

Queensland



BUILDING ACT 1975

**Reprinted as in force on 7 February 2003
(includes commenced amendments up to 2002 Act No. 77)**

Reprint No. 4

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 7 February 2003. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.

Queensland



BUILDING ACT 1975

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	5
2	Act binds all persons	5
3	Definitions	5
PART 2—STANDARD BUILDING REGULATION		
4	Standard Building Regulation	12
5	Variation of how Standard Building Regulation may apply	12
6	Deciding application to vary how Standard Building Regulation will apply	13
7	Fast-track decisions	13
8	Appeal from chief executive’s decision	14
9	Effect of variation of Standard Building Regulation	14
10	How changes to Standard Building Regulation may affect certain building work to be carried out	14
11	Alterations to safe existing work	15
12	Alterations to unsafe existing work	15
PART 2A—FIRE SAFETY FOR BUDGET ACCOMMODATION BUILDINGS		
<i>Division 1—Interpretation</i>		
12A	Definitions for pt 2A	16
12B	Meaning of “budget accommodation building”	17
<i>Division 2—Fire safety standard</i>		
12C	Fire safety standard	17
12D	Guidelines for fire safety standard	18
12E	Public notice of guidelines	18
12F	Access to guidelines	18

Division 3—Budget accommodation buildings built, approved or applied for, before 1 January 1992

12G	Application of div 3	19
12H	Owner must ensure building conforms with fire safety standard	19
12I	Approval of longer period for conformity with fire safety standard	20
12J	Advice as to conformity with fire safety standard.	20
12K	Appeals about conformity with fire safety standard	21
12L	Stay of operation of local government decision	21
12M	Local government decisions	22

Division 4—All budget accommodation buildings

12N	Application of div 4	22
12O	Obligation about fire safety management plan	22
12P	Accessing fire safety management plan	23
12Q	Development approval for building work for budget accommodation buildings	23
12R	Annual inspection of buildings for which development approval is given	24

Division 5—Miscellaneous

12S	Obligations of entities about guidelines for fire safety standard and fire safety management plans	24
-----	--	----

PART 3—SWIMMING POOL FENCING

13	Local law for fencing of swimming pools	25
14	Outdoor swimming pools must be fenced	26
15	Application for exemption from fencing	26
16	Revocation of decisions or previous variations	27
17	Advice as to compliance	28
18	Access to outdoor swimming pools must be kept secure	29
19	Apportionment of cost of constructing dividing fence	29
20	Appeals about swimming pool fencing	30

PART 4—SHOW CAUSE AND ENFORCEMENT NOTICES

21	Show cause notices	30
22	Enforcement notices	31
23	Specific requirements of enforcement notices	31
24	Appeals against enforcement notices	32

25	Register of notices given	32
26	Action local government may take if enforcement notice not complied with	33
27	Removal of persons in buildings to be demolished	33
PART 5—ACCREDITING BODIES AND BUILDING CERTIFIERS		
<i>Division 1—Accreditation</i>		
28	Authorisation of accrediting bodies	34
29	Function of accrediting bodies	34
30	Persons must not perform or exercise building certifying functions without accreditation	35
<i>Division 2—Jurisdiction</i>		
31	Jurisdiction of building certifiers.	36
<i>Division 3—Auditing building certifiers</i>		
32	Accrediting body must audit building certifier’s work	37
<i>Division 4—Complaints</i>		
33	Making a complaint against a building certifier	37
34	Building certifier must be advised of complaint	38
35	Accrediting body must investigate complaint	38
<i>Division 5—Investigations</i>		
36	Accrediting body may require documents to be produced	38
37	Inspection of documents	39
38	Power to enter and inspect building	39
39	Cooperating with investigation or audit	39
40	Decision after investigation or audit completed	40
41	Accrediting body’s decision may be appealed	41
<i>Division 6—Chief executive and court powers</i>		
42	Chief executive may investigate building certifier	41
43	Chief executive’s decision	41
44	Appeal to the court against the chief executive’s decision	42
45	Court may make certain disciplinary findings.	42
PART 6—GENERAL PROVISIONS		
46	Approved forms.	43
46A	Fees for statutory functions	43
47	Giving security in certain cases.	43

48	Information to be supplied by the State	45
49	Owner liable for offences under Standard Building Regulation	45
50	Prosecution of offences	45
51	Liability for corporation's default	46
52	Regulation-making power	46
53	Day when Standard Building Regulation was made for Statutory Instruments Act 1992	46

PART 7—SAVINGS AND TRANSITIONAL PROVISIONS

54	Swimming pool fencing compliance—hardship	47
55	References to Standard Building Law etc.	47
56	Existing referees	47
57	Existing registrar	48
58	Lawfully constructed buildings and structures protected	48
59	Lawfully constructed swimming pool fences protected	48

ENDNOTES

1	Index to endnotes	49
2	Date to which amendments incorporated.	49
3	Key	50
4	Table of reprints	50
5	Tables in earlier reprints.	51
6	List of legislation	51
7	List of annotations	54
8	List of forms notified or published in the gazette	72
9	Table of renumbered provisions.	72
10	Provisions that have not commenced and are not incorporated into reprint	74

BUILDING ACT 1975

[as amended by all amendments that commenced on or before 7 February 2003]

An Act to authorise the making of standard laws about the erection of buildings and other structures, to provide for building certifying, and for other purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Building Act 1975*.

2 Act binds all persons

(1) This Act binds all persons, including the State, and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

3 Definitions

(1) In this Act—

“**accrediting auditor**” see section 36.

“**accrediting body**” means a body authorised under a regulation under section 28 to be an accrediting body for accrediting building certifiers.

“**approved form**” means a form approved under section 46.

“**assessment manager**” has the meaning given by the *Integrated Planning Act 1997*, section 3.1.7.¹

“**build**” includes—

- (a) starting or continuing to build; and
- (b) doing, or starting or continuing to do, work in the course of or for building; and
- (c) performing structural work or altering or adding to a building; and
- (d) moving a building from 1 position to a different position (whether on the same allotment, another allotment or partly on the same and partly on another allotment).

“**building**” means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a floating building and any part of a building.

“**building certifier**” means a person or public sector entity accredited as a building certifier by an accrediting body.

“**Building Code of Australia**” means the edition, current at the relevant time, of the Building Code of Australia (including the Queensland Appendix) published by the body known as the Australian Building Codes Board and includes the edition as amended from time to time by amendments published by the board.

1 *Integrated Planning Act 1997*, section 3.1.7 (Assessment manager)—

(1) The “**assessment manager**”, for an application, is—

- (a) if the development is wholly within a local government’s area—the local government, unless a different entity is prescribed under a regulation; or
- (b) if paragraph (a) does not apply—
 - (i) the entity prescribed under a regulation; or
 - (ii) if no entity has been prescribed—the entity decided by the Minister.

(2) However, instead of making a decision under subsection (1)(b)(ii), the Minister may decide that the application, for which a decision under subsection (1)(b)(ii) would normally be made, be split into 2 or more applications.

(2A) If the entity prescribed or decided under subsection (1)(b) is a local government, the local government, in addition to its jurisdiction under the *Local Government Act 1993*, section 25, has the jurisdiction to assess and decide the application.

(3) The assessment manager administers applications.

“**building work**” has the meaning given by the *Integrated Planning Act 1997*, section 1.3.5.²

“**complaint**” means a complaint about a building certifier made under part 5.

“**court**” means the Planning and Environment Court.

“**disciplinary finding**” means a finding of professional misconduct.

“**dividing fence**” has the meaning given by the *Dividing Fences Act 1953*.

“**enforcement notice**” see section 22(1).

“**indoor swimming pool**” means a swimming pool—

- (a) wholly enclosed by the walls of a building; or
- (b) on a building.

“**local government**” means the local government for the local government area where the building work or other work is proposed.

“**outdoor swimming pool**” means a swimming pool other than an indoor swimming pool.

“**owner**”, of a building or structure, means—

- (a) if the building or structure is subject to the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*—
 - (i) for a single lot in the building or structure—the registered proprietor; or

2 *Integrated Planning Act 1997*, section 1.3.5 (Definitions for terms used in “development”)—

“**building work**” means—

- (a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
- (aa) work regulated under the *Standard Building Regulation 1993*; or
- (b) excavating or filling—
 - (i) for, or incidental to, the activities mentioned in paragraph (a); or
 - (ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or
- (c) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).

Building Act 1975

- (ii) for 2 or more lots in the building or structure—the primary thoroughfare body corporate; or
- (b) if the building or structure is subject to the *Mixed Use Development Act 1993*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the community body corporate; or
- (c) subject to paragraphs (a) and (b), if the building or structure is subject to the *Building Units and Group Titles Act 1980*—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate; or
- (d) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for a single community titles scheme—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate for the scheme; or
- (e) if the building or structure is, under the *Body Corporate and Community Management Act 1997*, on scheme land for 2 or more community titles schemes—
 - (i) for a single lot in the building or structure—the registered proprietor; or
 - (ii) for 2 or more lots in the building or structure—the body corporate for the community titles scheme that is a principal scheme; or

-
- (f) if the building or structure is part of a time-sharing scheme and the name and address of a person has been notified under the *Local Government Act 1993*, section 1124³—the person; or
 - (g) if the building or structure is on land being bought from the State for an estate in fee simple under the *Land Act 1994*—the buyer; or
 - (h) if the building or structure is on land granted in trust or reserved and set apart and placed under the control of trustees under the *Land Act 1994*—the trustees of the land; or
 - (i) if paragraphs (a) to (h) do not apply—the person for the time being entitled to receive the rent for the building or structure or would be entitled to receive the rent for the building or structure if the building or structure were let to a tenant at a rent.

