the variation in writing.

Maximum penalty—20 penalty units.

#### **41 General contents of document evidencing a variation**

- (1) The building contractor under a regulated contract must ensure a document evidencing a



variation of the contract complies with the formal requirements for a variation.

Maximum penalty—20 penalty units.

- (2) The document evidencing the variation complies with the formal requirements if it—
  - (a) is readily legible; and
  - (b) describes the variation; and
  - (c) states the date of the request for the variation; and
  - (d) if the variation will result in a delay affecting the subject work—states the building contractor's reasonable estimate for the period of delay; and
  - (e) states the change to the contract price because of the variation, or the method for calculating the change to the contract price because of the variation; and
  - (f) if the variation results in an increase in the contract price—states when the increase is to be paid; and
  - (g) if the variation results in a decrease in the contract price—states when the decrease is to be accounted for.
- (3) Any increase in the contract price as a result of the variation can not be required to be paid before work the subject of the variation is started.

## **42 Extension of time**

- (1) The building contractor under a regulated contract may only claim for an extension of time under the contract if—
  - (a) the delay causing the need for the extension of time was—

- (i) not reasonably foreseeable and beyond the reasonable control of the contractor; or
    - (ii) caused by the building owner; or
    - (iii) caused by a variation of the contract complying with schedule section 40; and
  - (b) the claim is made to the building owner in writing; and
  - (c) the claim is given to the building owner within 10 business days of the building contractor becoming aware of the cause and extent of the delay or when the building contractor reasonably ought to have become aware of the cause and extent of the delay; and
  - (d) the owner approves the claim in writing.
- (2) A building contractor under a regulated contract must not seek to rely on an extension of time under the contract unless the contractor claimed for the extension of time in compliance with subsection (1).
- Maximum penalty—20 penalty units.
- (3) A building contractor under a regulated contract must give the building owner a signed copy of a claim for an extension of time within 5 business days of the owner approving the claim.
- Maximum penalty—20 penalty units.
- (4) A regulation may prescribe when a series of similar delays may be taken to be a single delay for the purpose of subsection (1)(c).

## **Part 7                      Building sites**

### **43    Building contractor does not acquire interest       in land of resident owner**

- (1)    A domestic building contract does not give the building contractor an interest in land of a resident owner for the *Land Title Act 1994*, section 122.
- (2)    A building contractor who lodges a caveat claiming an interest in land of a building owner under a domestic building contract knowing the owner to be a resident owner commits an offence.

Maximum penalty for subsection (2)—100 penalty units.

## **Part 8                      Other matters relating                                  to contracts**

### **44    Effect of failure by building contractor to       comply with requirement**

Unless the contrary intention appears in this Act, a failure by a building contractor to comply with a requirement under this Act in relation to a domestic building contract does not make the contract illegal, void or unenforceable.

## **Part 9                      Miscellaneous**

### **45 Relationship with other Acts**

- (1) The *Commercial Arbitration Act 2013* does not apply to domestic building work unless the relevant arbitration agreement under that Act—
  - (a) is an agreement other than a domestic building contract; and
  - (b) is entered into after the dispute to which it relates arises.
- (2) The *Subcontractors' Charges Act 1974* does not apply to domestic building work relating to a detached dwelling if the work—
  - (a) is carried out by a building contractor for an individual; and
  - (b) is not for a business carried on by the individual, either alone or as a member of a partnership.

### **46 Consumer building guide**

- (1) The commission must prepare and publish a consumer building guide in a form prescribed by regulation.
- (2) The consumer building guide may, for informational purposes, contain information about the following—
  - (a) warnings about cost plus contracts;
  - (b) information about the cooling-off period;
  - (c) commencement notice requirements;
  - (d) deposit and progress payment requirements;
  - (e) variation procedures;

- (f) statutory warranties;
- (g) dispute resolution procedures.
- (3) Subsection (2) does not limit the type of information the commission may include in the consumer building guide.

## 61 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *building*, *building contractor*, *building owner*, *building site*, *consumer*, *contract price*, *disciplinary proceeding*, *domestic building contract*, *domestic building work*, *permitted individual*, *progress payment*, *residential construction work*, *reviewable domestic work*, *speculative residential construction work* and *subcontractor*—

*omit.*

- (2) Schedule 2—  
*insert—*

*appropriate insurance premium*, for part 5, see section 67WA.

*assistance*, for part 5, see section 67WA.

*associated insurable work*, for part 5, see section 67WD.

*building*—

- (a) generally, includes any fixed structure; but

*Examples of a fixed structure—*

- a fence other than a temporary fence
- a water tank connected to the stormwater system for a building
- an in-ground swimming pool or an above-ground pool fixed to the ground

- (b) for schedule 1B, see schedule 1B, section 1.

*building contractor*—

(a) generally, means a person who carries on a business that consists of or includes carrying out building work, and includes a subcontractor who carries out building work for a building contractor; but

(b) for schedule 1B, see schedule 1B, section 1.

***building owner***—

(a) generally, means a person for whom tribunal work is to be, is being or has been carried out, but does not include a building contractor for whom tribunal work is carried out by a subcontractor; but

(b) for schedule 1B, see schedule 1B, section 1.

***building site***—

(a) generally, means a place where domestic building work has been, is being, or is to be, carried out; but

(b) for schedule 1B, see schedule 1B, section 1.

***certificate of inspection***, for schedule 1B, see schedule 1B, section 1.

***consequential damage*** see section 71H.

***consumer***—

(a) generally, means a person for whom building work is carried out, but does not include a building contractor for whom building work is carried out by a subcontractor; but

(b) for part 5, see section 67WA.

***consumer building guide***, for schedule 1B, see schedule 1B, section 1.

***contracted services***, for schedule 1B, see schedule 1B, section 1.

***contract price***—

- (a) for part 4A, see section 67A.
  - (b) for schedule 1B, see schedule 1B, section 2.
- cost plus contract***, for schedule 1B, see schedule 1B, section 1.
- defects document***, for schedule 1B, see schedule 1B, section 1.
- detached dwelling***, for schedule 1B, see schedule 1B, section 1.
- development approval***, for schedule 1B, see schedule 1B, section 1.
- direction to rectify or remedy*** see section 71G.
- domestic building contract***, for schedule 1B, see schedule 1B, section 3.
- domestic building work***, for schedule 1B, see schedule 1B, section 4.
- draftsperson***, for schedule 1B, see schedule 1B, section 1.
- excluded building work***, for schedule 1B, see schedule 1B, section 1.
- farm building***, for schedule 1B, see schedule 1B, section 1.
- foundations data***, for schedule 1B, see schedule 1B, section 8.
- home***, for schedule 1B, see schedule 1B, section 9.
- incomplete***, for part 5, see section 67WA.
- insurable value***, for part 5, see section 67WA.
- level 1 regulated contract***, for schedule 1B, see schedule 1B, section 6.
- level 2 regulated contract***, for schedule 1B, see schedule 1B, section 7.

***manage***, for schedule 1B, see schedule 1B, section 1.

***mixed-purpose contract***, for schedule 1B, see schedule 1B, section 1.

***optional additional cover***, for part 5, see section 67Z(4).

***practical completion***, for schedule 1B, see schedule 1B, section 1.

***primary insurable work***, for part 5, see section 67WC.

***prime cost item***, for schedule 1B, see schedule 1B, section 1.

***progress payment***—

(a) for part 4A, see section 67A; and

(b) for schedule 1B, see schedule 1B, section 1.

***provisional sum***, for schedule 1B, see schedule 1B, section 10.

***reasonably believes***, for schedule 1B, see schedule 1B, section 1.

***regulated amount***, for schedule 1B, see schedule 1B, section 1.

***regulated contract***, for schedule 1B, see schedule 1B, section 5.

***related roofed building***, for part 5, see section 67WF.

***residence***, for part 5, see section 67WE.

***residential construction work***, for part 5, see section 67WA.

***resident owner***, for schedule 1B, see schedule 1B, section 1.

***reviewable domestic work*** means domestic building work under schedule 1B, section 4,



except that for applying schedule 1B, section 4(8), the definition *excluded building work* under the schedule is taken not to mean anything mentioned in paragraph (b), (c) or (d) of that definition.