“portable wading pool” means a pool that—

- (a) is capable of being filled with water to a depth of no more than 450 mm; and
- (b) has a volume of no more than 2 000 L; and
- (c) has no filtration system.

“private certifier” has the meaning given by the *Integrated Planning Act 1997*, section 5.3.3.⁴

“professional misconduct” includes conduct (whether by act or omission) when a building certifier—

- (a) seeks, accepts or agrees to accept a benefit, whether for the benefit of the building certifier or another person, as a reward or inducement to act other than—
 - (i) under this Act; or
 - (ii) under another Act regulating building certifiers, including private certifiers for building work; or
- (b) acts in a way contrary to a duty—

3 *Local Government Act 1993*, section 1124 (Notice of time share scheme to local government)

4 *Integrated Planning Act 1997*, section 5.3.3(1) (What is a private certifier)—

A **“private certifier”** is a person or public sector entity that carries out certification work under written contractual arrangements with clients.

Building Act 1975

- (i) under this Act; or
- (ii) stated in another Act for building certifiers, including private certifiers for building work; or
- (c) falsely claims the building certifier has the qualifications, necessary experience or accreditation to be engaged as a building certifier; or
- (d) acts outside the scope of the building certifier's powers; or
- (e) acts beyond the scope of the building certifier's competence; or
- (f) contravenes a code of conduct published by an accrediting body; or
- (g) acts negligently or incompetently in relation to the certifier's practice.

“public sector entity” means—

- (a) a department or part of a department; or
- (b) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

“residential land” means land on which a class 1 or 2 building, under the Standard Building Regulation, is constructed, or is to be constructed, and includes land—

- (a) adjacent to the land; and
- (b) in the same ownership as the land; and
- (c) used in association with the land.

“revocation notice” see section 16(3).

“show cause notice” see section 21.

“Standard Building Regulation” means the regulation made under section 4(1).

“structure” includes a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure.

“swimming pool” means an excavation or structure—

- (a) capable of being filled with water to a depth of 300 mm or more; and

Building Act 1975

- (b) capable of being used for swimming, bathing, wading, paddling or some other human aquatic activity; and
- (c) solely or principally used, or designed, manufactured or adapted to be solely or principally used, for the purposes mentioned in paragraph (b) despite its current use;

and includes a spa pool, spa tub or similar thing (whether portable or fixed) and a wading pool (other than a portable wading pool), but does not include—

- (d) a fish pond or pool solely or principally used, or designed, manufactured or adapted to be solely or principally used, for ornamental purposes; or
- (e) a dam or tank solely or principally used, or designed, manufactured or adapted to be solely or principally used, for aquaculture, marine research or storage of water; or
- (f) a watercourse; or
- (g) a portable wading pool.

“tourist resort complex” means a complex that operates as a single integrated facility providing all, or substantially all, the recreational and personal needs of guests resident at the complex and visitors at the complex.

“tribunal” means a building and development tribunal established under the *Integrated Planning Act 1997*, section 4.2.1.⁵

“watercourse” means—

- (a) a canal, creek, river or stream in which water flows permanently or intermittently; or
- (b) an ocean, a lake or other collection of water (whether permanent or intermittent).

“young child” means a child under the age of 5 years.

(2) In this Act, a reference to building work is a reference to the aspect of building work assessed under the *Integrated Planning Act 1997* against this Act.

⁵ *Integrated Planning Act 1997*, section 4.2.1 (Establishing building and development tribunals)

PART 2—STANDARD BUILDING REGULATION

4 Standard Building Regulation

(1) A regulation (the “**Standard Building Regulation**”) made under this Act may be made about the following—

- (a) building work, the certification of building work and the occupation of buildings;
- (b) matters relating to the accrediting of building certifiers.

(2) In carrying out building work or in occupying a building a person must comply with the Standard Building Regulation even if a development permit given by an assessment manager is contrary to the Standard Building Regulation.

(3) In this section—

“**Standard Building Regulation**” includes any variation, exception or exemption to the Standard Building Regulation permitted by this Act.⁶

5 Variation of how Standard Building Regulation may apply

(1) This section applies if building work is proposed to be carried out, is being carried out or has been carried out, and the building work will not, or does not, comply in all respects with the Standard Building Regulation.

(2) A person may apply to the chief executive to vary how the Standard Building Regulation applies to the building work.

(3) An application may not be made under this section if the Standard Building Regulation permits an assessment manager or private certifier to exercise discretion about the matter for which the variation is sought.

(4) The application must be made in the approved form and be accompanied by the fee prescribed under a regulation.

(5) If the application is about building work proposed to be carried out and for which a development application has been made under the *Integrated Planning Act 1997*, the IDAS process under that Act—

⁶ Under the *Acts Interpretation Act 1954*, section 7, reference to the Act includes reference to the Standard Building Regulation.

- (a) stops on the day the application is received by the chief executive; and
- (b) starts again the day the chief executive gives the applicant written notice under section 6(5).

6 Deciding application to vary how Standard Building Regulation will apply

(1) If there is an assessment manager or a private certifier for the building work, the chief executive must consult with the assessment manager or the private certifier about the application before deciding it.

(2) The chief executive may consult with any other person about the application before deciding it.

(3) After considering the application, the chief executive must decide to—

- (a) vary how the Standard Building Regulation applies to the building work; or
- (b) refuse to vary how the Standard Building Regulation applies to the building work.

(4) The chief executive must decide the application within 20 business days after the application is made.

(5) The chief executive must, within 5 business days after deciding the application, give written notice of the decision to—

- (a) the applicant; and
- (b) if there is an assessment manager or private certifier for the building work—the assessment manager or private certifier.

(6) Subsection (1) does not apply to building work carried out by or on behalf of the State.

7 Fast-track decisions

(1) The applicant, may, in the application, ask the chief executive to decide the application within 2 business days after making the application.

(2) A request made under subsection (1) must be accompanied by the fee prescribed under a regulation.

(3) The chief executive may grant or refuse the request.

(4) If the chief executive grants the request, the chief executive may, as a condition of granting the request, require the applicant to pay any reasonable additional costs that would be incurred by the chief executive in deciding the application within the 2 business days.

8 Appeal from chief executive's decision

(1) If the applicant is dissatisfied with the chief executive's decision, the applicant may appeal to a tribunal against the decision under the *Integrated Planning Act 1997*.

(2) The appeal must be started within 20 business days after the day notice of the decision is given to the applicant.

9 Effect of variation of Standard Building Regulation

(1) This section applies if the chief executive decides to vary how the Standard Building Regulation applies to the building work.

(2) Subject to any appeal against the chief executive's decision, the Standard Building Regulation, as varied by the decision, applies to the building work.

(3) An assessment manager or private certifier must not refuse to approve an application for building work to which the chief executive's decision relates merely on the ground that the building work does not comply with the Standard Building Regulation.

10 How changes to Standard Building Regulation may affect certain building work to be carried out

(1) This section applies to building work if—

- (a) the lawful carrying out of the work starts before the Standard Building Regulation is amended; or
- (b) approval to carry out the work is given before the Standard Building Regulation is amended, but the work does not start before the amendment commences; or
- (c) application to carry out the work is made before the Standard Building Regulation is amended, but the application is not decided before the Standard Building Regulation is amended; or

(d) planning for carrying out the work started before the Standard Building Regulation is amended and the person deciding the application is satisfied that to require the work to be replanned to conform with the Standard Building Regulation after the amendment would cause financial hardship to the person for whom the work is to be carried out having regard to the following—

- (i) the stage the planning has reached;
- (ii) the nature of the work;
- (iii) the means and circumstances of the person.

(2) For subsection (1)—

- (a) the work is lawfully carried out if the work is carried out in accordance with the Standard Building Regulation in force immediately before the amendment; and
- (b) approval for the work may be given if the approval is given in accordance with the Standard Building Regulation in force immediately before the amendment.

(3) For subsections (1) and (2), an amendment of the Standard Building Regulation includes an amendment of the Building Code of Australia.

11 Alterations to safe existing work

(1) If an application for building work is for adding to or altering a building or other structure, the work must comply with the Standard Building Regulation in force at the time the application for the work is approved.

(2) However, if the person approving the application is satisfied the general safety and structural standards of the building or structure would not be at risk if the addition or alteration were carried out in accordance with the Standard Building Regulation or a local law in force in a local government area at a particular time before the application was made, the person may approve that the work be carried out in accordance with the Standard Building Regulation or local law in force at that time.

12 Alterations to unsafe existing work

(1) This section applies if an application for building work is for adding to or altering a building or other structure and the person approving the

application is satisfied the building or structure is unsafe or structurally unsound.

(2) The person approving the application may require, as a condition of approving the application, that all or part of the building or structure conform with the Standard Building Regulation in force—

- (a) at the time the application is approved; or
- (b) at a time as will ensure the building or structure is made safe and structurally sound.

PART 2A—FIRE SAFETY FOR BUDGET ACCOMMODATION BUILDINGS

Division 1—Interpretation

12A Definitions for pt 2A

In this part—

“**BCA**” means the Building Code of Australia.

“**budget accommodation building**” see section 12B.

“**development application**” see schedule 10 of IPA.

“**development approval**” see schedule 10 of IPA.

“**fire safety management plan**” see the *Fire and Rescue Service Act 1990*, section 104FC.

“**fire safety standard**” see section 12C(1).

“**fire safety system**”, for a building, means the building’s features, and procedures established for the building, providing for all or any of the following—

- (a) warning the building’s occupants about a fire emergency;
- (b) safe evacuation of the building’s occupants;
- (c) extinguishing or restricting the spread of fire in the building.

“**IPA**” means the *Integrated Planning Act 1997*.

12B Meaning of “budget accommodation building”

(1) A “**budget accommodation building**” is a building that—

- (a) has bathroom and sanitary facilities, other than a laundry, shared by the occupants of the building; and
- (b) provides accommodation of a following type for 6 or more persons—
 - (i) boarding house, backpacker hostel or similar type accommodation;
 - (ii) hotel accommodation;
 - (iii) accommodation for persons who have an intellectual or physical disability and require full time or part time care.

(2) However, each of the following is not a budget accommodation building—

- (a) a motel;
- (b) a building that is, or forms part of—
 - (i) a corrective service facility established under the *Corrective Services Act 2000*; or
 - (ii) a detention centre established under the *Juvenile Justice Act 1992*;
- (c) a building used for providing aged care under the *Aged Care Act 1997* (Cwlth);
- (d) a building classified as a class 1a, 2 or 9a building under the BCA.

Division 2—Fire safety standard**12C Fire safety standard**

(1) A regulation may prescribe a standard (the “**fire safety standard**”) for ensuring that all the occupants of a budget accommodation building may be safely evacuated in the event of a fire in the building.

(2) Without limiting subsection (1), the fire safety standard may provide for all or any of the following for the building—

- (a) the allowable number of occupants;

- (b) the provision and maintenance of fire safety systems;
- (c) training programs for occupants and persons employed in the building about—
 - (i) fire management and prevention; or
 - (ii) emergency evacuation.

12D Guidelines for fire safety standard

(1) The chief executive may issue guidelines about ways of complying with the fire safety standard.

(2) Before issuing the guidelines, the chief executive must consult with any entity the chief executive considers appropriate.

12E Public notice of guidelines

(1) After issuing the guidelines, the chief executive must give notice of the guidelines.

(2) The notice must—

- (a) be published in a newspaper the chief executive considers appropriate; and
- (b) state the places where copies of the guidelines may be inspected or bought.

12F Access to guidelines

(1) The chief executive must keep a copy of the guidelines and any document applied, adopted or incorporated by the guidelines available for inspection—

- (a) without charge, during normal business hours at the department's head office; and
- (b) on the department's web site on the internet.⁷

(2) On payment of the fee, if any, decided by the chief executive, a person may obtain a copy of the guidelines.

⁷ The department's head office is at 41 George Street, Brisbane 4000 and its web site on the internet is www.dlqp.qld.gov.au.

(3) The fee decided by the chief executive must be not more than the chief executive's reasonable cost of producing the copy.

Division 3—Budget accommodation buildings built, approved or applied for, before 1 January 1992

12G Application of div 3

This division applies to a budget accommodation building only if—

- (a) construction of the building started before 1 January 1992; or
- (b) construction of the building was—
 - (i) approved, under this Act, before 1 January 1992; and
 - (ii) started on or after 1 January 1992; or
- (c) an application for approval to construct the building—
 - (i) was made, under this Act, before 1 January 1992; and
 - (ii) the approval was given on or after 1 January 1992.

12H Owner must ensure building conforms with fire safety standard

The owner of a budget accommodation building must ensure the building conforms with—

- (a) the provisions of the fire safety standard about emergency lighting and early warning systems within—
 - (i) 1 year after the standard commences; or
 - (ii) the longer period approved for the building under section 12I; and
- (b) the remaining provisions of the standard within—
 - (i) 3 years after the standard commences; or
 - (ii) the longer period approved for the building under section 12I.

Maximum penalty—165 penalty units.

12I Approval of longer period for conformity with fire safety standard

(1) The owner of a budget accommodation building may make written application to the local government to approve a period for the building under section 12H(a)(ii) or (b)(ii).

(2) The local government may—

- (a) consult with any other entity the local government considers appropriate in deciding the application; and
- (b) grant the application only if the local government is satisfied undue hardship would be caused to the building's occupants if the application were refused.

(3) The local government may grant the application with or without the reasonable conditions the local government considers appropriate.

(4) Within 20 business days after receiving the application, the local government must—

- (a) decide the application; and
- (b) give the owner written notice of the decision.

(5) The notice must state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to a tribunal under IPA; and
- (c) if an appeal is made, the appeal must be made within 20 business days after the owner receives the notice.

(6) The owner must comply with each condition imposed on the approval.

Maximum penalty for subsection (6)—165 penalty units.

12J Advice as to conformity with fire safety standard

(1) The owner of a budget accommodation building may make written application to the local government for advice as to whether the building conforms with the fire safety standard.

(2) Within 20 business days after receiving the application, the local government must—

- (a) decide if the building conforms with the fire safety standard; and
- (b) give the owner written notice of the decision.

(3) If the local government decides the building does not conform with the fire safety standard, the notice must state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to a tribunal under IPA; and
- (c) if an appeal is made, the appeal must be made within 20 business days after the owner receives the notice.

(4) The notice must also state what must be done by the owner to make the building conform with the standard.

(5) The owner must comply with the notice.

Maximum penalty for subsection (5)—165 penalty units.

(6) Subsection (3) does not limit the power of the local government under sections 22 and 23.⁸

12K Appeals about conformity with fire safety standard

(1) This section applies if the owner of a budget accommodation building is dissatisfied with—

- (a) a local government decision on an application made by the owner under section 12I(1) or 12J(1); or
- (b) the lack of a decision mentioned in paragraph (a) within 20 business days after the local government received the application (the “**decision period**”).

(2) The owner may appeal to a tribunal under IPA.

(3) The appeal must be started within 20 business days after—

- (a) notice of the decision is given to the owner; or
- (b) if a decision is not given within the decision period, the last day of the decision period.

12L Stay of operation of local government decision

The lodging of a notice of appeal about a local government decision mentioned in section 12K(1)(a) stays the operation of the decision until—

⁸ Sections 22 (Enforcement notices) and 23 (Specific requirements of enforcement notices)

- (a) the tribunal, on the application of the local government, decides otherwise; or
- (b) the appeal is withdrawn; or
- (c) the appeal is dismissed.

12M Local government decisions

(1) This section applies to a decision made, or written notice of which is given, by a local government, after the period stated in section 12I(4) or 12J(2).

(2) The decision is not invalid merely because it was made, or the notice was given, after the period.

Division 4—All budget accommodation buildings

12N Application of div 4

This division applies to a budget accommodation building regardless of when it was, or is, built.

12O Obligation about fire safety management plan

(1) This section applies if—

- (a) the owner of a budget accommodation building prepares a fire safety management plan, under section 12Q(2), for a development application for the building; and
- (b) a development approval is given for the application.

(2) The owner must ensure the fire safety management plan is updated as soon as practicable, but not later than 1 month, after a change in circumstances affecting the plan's compliance with the fire safety standard.

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

(3) A change in circumstances mentioned in subsection (2) includes, for example, a change in the fire safety standard.

(4) The owner must ensure the current fire safety management plan is implemented.

Maximum penalty for subsection (4)—100 penalty units.

12P Accessing fire safety management plan

The owner of a budget accommodation building must ensure a copy of the building's current fire safety management plan is kept in the building and is available for inspection, free of charge, by occupants and other members of the public whenever the building is open for business.

Maximum penalty—20 penalty units.

12Q Development approval for building work for budget accommodation buildings

(1) This section applies to a development application for a budget accommodation building that is made after the commencement of this section and involves building work.

(2) A fire safety management plan is a mandatory requirement in addition to the requirements stated in section 3.2.1(3)(a)⁹ of IPA for the application.

(3) Chapter 5, part 3¹⁰ of IPA does not apply for the application if it is for building work required to ensure the building conforms, under section 12H, with the fire safety standard.

(4) For the part of the application relating to building work for a budget accommodation building—

- (a) section 3.5.13(4)¹¹ of IPA does not apply; and
- (b) the assessment manager must refuse the part of the application if the assessment manager is satisfied—
 - (i) the development does not comply with the applicable code and compliance with the code can not be achieved by imposing reasonable conditions; or
 - (ii) the fire safety management plan does not comply with the *Fire and Rescue Service Act 1990*, section 104FC,¹² and compliance with the section can not be achieved by imposing reasonable conditions.

9 IPA, section 3.2.1 (Applying for development approval)

10 IPA, chapter 5 (Miscellaneous), part 3 (Private certification)

11 IPA, section 3.5.13 (Decision if application requires code assessment)

12 *Fire and Rescue Service Act 1990*, section 104FC (Meaning of “fire safety management plan”)

12R Annual inspection of buildings for which development approval is given

- (1) This section applies to a budget accommodation building if—
- (a) a development approval is given for building work for the building after the commencement of this section; and
 - (b) the building work involves an alternative solution, within the meaning of the BCA,¹³ that includes fire safety management procedures as a condition of the use and occupation of the building.
- (2) The local government must inspect the building annually—
- (a) to monitor compliance, by the owner of the building, with this part; and
 - (b) to inspect the records required, under this Act, to be kept by the owner for this part.

Division 5—Miscellaneous**12S Obligations of entities about guidelines for fire safety standard and fire safety management plans**

- (1) In carrying out a function or power conferred on an entity under this Act or another local government Act, the entity must have regard to—
- (a) for a matter relating to the fire safety standard—the information in the fire safety standard guidelines; or
 - (b) for a matter relating to the fire safety management plan—the information in the fire safety management plan guidelines.
- (2) In ensuring a budget accommodation building conforms with the fire safety standard, the owner of the building must have regard to the information in the fire safety standard guidelines.

13 BCA, part A1 (Interpretation), section A1.1 (Definitions)—

“**Alternative Solution**” means a *Building Solution* which complies with the *Performance Requirements* other than by reason of satisfying the *Deemed-to-Satisfy Provisions*.