***schedule section***, for schedule 1B, see schedule 1B, section 1.

***speculative residential construction work***, for part 5, see section 67WA.

***statutory warranties***, for schedule 1B, see schedule 1B, section 1.

***subcontractor***—

(a) for part 7—means—

- (i) a building contractor who carries out tribunal work for another building contractor; or
- (ii) a building contractor who carries out tribunal work for another person under a construction management trade contract under section 67B; and

(b) for schedule 1B, see schedule 1B, section 1.

***subject work***, for schedule 1B, see schedule 1B, section 1.

***written form***, for schedule 1B, see schedule 1B, section 1.

- (3) Schedule 2, definition *insurance notification form*, ‘insuring’—

*omit, insert*—

covering

## **Part 3                      Amendment of Housing Act 2003**

### **62      Act amended**

This part amends the *Housing Act 2003*.

### **63      Amendment of pt 3, div 1 hdg (Giving information to the chief executive)**

Part 3, division 1, heading, after ‘executive’—  
*insert—*

**or funded provider**

### **64      Amendment of s 17 (False or misleading information)**

(1) Section 17(1), ‘executive housing’—

*omit, insert—*

**executive or a funded provider housing**

(2) Section 17(1), examples, paragraph 3—

*omit, insert—*

3 A person is renting a house from a funded provider.  
In response to a query from the funded provider, the  
person gives false information about the income of  
persons living in the house.

(3) Section 17(2), ‘executive a’—

*omit, insert—*

**executive or a funded provider a**

(4) Section 17(2)(a), ‘executive,’—

*omit, insert—*

**executive or the funded provider,**

**65 Amendment of s 18 (Notice of changes in information)**

Section 18(2), from ‘executive,’ to ‘executive notice’—

*omit, insert—*

executive or a funded provider, the person must give  
the chief executive or funded provider notice

**66 Insertion of new pt 8, div 2A**

Part 8—

*insert—*

**Division 2A Confidentiality**

**94A Definitions for div 2A**

In this division—

***approved provider*** means—

- (a) a funded provider that—
  - (i) provides housing services, other than a funded provider that only provides home maintenance services or home modification services; and
  - (ii) is, under the provider’s funding agreement, described as an approved provider in relation to the disclosure of confidential information; or
- (b) an exempt provider or registered provider if—
  - (i) the exempt provider or registered provider is engaged under a contract or agreement by an approved provider mentioned in paragraph (a) to provide services to the approved provider; and
  - (ii) under the approved provider’s funding agreement, the approved provider is

authorised to disclose confidential information to the exempt provider or registered provider.

*disclose* includes record, reveal or use.

### **94B Immunity for disclosure of particular confidential information**

- (1) This section applies to the disclosure of confidential information by—
  - (a) the chief executive or an employee of the department to an approved provider; or
  - (b) an approved provider or an employee of the approved provider to the chief executive or another approved provider.
- (2) The chief executive, employee of the department, approved provider or employee of the approved provider is not criminally liable for the disclosure under any law, including, for example, a confidentiality provision, if the disclosure is made for the purpose of providing a housing service.
- (3) The chief executive or employee of the department is not civilly liable if the disclosure is made for the purpose of providing a housing service.
- (4) The approved provider or employee of the approved provider is not civilly liable if—
  - (a) the disclosure is made for the purpose of providing a housing service; and
  - (b) the disclosure does not contravene—
    - (i) for a funded provider—a term of the provider’s funding agreement; or

- (ii) for another approved provider—a term of the provider’s contract or agreement with a funded provider.
- (5) In this section—
- confidentiality provision** means any of the following—
- (a) the *Ambulance Service Act 1991*, section 49A;
  - (b) the *Child Protection Act 1999*, sections 186 and 188;
  - (c) the *Corrective Services Act 2006*, section 341;
  - (d) the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6;
  - (e) the *Criminal Law (Sexual Offences) Act 1978*, section 10;
  - (f) the *Witness Protection Act 2000*, section 36;
  - (g) section 94C, 94D or 94E.

**94C Prohibition on disclosure of confidential information the subject of the *Ambulance Service Act 1991*, s 49A**

- (1) This section applies to confidential information given to an approved provider or an employee of an approved provider if the information is or has been confidential information—
- (a) that must not be disclosed under the *Ambulance Service Act 1991*, section 49A; and
  - (b) that identifies a person as a person who is receiving, or has received, an ambulance service.

- (2) The approved provider or employee must not disclose the information to anyone else.

Maximum penalty—50 penalty units.

- (3) However, the approved provider or employee may disclose the information to someone else if the disclosure is—

- (a) to the person to whom the confidential information relates; or
- (b) required or permitted by law.

**94D Prohibition on disclosure of confidential information the subject of the *Child Protection Act 1999*, s 188**

- (1) This section applies to confidential information given to an approved provider or an employee of an approved provider if the information is or has been information or a document—

- (a) that must not be disclosed, or to which access must not be given, under the *Child Protection Act 1999*, section 188(2); and
- (b) that is about a person's affairs.

- (2) The approved provider or employee must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (3) However, the approved provider or employee may disclose the information or give access to the document to someone else—

- (a) if the disclosure or giving of access is authorised by the chief executive under the *Child Protection Act 1999*, section 189B; or

- (b) if the disclosure or giving of access is for purposes directly related to a child's protection or wellbeing; or
  - (c) if the disclosure or giving of access is for purposes directly related to obtaining information requested by the chief executive under the *Child Protection Act 1999*, section 246C; or
  - (d) if the disclosure or giving of access is required or permitted by law.
- (4) In this section—

***chief executive*** means the chief executive of the department in which the *Child Protection Act 1999* is administered.

**94E Prohibition on disclosure of confidential information the subject of the *Corrective Services Act 2006*, s 341**

- (1) This section applies to confidential information given to an approved provider or an employee of an approved provider if the information is or has been confidential information that must not be disclosed under the *Corrective Services Act 2006*, section 341(2).
- (2) The approved provider or employee must not disclose the information to anyone else.  
  
Maximum penalty—100 penalty units or 2 years imprisonment.
- (3) However, the approved provider or employee may disclose the information to someone else—
  - (a) if the disclosure is to the person to whom the confidential information relates; or
  - (b) if authorised by the chief executive of the department that administers the *Corrective Services Act 2006* because—

- (i) a person's life or physical safety could otherwise reasonably be expected to be endangered; or
- (ii) it is otherwise in the public interest; or
- (c) if the information merely informs someone—
  - (i) of the corrective services facility in which a prisoner is being held in custody under the *Corrective Services Act 2006*; or
  - (ii) for an offender who is subject to a parole order or a community based order under the *Corrective Services Act 2006*—that the offender is subject to the order; or
- (d) if the disclosure is required or permitted by law.

**67 Amendment of s 99A (Delegation by Minister or chief executive)**

- (1) Section 99A(2), 'public service employee.'—

*omit, insert—*

person.

- (2) Section 99A(3)—

*omit, insert—*

- (3) A delegation of a function or power by the Minister may permit the subdelegation of the function or power to an appropriately qualified public service employee.
- (4) A delegation of a function or power by the chief executive may permit the subdelegation, and further subdelegation, of the function or power to an appropriately qualified person.



**68 Insertion of new s 99B**

After section 99A—

*insert—*

**99B Acts applying to delegates and sub-delegates**

- (1) This section applies to an entity, other than an individual, to whom a function or power is delegated under section 99A(2) in relation to the performance of a function or exercise of a power by the entity under this Act.
- (2) The *Crime and Corruption Act 2001* applies to the entity as if—
  - (a) the entity were a unit of public administration; and
  - (b) the holder of a specified office, prescribed by regulation, of the entity were the chief executive officer of the entity; and
  - (c) a person employed by the entity were a person holding an appointment in a unit of public administration.
- (3) The *Judicial Review Act 1991* applies to the entity as if—
  - (a) the entity were a State authority; and
  - (b) a decision of an administrative character made, proposed to be made, or required to be made, by the entity or a person employed by the entity, whether or not in the exercise of a discretion, were a decision to which that Act applies.
- (4) The *Ombudsman Act 2001* applies to the entity as if—
  - (a) the entity were an agency; and
  - (b) the holder of a specified office, prescribed by regulation, of the entity were the chief executive officer of the entity; and

- (c) a person employed by the entity were an officer of an agency; and
  - (d) the Minister were the responsible Minister.
- (5) The *Public Interest Disclosure Act 2010* applies to the entity as if—
  - (a) the entity were a public sector entity; and
  - (b) a person employed by the entity were a public officer; and
  - (c) the holder of a specified office, prescribed by regulation, of the entity were the chief executive officer of the entity.