(3) In preparing a fire safety management plan for a budget accommodation building, the owner of the building must have regard to the information in—

- (a) the fire safety standard guidelines; and
- (b) the fire safety management plan guidelines.

(4) In this section—

“**fire safety management plan guidelines**” means the guidelines made under the *Fire and Rescue Service Act 1990*, section 104FD.¹⁴

“**fire safety standard guidelines**” means the guidelines made under section 12D.

“**local government Act**” means a local government Act within the meaning of the *Local Government Act 1993*, section 3.¹⁵

PART 3—SWIMMING POOL FENCING

13 Local law for fencing of swimming pools

(1) This section applies if a local government has a local law requiring—

- (a) the construction of fencing around swimming pools; or
- (b) doors, windows and other openings giving access to swimming pools to comply with the local law.

(2) The local law has effect only if the local law can reasonably be characterised as being directed to inhibiting young children from accessing swimming pools.

(3) A local law is of no effect if the local law—

14 *Fire and Rescue Service Act 1990*, section 104FD (Guidelines for preparing fire safety management plans)

15 *Local Government Act 1993*, schedule (Dictionary)—

“**local government Act**” means an Act under which a local government may exercise the jurisdiction of local government, and includes, for example, this Act, the *Integrated Planning Act 1997*, *Water Act 2000*, chapter 3, a local law, a planning scheme or interim development control provisions.

- (a) requires the construction of fencing around swimming pools on land used, or to be used, for a tourist resort complex and the land is specified under a regulation; or
- (b) allows the construction of fencing around outdoor swimming pools on residential land to a standard less effective than the standard required by section 14.

14 Outdoor swimming pools must be fenced

(1) This section applies if an outdoor swimming pool is to be constructed or installed on, or is on, residential land.

(2) Before a person fills the pool with water to a depth of 300 mm or more, the person must ensure—

- (a) fencing that complies with the design, construction and performance standards (the “**standards**”) prescribed under a regulation is constructed around the pool; and
- (b) a building certifier has, after inspecting the pool and fencing, issued the owner of the land with a certificate in the approved form stating the pool and fencing comply with the requirements for pools and fencing prescribed under a regulation.

Maximum penalty—165 penalty units.

(3) The owner must—

- (a) keep the fencing in good condition; and
- (b) at all times, ensure the fencing complies with the standards.

Maximum penalty—165 penalty units.

(4) If the fencing no longer complies with the standards because the owner or occupier of adjoining land has constructed or placed something on the adjoining land, the owner of the land with the pool on it is not required to construct additional fencing or change existing fencing to comply with the standards.

15 Application for exemption from fencing

(1) An owner of residential land on which there is an outdoor swimming pool, or on which an outdoor swimming pool is to be constructed or installed, may apply to the local government for exemption from complying with section 14(2).

(2) The local government may grant the application only if it is satisfied it is unlikely a young child would gain access to the pool because of—

- (a) the physical nature or location of the land concerned; or
- (b) the design or construction of the pool or fencing; or
- (c) the location of the pool or fencing.

(3) The local government may grant the application subject to the conditions the local government considers appropriate to inhibit young children accessing the pool.

(4) If an application is made under this section, the local government must decide the application within 5 business days after the application is made.

(5) As soon as practicable after making the decision, the local government must give the owner written notice of the decision.

(6) The notice must state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to a tribunal under the *Integrated Planning Act 1997*; and
- (c) the appeal must be made within 20 business days after the day the owner receives the notice.

(7) The owner of the land must comply with each condition attached to the exemption.

Maximum penalty for subsection (7)—165 penalty units.

16 Revocation of decisions or previous variations

(1) This section applies if, in relation to fencing around an outdoor swimming pool on residential land, a local government has previously made a decision or given a variation and the local government is satisfied 1 or more of the following has happened—

- (a) the decision or variation was based on a false or misleading particular given by the owner of the land;
- (b) a significant change has happened so that reasonable provision no longer exists for inhibiting access by young children to the pool;

- (c) if the decision or variation was subject to conditions—the owner has contravened a condition.

(2) The local government must give the owner a show cause notice inviting the owner to show cause why the decision or variation should not be revoked.

(3) Subsection (2) applies only if the work the owner must do to comply with section 14(2) is not of a minor nature.

(4) After considering any representations made to it under the show cause notice, the local government may, by a further written notice (a “**revocation notice**”) given to the owner, revoke the decision or variation previously given.

(5) The revocation notice must specify—

- (a) what the owner must do to comply with section 14(2); and
(b) the day by which the work must be done.

(6) The owner must comply with the revocation notice.

Maximum penalty for subsection (6)—165 penalty units.

(7) If the owner fails to perform the work required to be performed under the revocation notice, the failure is taken to be a failure mentioned in the *Local Government Act 1993*, section 1066.¹⁶

(8) In this section—

“**variation**” means a variation given under section 30M as in force immediately before the commencement of the *Building and Integrated Planning Amendment Act 1998*, part 2.¹⁷

17 Advice as to compliance

(1) The owner of residential land on which there is an outdoor swimming pool may make written application to the local government for written advice as to whether the fencing around the pool complies with section 14(2).

(2) If an application is made under subsection (1), the local government must—

¹⁶ *Local Government Act 1993*, section 1066 (Performing work for owner or occupier)

¹⁷ Section 30M (Variations), was repealed by the *Building and Integrated Planning Amendment Act 1998*.

- (a) decide if the fencing complies with section 14(2); and
- (b) give the owner written notice of its decision within 10 business days after receiving the application.

(3) If the local government decides the fencing does not comply with section 14(2), the local government must—

- (a) include in the written notice given under subsection (2) the reasons why the fencing does not comply; and
- (b) advise the owner what must be done to make the fencing comply with section 14(2).

(4) The owner must comply with the notice.

Maximum penalty—165 penalty units.

(5) Subsection (3) does not limit the power of the local government under sections 22 and 23.

18 Access to outdoor swimming pools must be kept secure

The occupier of residential land on which there is an outdoor swimming pool must ensure that any gate or door giving access to the pool is kept securely closed at all times when the gate or door is not in use.

Maximum penalty—165 penalty units.

19 Apportionment of cost of constructing dividing fence

(1) The cost of constructing, altering, repairing, replacing and maintaining an outdoor swimming pool fence consisting of the whole or part of a dividing fence is, to the extent it is attributable to work done to comply with section 14(2), to be borne—

- (a) by the owner of the residential land on which the pool is constructed or installed; or
- (b) if the work or part of the work is done to comply with this part in relation to more than 1 parcel of residential land—equally by the owners of the parcels of land where the pools are constructed or installed.

(2) Subsection (1) applies despite the *Dividing Fences Act 1953*.

(3) A local law mentioned in section 13(1) does not limit the discretion of a Magistrates Court under the *Dividing Fences Act 1953*.

20 Appeals about swimming pool fencing

(1) An owner of residential land on which there is an outdoor swimming pool who is dissatisfied with a decision, or the lack of a decision within the time stated for the giving of the decision, of the local government or a private certifier about a matter relating to the fencing around the pool may appeal to a tribunal under the *Integrated Planning Act 1997*.

(2) The appeal must be started within 20 business days after—

- (a) notice of the decision is given to the person; or
- (b) if a decision is not given within the time stated for the giving of the decision—the last day when the decision could have been made.

PART 4—SHOW CAUSE AND ENFORCEMENT NOTICES

21 Show cause notices

(1) A notice (a “**show cause notice**”) inviting a person to show cause why an enforcement or revocation notice should not be given to the person must—

- (a) be in writing; and
- (b) outline the facts and circumstances forming the basis for the belief that an enforcement or revocation notice should be given to the person; and
- (c) state that representations may be made about the show cause notice; and
- (d) state how the representations may be made; and
- (e) state where the representations may be made or sent; and
- (f) state—
 - (i) a day and time for making the representations; or
 - (ii) a period within which the representations must be made.

(2) The day or period stated in the notice must be, or must end, at least 20 business days after the notice is given.

22 Enforcement notices

(1) A local government may give a notice (an “**enforcement notice**”) to the owner of a building, structure or building work if the local government reasonably believes the building, structure or building work—

- (a) was built before the commencement of this section without, or not in accordance with, the approval of the local government; or
- (b) is dangerous; or
- (c) is in a dilapidated condition; or
- (d) is unfit for use or occupation; or
- (e) is filthy, infected with disease or infested with vermin.

(2) A local government may also give an enforcement notice to a person who does not comply with a particular matter in this Act.

(3) A private certifier may also give an enforcement notice under subsection (2) in relation to building work for which the private certifier is engaged to perform the functions of a private certifier.

(4) However, before a local government or private certifier gives a person an enforcement notice, the local government or private certifier must give the person a show cause notice.

(5) Subsection (4) applies only if the matter, about which the local government or private certifier is proposing to give the enforcement notice, is not of a dangerous or minor nature.

(6) An enforcement notice given under this section is taken to be an enforcement notice given under the *Integrated Planning Act 1997*, section 4.3.11.¹⁸

23 Specific requirements of enforcement notices

(1) Without limiting specific requirements an enforcement notice may impose, an enforcement notice may require a person to do any of the following—

- (a) to apply for a development permit under the *Integrated Planning Act 1997*;

18 *Integrated Planning Act 1997*, section 4.3.11 (Giving enforcement notice)

- (b) to do, or not to do, another act to ensure building work complies with the approval of the local government given before the commencement of this section;
- (c) to repair or rectify the building or structure;
- (d) to secure the building or structure (whether by a system of supports or in another way);
- (e) to fence off the building or structure to protect persons;
- (f) to cleanse, purify and disinfect the building or structure;
- (g) to demolish or remove the building or structure;
- (h) to comply with this Act for a particular matter.

(2) However, a person may be required to demolish or remove the building or structure only if the local government reasonably believes it is not possible and practical to take steps to comply with subsection (1)(c) to (f).

24 Appeals against enforcement notices

(1) A person who is given an enforcement notice under section 22 may appeal to a tribunal as if the appeal were an appeal under the *Integrated Planning Act 1997*.

(2) The appeal must be started within—

- (a) if the notice is given in relation to a dangerous building or structure—5 business days; or
- (b) if the notice is given for any other purpose—20 business days after the enforcement notice is given to the person.

25 Register of notices given

(1) Each local government must keep the register maintained under this section before the commencement of the *Building and Integrated Planning Amendment Act 1998* open to inspection by the public.

(2) A local government may remove from the register all entries and details relating to a notice when the requirements of the notice have been complied with.

26 Action local government may take if enforcement notice not complied with

If an enforcement notice is given under section 22(1)(b) to (e) or (2) to an owner and the owner fails to perform the work required to be performed under the notice, the failure is taken to be a failure mentioned in the *Local Government Act 1993*, section 1066.¹⁹

27 Removal of persons in buildings to be demolished

(1) This section applies if it is necessary or desirable to remove any person from a building or other structure that is to be wholly or partly demolished by a local government under this Act.

(2) For the purpose of removing any person from a building or other structure referred to in subsection (1)—

- (a) any officer of the local government concerned who is authorised in writing in that behalf by the chief executive officer of the local government may, without other authority than this Act, enter upon such building or other structure and all parts of the building or structure and upon the land on which it stands; and
- (b) any officer may remove from such building or other structure all persons found in the building or structure, using such force as is reasonably necessary for the purpose.

(3) An officer of a local government mentioned in subsection (2) is a public official for the *Police Powers and Responsibilities Act 2000*.

¹⁹ *Local Government Act 1993*, section 1066 (Performing work for owner or occupier)

PART 5—ACCREDITING BODIES AND BUILDING CERTIFIERS

Division 1—Accreditation

28 Authorisation of accrediting bodies

(1) A regulation may authorise an incorporated or statutory body to be an accrediting body for accrediting building certifiers.

(2) An incorporated or statutory body may not be authorised as an accrediting body unless the accrediting body has identifiable competence and expertise in accrediting building certifiers.

(3) More than 1 incorporated or statutory body may be authorised as an accrediting body for accrediting building certifiers.

29 Function of accrediting bodies

(1) The function of an accrediting body is to accredit persons and public sector entities as building certifiers.

(2) For subsection (1), an accrediting body must—

- (a) maintain a code of conduct by which the performance of building certifiers may be measured and to which building certifiers must comply; and
- (b) maintain standards specifying the levels of accreditation available and the minimum requirements for each level; and
- (c) have balanced stakeholder representation, including industry, local government and State government representation, on all its committees; and
- (d) monitor compliance by building certifiers with accreditation requirements and implement disciplinary mechanisms in cases of noncompliance; and
- (e) carry out audits of work by building certifiers; and
- (f) subject to section 33(4), investigate all written complaints made to the accrediting body about alleged breaches by building certifiers of the code of conduct or this or another Act; and

- (g) review the accreditation of, and if necessary take disciplinary action against, building certifiers for proven unethical or incompetent conduct, noncompliance with accreditation requirements or failure to comply with the duties of a building certifier as prescribed under this or another Act; and
- (h) issue annual practice certificates that will ensure building certifiers have maintained compliance with accreditation requirements; and
- (i) give the chief executive and local governments, at least once each year, a list of building certifiers and a summary of any disciplinary action taken; and
- (j) keep available for purchase by members of the public, on payment of a reasonable fee—
 - (i) a list of building certifiers; and
 - (ii) information about the accreditation history and status of each building certifier; and
 - (iii) documented procedures for all accrediting body functions.

(3) An accrediting body must not disclose unproved complaints against a building certifier.

30 Persons must not perform or exercise building certifying functions without accreditation

(1) A person must not perform or exercise a building certifying function unless the person holds current accreditation as a building certifier.

Maximum penalty—165 penalty units.

(2) Subsection (1) does not apply to a corporation performing or exercising a building certifying function if—

- (a) the corporation is an assessment manager; and
- (b) the corporation is not practising as a private certifier in performing or exercising the function; and
- (c) the function is performed or exercised on behalf of the corporation by an individual who holds current accreditation as a building certifier and is employed by the corporation to perform or exercise the function.

(3) In this section—

“**building certifying function**” means a building certifier’s function under the *Standard Building Regulation 1993*.

Division 2—Jurisdiction

31 Jurisdiction of building certifiers

(1) This section applies only to the building work component of a development application.

(2) In assessing or deciding a development application under the *Integrated Planning Act 1997*, section 5.3.5,²⁰ a building certifier must assess and decide²¹ the application against—

(a) this Act;²² or

(b) to the extent a local law is about the construction of fencing around swimming pools and is not inconsistent with this Act—the local law.²³

(3) If a building certifier is required under this Act to inspect work relating to a development application, the building certifier’s inspection of the work must be against this Act.

(4) If a building certifier gives a show cause or enforcement notice under the *Integrated Planning Act 1997*, the notice must relate to building work.

(5) Nothing in this section prevents a building certifier who has the qualifications, necessary experience or accreditation for assessing or deciding another aspect of a development application from assessing and deciding the other aspect.

20 *Integrated Planning Act 1997*, section 5.3.5 (Private certifier may decide certain development applications and inspect and certify certain works)

21 Under the *Integrated Planning Act 1997*, section 5.3.4, the application must not be inconsistent with any earlier approval and under the *Integrated Planning Act 1997*, section 5.3.5(4), the application must not be decided until certain other assessments for the application are completed.

22 Under the *Acts Interpretation Act 1954*, section 7, reference to this Act includes reference to the *Standard Building Regulation*.

23 See also the *Integrated Planning Act 1997*, section 3.5.4 (Code assessment).

Division 3—Auditing building certifiers**32 Accrediting body must audit building certifier's work**

(1) For complying with its function under section 29, an accrediting body must audit the work of a building certifier.

(2) When an accrediting body takes action under subsection (1)—

- (a) the accrediting body has the same powers it would have if it took action under division 5; and
- (b) the building certifier must comply with the requirements of division 5 as if the requirements were made in relation to an action under division 5.

(3) If the accrediting body detects professional misconduct while auditing the work of a building certifier, the accrediting body must undertake disciplinary procedures as if a complaint had been received about the professional misconduct.

Division 4—Complaints**33 Making a complaint against a building certifier**

(1) A person may make a complaint to the accrediting body about a building certifier if the person believes the building certifier is guilty of professional misconduct.

(2) A complaint must—

- (a) be in writing; and
- (b) contain particulars of the allegations on which it is founded; and
- (c) be verified by statutory declaration.

(3) The accrediting body may require the complainant to give further particulars of the complaint.

(4) The accrediting body may dismiss any complaint without investigation if the further particulars are not given or if the complaint or the further particulars are not verified by statutory declaration.

34 Building certifier must be advised of complaint

(1) After receiving the complaint, the accrediting body must, by written notice—

- (a) inform the building certifier of the nature of the complaint; and
- (b) invite the building certifier to make, within the time stated in the notice, representations to the accrediting body about the complaint.

(2) The time stated in the notice must be at least 5 business days after the notice is given.

(3) The accrediting body must have regard to the representations when making its decision on the complaint.

35 Accrediting body must investigate complaint

(1) The accrediting body must conduct an investigation into the complaint as soon as practicable.

(2) The accrediting body may deal with 1 or more complaints about a building certifier in the same investigation.

(3) If during an investigation the accrediting body is satisfied there is matter about which another complaint could have been made against the building certifier, the accrediting body may deal with the matter in its investigation as if a complaint had been made about the matter.

*Division 5—Investigations***36 Accrediting body may require documents to be produced**

(1) For investigating a complaint or conducting an audit, an accrediting body may, by written notice given to a building certifier, require the building certifier to produce a document to the accrediting body, or a person authorised by the accrediting body (an “**accrediting auditor**”).

(2) The notice may also state—

- (a) a time and place by which the document must be produced; or
- (b) that the document must be verified by statutory declaration.

(3) The time for compliance stated in the notice must be a reasonable time.

37 Inspection of documents

An accrediting auditor may inspect any document produced to the accrediting body and copy it or any part of it.

38 Power to enter and inspect building

(1) For investigating a complaint or conducting an audit, an accrediting auditor may enter and inspect a building.

(2) The entry and inspection must be—

- (a) made with the consent of the person in control of the building; or
- (b) authorised by warrant of a magistrate.

(3) An accrediting auditor may apply to a magistrate for a warrant under this section for a particular building.

(4) The application must be sworn and state the grounds on which it is sought.

(5) If the magistrate requires further information about the grounds on which the warrant is sought, the magistrate must not issue the warrant unless the accrediting auditor or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.

(6) The magistrate may issue the warrant only if the magistrate is satisfied there is a proper reason for entering and inspecting the building.

(7) The warrant must state—

- (a) that the accrediting auditor may, with necessary and reasonable help and force, enter and inspect the building; and
- (b) the hours of the day when entry may be made; and
- (c) the day (not more than 14 days after the issue of the warrant) on which the warrant ceases to have effect.

39 Cooperating with investigation or audit

(1) A building certifier who is being investigated or audited by the accrediting body must assist in and cooperate with the investigation or audit.

(2) A building certifier is guilty of professional misconduct if the building certifier, without reasonable excuse—

- (a) fails to comply with subsection (1) or section 36; or
- (b) misleads or obstructs an accrediting body in the exercise of any function under this division.