## **69 Amendment of s 105 (Other evidentiary aids)**

Section 105—

*insert—*

- (2) A certificate purporting to be signed by an approved provider stating any of the following matters is evidence of the matter—
  - (a) a stated document is one of the following things made, given or issued under this Act—
    - (i) an appointment, approval or decision;
    - (ii) a notice, direction or requirement;
  - (b) a stated document is a copy of a document mentioned in paragraph (a);
  - (c) on a stated day, a stated person was given a stated notice or direction under this Act;
  - (d) on a stated day, a stated requirement was made of a stated person.

**70 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, *appropriately qualified*—  
*omit.*

(2) Schedule 4—  
*insert—*

*approved provider* see section 94A.

*disclose*, for part 8, division 2A, see section 94A.

**Part 4**

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

**71 Act amended**

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

**72 Amendment of s 457 (Definitions for ch 9)**

Section 457—

*insert—*

*social housing database* means a database kept for the purpose of providing housing services under the *Housing Act 2003*.

**73 Amendment of s 458 (Non-application to internal databases)**

Section 458(1), from ‘apply to’—

*omit, insert—*

apply to—

[s 74]

---

- (a) a tenancy database kept by an entity for use only by that entity or its employees or agents; or
- (b) a social housing database.

#### **74 Amendment of s 527A (Definitions for ch 13A)**

Section 527A, definition *community housing provider tenancy agreement*—

*omit, insert—*

***community housing provider tenancy agreement*** see section 527C.

***existing State tenancy agreement***, for a residential tenancy, means a residential tenancy agreement under which the State is the lessor.

***replacement lessor*** means a funded provider that has entered a funding agreement under the *Housing Act 2003* if, under the funding agreement, the funded provider may enter into a lease with the State for residential premises that are the subject of an existing State tenancy agreement.

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

Schedule 2—

*insert—*

***existing State tenancy agreement***, for chapter 13A, see section 527A.

***social housing database***, for chapter 9, see section 457.

***replacement lessor***, for chapter 13A, see section 527A.

## Part 5                      **Amendment of Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013**

### 76      **Act amended**

This part amends the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013*.

*Editor's note—*

Legislation ultimately amended—

- *Residential Tenancies and Rooming Accommodation Act 2008*

### 77      **Amendment of s 20 (Insertion of new ch 13A)**

Section 20, inserted section 527C—

*omit, insert—*

#### **527C Existing State tenancy agreements and community housing provider tenancy agreements**

- (1) This section applies if a replacement lessor gives a notice to the State for residential premises that are the subject of an existing State tenancy agreement stating a day, at least 14 days after the notice is given, for termination and replacement of the existing State tenancy agreement.
- (2) On the day stated in the notice—
  - (a) the existing State tenancy agreement for the residential premises is terminated; and
  - (b) a new residential tenancy agreement (a *community housing provider tenancy agreement*) for the residential premises is

taken to have been entered into between the replacement lessor and the tenant.