40 Decision after investigation or audit completed

(1) After investigating a complaint or conducting an audit, the accrediting body must—

- (a) decide whether or not the building certifier is guilty of professional misconduct; and
- (b) give the building certifier and the complainant (if any) written notice of the decision.

(2) If the accrediting body decides the building certifier is guilty of professional misconduct, the accrediting body must, by written notice—

- (a) caution or reprimand the building certifier; or
- (b) impose the conditions it considers appropriate on the building certifier's accreditation; or
- (c) direct the building certifier to complete the educational courses stated by the accrediting body; or
- (d) direct the building certifier to report on his or her practice as a building certifier at the times, in the way and to the persons stated by the accrediting body; or
- (e) suspend the building certifier's accreditation for the term the accrediting body considers appropriate; or
- (f) cancel the building certifier's accreditation; or
- (g) if the accrediting body is satisfied the building certifier is generally competent and diligent and that no other material complaints have been made against the building certifier—take no further action.

(3) The notice given under subsection (1)(b) must also state—

- (a) the reasons for the decision; and
- (b) the decision may be appealed to the chief executive; and

- (c) the appeal must be made within 20 business days after the day the person receives the notice.

41 Accrediting body's decision may be appealed

(1) If a building certifier or a complainant is dissatisfied with the accrediting body's decision, the building certifier or the complainant may appeal to the chief executive against the decision.

(2) The appeal must be made within 20 business days after the day the appellant receives notice of the decision.

(3) If the building certifier appeals to the chief executive, the building certifier may apply to the court for a stay of the decision.

Division 6—Chief executive and court powers

42 Chief executive may investigate building certifier

(1) If a building certifier or a complainant appeals to the chief executive under section 41, the chief executive may investigate the matter about which the decision was made.

(2) In investigating the matter the chief executive has the same powers as the accrediting body had to investigate the matter.

43 Chief executive's decision

(1) After investigating the matter, the chief executive must—

- (a) decide whether or not the building certifier is guilty of professional misconduct; and
- (b) give a copy of the chief executive's decision to—
 - (i) the building certifier; and
 - (ii) the complainant; and
 - (iii) the accrediting body.

(2) In deciding the matter, the chief executive may direct the accrediting body to do anything the accrediting body could have done under section 40.

(3) The accrediting body must comply with the direction and do anything necessary to give effect to it.

44 Appeal to the court against the chief executive's decision

(1) If a building certifier, a complainant or the accrediting body is dissatisfied with the chief executive's decision, the building certifier, complainant or accrediting body may appeal to the court against the decision.

(2) The appeal must be made within 20 business days after the appellant receives notice of the decision.

(3) If the building certifier appeals to the court, the building certifier may also apply to the court for a stay of the decision.

45 Court may make certain disciplinary findings

(1) If an appeal is made to the court under section 44, the court must decide whether or not the building certifier is guilty of professional misconduct.

(2) The registrar of the court must give a copy of the court's decision to—

- (a) the building certifier; and
- (b) the complainant; and
- (c) the accrediting body.

(3) In deciding the matter, the court may—

- (a) direct the accrediting body to do anything the accrediting body could have done under section 40; or
- (b) impose a fine, of not more than 1 665 penalty units on the building certifier; or
- (c) order the building certifier to pay to the complainant or another person the amount the court considers appropriate as compensation for—
 - (i) any costs in bringing the complaint; and
 - (ii) any damage suffered by the complainant or the other person as a result of the professional misconduct; or

(d) make any other order the court considers appropriate.

(4) The accrediting body must comply with the direction and do anything necessary to give effect to it.

(5) If the court orders that a building certifier's accreditation be cancelled, the court may also order that the building certifier can not reapply for accreditation by any accrediting body within the period (including the period of the building certifier's lifetime) stated by the court.

PART 6—GENERAL PROVISIONS

46 Approved forms

The chief executive may approve forms for use under this Act.

46A Fees for statutory functions

(1) A local government may, by local law or resolution, fix a reasonable fee in relation to the performance of a function imposed on the local government under this Act.

(2) The local law or resolution must prescribe the person liable to pay the fee.

(3) A local government is taken to have always had power, by local law or resolution, to fix a fee mentioned in subsection (1).

(4) Subsection (3) does not affect a decision of a court made before the commencement of this subsection in relation to a particular action about the validity of a fee mentioned in subsection (1) fixed by local law or resolution and imposed on a particular person.

47 Giving security in certain cases

(1) This section applies to approvals to carry out building work relating to—

- (a) the removal of a building or other structure (whether for rebuilding at another site or not); and

(b) the rebuilding of a building or other structure that is to be removed from another site.

(2) If the application is made to a local government, the local government may, before approving the application or as a condition of the approval, require the applicant to give the local government security for the amount and in the form the local government decides.

(3) If the application is made to a private certifier, the private certifier must, before approving the application, ask the local government to advise the amount and the form of the security the local government requires for the building work.

(4) If a request is made under subsection (3), the local government must, within 5 business days after the request is made, give the owner and the private certifier written notice of the amount and the form of the security the local government requires for the application.

(5) The owner may appeal to a tribunal under the *Integrated Planning Act 1997* against the decision of the local government about the amount and the form of the security.

(6) The appeal must be started within 20 business days after notice of the decision is given to the owner.

(7) If the local government does not comply with subsection (4), the private certifier must decide the application without requiring any security.

(8) The amount of the security must not be more than the value of the building work to be carried out in accordance with the Standard Building Regulation.

(9) Before approving the application, the private certifier must be satisfied the security has been given to the local government.

(10) If an approval mentioned in this section is given and the approval lapses because the building work has not been substantially completed within the time prescribed for that purpose in the Standard Building Regulation, the local government may take the action it considers necessary to have the building work completed in accordance with the approval.

(11) In taking action under subsection (10), the local government may use all or part of the security given for the building work.

(12) If building work mentioned in this section is approved and security is given for the building work, the local government—

- (a) may at any time, having regard to the progress being made in carrying out the building work, release part of the security to the person who gave it; and
- (b) must, if the building work has been completed in accordance with the approval (other than under subsection (10)), refund the security or, as the case may be, the balance of the security to the person who gave it.

48 Information to be supplied by the State

If building work mentioned in the *Integrated Planning Act 1997*, schedule 8, part 2 is carried out by or on behalf of the State or a public sector entity, the State must give to the local government the information prescribed under a regulation.

49 Owner liable for offences under Standard Building Regulation

If the Standard Building Regulation requires that an act be done or not done but does not state who is to do, or not to do, the act, and the act is not done or, as the case may be, done in breach of the Standard Building Regulation, the owner of the building or other structure in respect of which the breach occurs is taken to be guilty of the offence occasioned by the breach and may be proceeded against accordingly.

50 Prosecution of offences

(1) A prosecution in respect of an offence against this Act (including any offence that consists of a breach of the Standard Building Regulation as duly modified in relation to any area) shall be by way of summary proceeding under the *Justices Act 1886* upon complaint laid within 12 months after the commission of the offence or within 6 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.

(2) A person who may lay a complaint in respect of an offence against this Act is a local government or a person authorised in that behalf by a local government.

(3) It shall not be necessary to prove the authority of the complainant in any proceeding in respect of an offence against this Act.

(4) Despite subsection (2), any person may lay a complaint in for an offence against part 5 of this Act or parts 11 and 12 of the Standard Building Regulation.

51 Liability for corporation's default

Where an offence against this Act is committed by a body corporate each member of the governing body of that body corporate shall be taken to have committed the offence and may be punished for the offence accordingly, in addition to the body corporate, unless the member proves that the member had no knowledge of the commission of the offence or could not have prevented its commission by the exercise of reasonable diligence.

52 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may make provision with respect to—

- (a) the fees payable under the Act; and
- (b) flammable and combustible liquids; and
- (ba) the records required for this Act; and
- (c) fixing a penalty for an offence against a regulation (including different penalties for successive offences against a regulation) of a fine of not more than 165 penalty units.

53 Day when Standard Building Regulation was made for Statutory Instruments Act 1992

For the *Statutory Instruments Act 1992*, part 7,²⁴ the Standard Building Regulation is taken to have been made on 14 December 1993.

²⁴ *Statutory Instruments Act 1992*, part 7 (Staged automatic expiry of subordinate legislation)

PART 7—SAVINGS AND TRANSITIONAL PROVISIONS

54 Swimming pool fencing compliance—hardship

(1) This section applies if—

- (a) before the commencement of this section, a local authority, under section 49H(11)(b) of the *Local Government Act 1936*, extended the time for an owner to comply with section 49H(4) of the Act; and
- (b) immediately before the commencement of this section, the extension was still in force.

(2) The extension continues, in accordance with its terms, as an extension of time for the owner to comply with section 14.

(3) The local government concerned may at any time, and subject to the reasonable conditions it considers appropriate, extend the time for the owner to comply with section 14 if—

- (a) the owner files a written application for an extension with the local government while a previously given extension is still in force; and
- (b) the local government is satisfied that compliance within the time provided for in the previously given extension would cause the owner financial hardship.

55 References to Standard Building Law etc.

A reference in an Act or document to the *Standard Building By-laws 1991*, the Standard Building By-laws (however described) or the Standard Building Law is a reference to the Standard Building Regulation.

Example—

A reference to the Standard Building By-laws as ‘those by-laws’ is a reference to the Standard Building Regulation.

56 Existing referees

A person who, immediately before the commencement of this section, was a referee under this Act is, until the end of the term for which the person was appointed under this Act, taken to be a referee appointed under the *Integrated Planning Act 1997*, section 4.2.36.

57 Existing registrar

The person who, immediately before the commencement of this section, was the registrar under this Act is taken to be the registrar appointed under the *Integrated Planning Act 1997*, section 4.2.8.

58 Lawfully constructed buildings and structures protected

If a building or structure was lawfully constructed before the commencement of this section, the Standard Building Regulation can not require the building or structure to be altered or removed unless the building or structure is—

- (a) dangerous; or
- (b) in a dilapidated condition and unfit for use or occupation; or
- (c) filthy; or
- (d) is infected with disease; or
- (e) is infested with vermin.

59 Lawfully constructed swimming pool fences protected

If a swimming pool fence was lawfully constructed and maintained before the commencement of this section, the Standard Building Regulation can not require the fence to be altered unless the fence is no longer maintained.

ENDNOTES**1 Index to endnotes**

	Page
2 Date to which amendments incorporated	49
3 Key	50
4 Table of reprints	50
5 Tables in earlier reprints	51
6 List of legislation	51
7 List of annotations	54
8 List of forms notified or published in the gazette.	72
9 Table of renumbered provisions	72
10 Provisions that have not commenced and are not incorporated into reprint	74

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 7 February 2003. Future amendments of the Building Act 1975 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to Act No. 52 of 1991 and SL No. 181 of 1991	1 January 1992	1 June 1992
2	to Act No. 76 of 1993	26 March 1994	26 March 1994
2A	to Act No. 57 of 1995	28 November 1995	26 June 1996
2B	to Act No. 28 of 1997	13 July 1997	12 August 1997
3	to Act No. 13 of 1998	30 April 1998	30 April 1998
3A	to Act No. 31 of 1998	12 October 1998	3 November 1998
3B	to Act No. 4 of 2000	16 March 2000	23 March 2000
3C	to Act No. 5 of 2000	4 September 2000	10 October 2000
3D	to Act No. 100 of 2001	19 December 2001	2 January 2002
			(Column discontinued) Notes
3E	to Act No. 7 of 2002	1 July 2002	
3F	to Act No. 77 of 2002	7 February 2003	R3F withdrawn, see R4
4	to Act No. 77 of 2002	7 February 2003	

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	2
Changed names and titles	2
Corrected minor errors	1, 3
Obsolete and redundant provisions	2
Renumbered provisions	3

6 List of legislation

Building Act 1975 No. 11

date of assent 15 May 1975

pts 5–6 and 8 and sch commenced 1 April 1976 (proc pubd gaz 6 March 1976 p 886)

remaining provisions commenced 31 May 1975 (proc pubd gaz 31 May 1975 p 748)

amending legislation—

Building Act Amendment Act 1978 No. 47

date of assent 12 June 1978

commenced 21 September 1978 (proc pubd gaz 23 September 1978 p 245)

Builders' Registration and Home-owners' Protection Act 1979 No. 69 s 4(2)–(3)

date of assent 21 December 1979

commenced 19 May 1980 (proc pubd gaz 12 April 1980 p 1344)

Building Act Amendment Act 1981 No. 53

date of assent 12 June 1981

ss 1–2 commenced on date of assent

remaining provisions commenced 29 June 1981 (proc pubd gaz 27 June 1981 p 1710)

Building Act Amendment Act 1984 No. 45

date of assent 10 May 1984

ss 1–2 commenced on date of assent

ss 3, 5(c), 17, 23, 25 and 26 commenced 7 July 1984 (proc pubd gaz 7 July 1984 p 1608)

remaining provisions commenced 2 June 1984 (proc pubd gaz 2 June 1984 p 987)

Building Act Amendment Act 1984 (No. 2) No. 114

date of assent 18 December 1984

ss 1–2 commenced on date of assent

remaining provisions commenced 2 March 1985 (proc pubd gaz 23 February 1985 p 942)

Building Act Amendment Act 1987 No. 69

date of assent 1 December 1987

ss 1–2 commenced on date of assent

remaining provisions commenced 28 March 1988 (proc pubd gaz 26 March 1988 p 1735)

Public Service Management and Employment Act 1988 No. 52 s 44 sch 3

date of assent 12 May 1988

commenced 18 July 1988 (proc pubd gaz 16 July 1988 p 2876)

Local Government (Planning and Environment) Act 1990 No. 61 s 8.8 schs 1, 2

date of assent 18 September 1990

commenced 15 April 1991 (proc pubd gaz 6 April 1991 p 2009)

Local Government Act and Other Acts Amendment Act 1990 No. 107 pt 4

date of assent 18 December 1990

commenced 1 February 1991 (proc pubd gaz 19 January 1991 p 144)

Building Act Amendment Act 1991 No. 52

date of assent 10 September 1991

ss 1.1–1.2 commenced on date of assent

remaining provisions commenced 1 January 1992 (1991 SL No. 180)

Standard Building By-law (Swimming Pool Fencing) Order 1991 SL No. 75

pubd gaz 14 September 1991 pp 128–133

commenced 14 September 1991 (see s 2)

Standard Building By-laws Amendment Order 1991 SL No. 181

pubd gaz 21 December 1991 pp 2089–129

ss 1, 3 commenced on date of publication

remaining provisions commenced 1 January 1992 (see s 3)

Local Government Act 1993 No. 70 ss 1–2, 804 sch (this Act is amended, see amending legislation below)

date of assent 7 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 26 March 1994 (see s 2(5))

amending legislation—

Local Government Legislation Amendment Act 1994 No. 1 pt 3 (amends 1993 No. 70 above)

date of assent 24 February 1994

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1

date of assent 14 December 1993

commenced on date of assent

Transport Infrastructure Amendment Act (No. 2) 1994 No. 49 ss 1–2, 6 sch 2

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 18 November 1994 (1994 SL No. 399)

Electricity Act 1994 No. 64 ss 1–2, 293 sch 4

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 1995 (1994 SL No. 467)

Statute Law (Minor Amendments) Act 1995 No. 50 ss 1–3, sch

date of assent 22 November 1995

commenced on date of assent

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2

date of assent 28 November 1995

commenced on date of assent

Electricity Amendment Act 1997 No. 26 ss 1–2, 57 sch

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 177)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3) pt 2

date of assent 23 March 1998

ss 1–2 commenced on date of assent

ss 3, 9 (so far as it inserts the definitions “accrediting body”, “building certifier”, “court” and “private certifier”), 19 (so far as it inserts pt 6B div 1) commenced 30 March 1998 (1998 SL No. 55)

remaining provisions commenced 30 April 1998 (1998 SL No. 55)

Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(5) pt 3

date of assent 3 September 1998

ss 1–2 commenced on date of assent

ss 59, 61, 65 commenced 12 October 1998 (1998 SL No. 270)

remaining provisions commenced 4 September 2000 (automatic commencement under AIA s 15DA(2)) (1999 SL No. 193 s 2)

Local Government and Other Legislation Amendment Act 2000 No. 4 ss 1, 2(5) pt 3 s 94 sch

date of assent 16 March 2000

commenced on date of assent (see s 2(5))

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Integrated Planning and Other Legislation Amendment Act 2001 No. 100 pts 1, 3

date of assent 19 December 2001

ss 1–2, 86, 88 commenced on date of assent (see s 2(1))

remaining provision not yet proclaimed into force (see s 2(2))

Note—AIA s 15DA does not apply to this Act (see s 2(3))

Building and Other Legislation Amendment Act 2002 No. 7 pts 1–2

date of assent 19 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2002 (2002 SL No. 171)

Plumbing and Drainage Act 2002 No. 77 ss 1–2, pt 11

date of assent 13 December 2002

ss 1–2 commenced on date of assent

pt 11 hdg, ss 160, 166 commenced 7 February 2003 (2003 SL No. 14)

remaining provisions not yet proclaimed into force (see s 2)

7 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 9.**Title**

sub 1993 No. 70 s 804 sch

amd 1998 No. 13 s 4

Short title**s 1 prov hdg** sub 1998 No. 13 s 5**Act binds all persons****s 2**

prev s 2 om 1998 No. 13 s 6

pres s 2 sub 1978 No. 47 s 4

amd 1981 No. 53 s 4; 1984 No. 45 s 4; 1991 No. 52 s 2.3; 1993 No. 70 s 804 sch; 1994 No. 49 s 6 sch 2; 1994 No. 64 s 293 sch 4; 1997 No. 26 s 57 sch

sub 1998 No. 13 s 7

Definitions**s 3**

prev s 3 om 1991 No. 52 s 2.2

pres s 3 sub 1998 No. 13 s 9

def **“accrediting auditor”**

ins 1998 No. 13 s 9

def **“accrediting body”**

ins 1998 No. 13 s 9

def **“approved form”** ins 1998 No. 13 s 9def **“area”** om 1993 No. 70 s 804 schdef **“assessment manager”** ins 1998 No. 13 s 9def **“build”** ins 1998 No. 13 s 9def **“building”** amd 1991 No. 52 s 2.5(a)

sub 1998 No. 13 s 9

def **“building certifier”** ins 1998 No. 13 s 9

sub 1998 No. 31 s 60(1)–(2)

def **“Building Code of Australia”** ins 1998 No. 13 s 9def **“building tribunal”** ins 1991 No. 52 s 2.5(b)

om 1998 No. 13 s 9

def **“building work”** ins 1984 No. 45 s 5(a)