- (3) The terms (the *replacement terms*) of the community housing provider tenancy agreement are the terms prescribed under a regulation for this section.
- (4) Without limiting subsection (3), the replacement terms may provide that the replacement lessor has a right to do any of the following—
  - (a) require the tenant to pay a rental bond;
  - (b) state the way in which the bond must be paid by the tenant;
  - (c) require the tenant to pay stated service charges;
  - (d) state the apportionment of the cost for the service charges payable by the tenant (where the premises are not individually metered for a service);
  - (e) state the way in which service charges must be paid by the tenant.
- (5) As soon as practicable after a community housing provider tenancy agreement is taken to have been entered under subsection (2), the replacement lessor must give to the tenant under the agreement—
  - (a) a notice stating—
    - (i) the existing State tenancy agreement is terminated; and
    - (ii) a community housing provider tenancy agreement is taken to have been entered into by the tenant; and
    - (iii) the replacement lessor is the lessor under the community housing provider tenancy agreement; and

- (iv) that rent under the community housing provider tenancy agreement must be paid to the replacement lessor; and
  - (v) the way in which the rent is to be paid; and
  - (vi) if the amount of the rent payable has changed—the new amount payable; and
- (b) a copy of the replacement terms.
- (6) The State does not incur any liability for an existing State tenancy agreement terminated under this section.
- (7) In this section—  
*funding agreement* see the *Housing Act 2003*, section 25.

## **78 Amendment of s 22 (Insertion of new ch 14, pt 3)**

- (1) Section 22, inserted section 554(1)(b) and (c)—  
*omit, insert—*
  - (b) the existing State tenancy agreement is terminated under section 527C(2)(a); and
  - (c) at the time the existing State tenancy agreement is terminated, an action is pending under the notice or proceeding.
- (2) Section 22, inserted section 554—  
*insert—*
  - (3) The action continues in relation to the existing State tenancy agreement despite its termination under section 527C(2)(a).
- (3) Section 22, inserted section 555(1)(b) and (c)—  
*omit, insert—*

- (b) the existing State tenancy agreement is terminated under section 527C(2)(a); and
  - (c) at the time the existing State tenancy agreement is terminated, an action is pending under the notice or proceeding.
- (4) Section 22, inserted section 555—  
*insert—*
  - (4) The action continues in relation to the existing State tenancy agreement despite its termination under section 527C(2)(a).

## **Part 6                      Repeal**

### **79            Repeal**

The Domestic Building Contracts Act 2000, No. 9 is repealed.

## **Part 7                      Minor and consequential amendments**

### **80            Acts amended**

Schedule 1 amends the Acts it mentions.



## Schedule 1      Minor and consequential amendments

section 80

### Building and Construction Industry Payments Act 2004

**1      Section 3(5), definition *resident owner*, ‘the *Domestic Building Contracts Act 2000*, schedule 2’—**

*omit, insert—*

the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 1.

**2      Schedule 2, definition *domestic building work*—**

*omit, insert—*

*domestic building work* see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 4.

*home* see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 9.

**3      Schedule 2, definition *relevant offence*, paragraph (e)—**

*omit, insert—*

- (e) an offence against the Domestic Building Contracts Act 2000 or a law of another State or the Commonwealth that provides for the same matter as that Act or a provision of that Act; or

## **Pest Management Act 2001**

**1 Section 14(d), ‘disciplinary’—**

*omit.*

**2 Section 14(d)(iv), ‘section 91, 97B or 97C’—**

*omit, insert—*

part 6A or section 97B or 97C.

## **Property Occupations Act 2014**

**1 Schedule 2, definitions *domestic building contract* and *home*—**

*omit, insert—*

*domestic building contract* see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 3.

*home* see the *Queensland Building and Construction Commission Act 1991*, schedule 1B, section 9.

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

**1 Section 31(3)(ca), ‘or the *Domestic Building Contracts Act 2000*’—**

*omit.*

- 2**     **Section 32(2)(d), ‘or the *Domestic Building Contracts Act 2000*’—**  
omit.
- 3**     **Section 32AA(2)(b), ‘or the *Domestic Building Contracts Act 2000*’—**  
omit.
- 4**     **Section 32AB(2)(b), ‘or the *Domestic Building Contracts Act 2000*’—**  
omit.
- 5**     **Section 36(3B), ‘part 4A or the *Domestic Building Contracts Act 2000*’—**  
omit, insert—  
  
                part 4 or schedule 1B
- 6**     **Section 44B(2)(b), ‘or the *Domestic Building Contracts Act 2000*’—**  
omit.
- 7**     **Part 3, division 9A, heading, from ‘part 4A’—**  
omit, insert—  
  
                parts 4 and 5, and schedule 1B