amd 1991 No. 52 s 2.5(c); 1993 No. 70 s 804 sch

sub 1998 No. 13 s 9

- def **“by-law”** om 1993 No. 70 s 804 sch
- def **“Chairman”** ins 1978 No. 47 s 5
om 1998 No. 13 s 9
- def **“chairperson”** om 1993 No. 70 s 804 sch
- def **“Committee”** om 1998 No. 13 s 9
- def **“complaint”** ins 1998 No. 13 s 9
- def **“court”** ins 1998 No. 13 s 9
- def **“Director”** sub 1993 No. 70 s 804 sch
om 1998 No. 13 s 9
- def **“disciplinary finding”** ins 1998 No. 13 s 9
- def **“dividing fence”** ins 1998 No. 13 s 9
- def **“enforcement notice”** ins 1998 No. 13 s 9
- def **“erect”** om 1998 No. 13 s 9
- def **“indoor swimming pool”** ins 1998 No. 13 s 9
- def **“interim development control provisions”** ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 9
- def **“local authority”** om 1993 No. 76 s 3 sch 1
- def **“local government”** ins 1998 No. 13 s 9
- def **“Minister”** sub 1991 No. 52 s 2.5(d)
om 1993 No. 76 s 3 sch 1
- def **“outdoor swimming pool”** ins 1998 No. 13 s 9
- def **“owner”** sub 1998 No. 13 s 9
amd 2000 No. 4 s 94 sch
- def **“planning application”** ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 9
- def **“planning scheme”** ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 9
- def **“planning scheme area”** ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 9
- def **“portable wading pool”** ins 1998 No. 13 s 9
- def **“private certifier”** ins 1998 No. 13 s 9
- def **“professional misconduct”** ins 1998 No. 13 s 9
sub 2000 No. 4 s 11
- def **“public sector entity”** ins 1998 No. 31 s 60(2)
- def **“Registrar”** ins 1991 No. 52 s 2.5(e)
om 1998 No. 13 s 9
- def **“residential land”** ins 1998 No. 13 s 9
- def **“revocation notice”** ins 1998 No. 13 s 9
- def **“show cause notice”** ins 1998 No. 13 s 9
- def **“Standard Building Law”** ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 9
- def **“Standard Building Regulation”** ins 1998 No. 13 s 9
- def **“structure”** amd 1984 No. 45 s 5(b)
sub 1998 No. 13 s 9
- def **“swimming pool”** ins 1998 No. 13 s 9
- def **“The Commissioner of Fire Service”** ins 1991 No. 52 s 2.5(f)
om 1998 No. 13 s 9
- def **“this Act”** ins 1991 No. 52 s 2.5(f)
om 1993 No. 76 s 3 sch 1
- def **“tourist resort complex”** ins 1998 No. 13 s 9

- def “**Tribunal**” ins 1984 No. 45 s 5(c)
om 1991 No. 52 s 2.5(g)
- def “**tribunal**” ins 1998 No. 13 s 9
- def “**underpinning**” ins 1991 No. 52 s 2.5(f)
om 1998 No. 13 s 9
- def “**watercourse**” ins 1998 No. 13 s 9
- def “**young child**” ins 1998 No. 13 s 9

PART 2—STANDARD BUILDING REGULATION

- pt hdg** amd 1993 No. 70 s 804 sch
sub 1998 No. 13 s 10

Standard Building Regulation

- s 4** amd 1984 No. 114 s 5
sub 1993 No. 70 s 804 sch; 1993 No. 76 s 3 sch 1
amd 1995 No. 57 s 4 sch 2
sub 1998 No. 13 s 10

Use of Crown buildings in emergency

- s 4A** ins 1991 No. 52 s 2.4
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 8

Variation of how Standard Building Regulation may apply

- s 5** prev s 5 om R1 (see RA s 39)
pres s 5 ins 1998 No. 13 s 10

Deciding application to vary how Standard Building Regulation will apply

- s 6** prev s 6 om 1993 No. 76 s 3 sch 1
pres s 6 ins 1998 No. 13 s 10

Fast-track decisions

- s 7** prev s 7 om 1993 No. 76 s 3 sch 1
pres s 7 ins 1998 No. 13 s 10

Appeal from chief executive’s decision

- s 8** prev s 8 om R2 (see RA s 39)
pres s 8 ins 1998 No. 13 s 10

Effect of variation of Standard Building Regulation

- s 9** prev s 9 sub 1978 No. 47 s 6
amd 1981 No. 53 s 5; 1984 No. 45 s 6; 1987 No. 69 s 4; 1990 No. 107 s 4.2
om 1993 No. 76 s 3 sch 1
pres s 9 ins 1998 No. 13 s 10

How changes to Standard Building Regulation may affect certain building work to be carried out

- s 10** prev s 10 om 1993 No. 76 s 3 sch 1
pres s 10 ins 1998 No. 13 s 10

Alterations to safe existing work

- s 11** amd 1984 No. 45 s 15
sub 1998 No. 13 s 10

By-laws prescribing requirements as to erection of buildings of Class I and X under Standard Building By-laws**s 11A** om 1987 No. 69 s 5**Alterations to unsafe existing work****s 12** amd 1991 No. 52 s 2.14; 1993 No. 70 s 804 sch
sub 1998 No. 13 s 10**PART 2A—FIRE SAFETY FOR BUDGET ACCOMMODATION BUILDINGS****pt hdg** prev pt 2A hdg om 1991 No. 52 s 2.15
pres pt 2A hdg ins 2002 No. 7 s 4**Division 1—Interpretation****div hdg** ins 2002 No. 7 s 4**Definitions for pt 2A****s 12A** prev s 12A om 1991 No. 52 s 2.6
pres s 12A ins 2002 No. 7 s 4**Delegate member of By-laws Variation Subcommittee****s 12AA** om 1991 No. 52 s 2.6**Meaning of “budget accommodation building”****s 12B** prev s 12B sub 1984 No. 45 s 10
amd 1991 No. 52 s 2.7; 1993 No. 70 s 804 sch
om 1998 No. 13 s 10
pres s 12B ins 2002 No. 7 s 4**Constitution of building tribunal****s 12BA** ins 1991 No. 52 s 2.8
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 10**Division 2—Fire safety standard****div hdg** ins 2002 No. 7 s 4**Fire safety standard****s 12C** prev s 12C sub 1984 No. 45 s 11
amd 1991 No. 52 s 2.9
om 1998 No. 13 s 10
pres s 12C ins 2002 No. 7 s 4**Guidelines for fire safety standard****s 12D** prev s 12D ins 1981 No. 53 s 6
amd 1984 No. 45 s 12; 1991 No. 52 s 2.10; 1993 No. 70 s 804 sch
om 1998 No. 13 s 10
pres s 12D ins 2002 No. 7 s 4**Public notice of guidelines****prov hdg** amd 1991 No. 52 s 2.11**s 12E** prev s 12E ins 1981 No. 53 s 6
amd 1984 No. 45 s 13; 1991 No. 52 s 2.11; 1993 No. 70 s 804 sch
om 1998 No. 13 s 10
pres s 12E ins 2002 No. 7 s 4

Access to guidelines

s 12F prev s 12F ins 1981 No. 53 s 6
 amd 1984 No. 45 s 14; 1991 No. 52 s 2.12
 om 1998 No. 13 s 10
 pres s 12F ins 2002 No. 7 s 4

Division 3—Budget accommodation buildings built, approved or applied for, before 1 January 1992

div hdg ins 2002 No. 7 s 4

Application of div 3

s 12G prev s 12G ins 1981 No. 53 s 6
 amd 1991 No. 52 s 2.13
 om 1998 No. 13 s 10
 pres s 12G ins 2002 No. 7 s 4

Owner must ensure building conforms with fire safety standard

s 12H ins 2002 No. 7 s 4

Approval of longer period for conformity with fire safety standard

s 12I ins 2002 No. 7 s 4

Advice as to conformity with fire safety standard

s 12J ins 2002 No. 7 s 4

Appeals about conformity with fire safety standard

s 12K ins 2002 No. 7 s 4

Stay of operation of local government decision

s 12L ins 2002 No. 7 s 4

Local government decisions

s 12M ins 2002 No. 7 s 4

Division 4—All budget accommodation buildings

div hdg ins 2002 No. 7 s 4

Application of div 4

s 12N ins 2002 No. 7 s 4

Obligation about fire safety management plan

s 12O ins 2002 No. 7 s 4

Accessing fire safety management plan

s 12P ins 2002 No. 7 s 4

Development approval for building work for budget accommodation buildings

s 12Q ins 2002 No. 7 s 4

Annual inspection of buildings for which development approval is given

s 12R ins 2002 No. 7 s 4

Division 5—Miscellaneous

div hdg ins 2002 No. 7 s 4

Obligations of entities about guidelines for fire safety standard and fire safety management plans

s 12S ins 2002 No. 7 s 4

PART 3—SWIMMING POOL FENCING

pt hdg prev pt 3 hdg amd 1991 No. 52 s 2.16
om 1998 No. 13 s 11
pres pt 3 hdg ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12

Local law for fencing of swimming poolss 13 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12**Outdoor swimming pools must be fenced**s 14 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12
amd 2002 No. 77 s 166**Interpretation**

s 14A om 1991 No. 52 s 2.15

Modification of Standard Building By-Laws

s 14B om 1991 No. 52 s 2.15

By-laws (Expo '88) Variation Committee

s 14C om 1991 No. 52 s 2.15

Remuneration

s 14D om 1991 No. 52 s 2.15

Quorum

s 14E om 1991 No. 52 s 2.15

Presiding at meetings

s 14F om 1991 No. 52 s 2.15

Application of certain sections

s 14G om 1991 No. 52 s 2.15

Application for exemption from fencings 15 prev s 15 amd 1991 No. 52 s 2.17
om 1998 No. 13 s 11
pres s 15 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12**Revocation of decisions or previous variations**s 16 prev s 16 amd 1979 No. 69 s 4(2); 1984 No. 45 s 16; 1991 No. 52 s 2.18; 1993
No. 70 s 804 sch
om 1998 No. 13 s 11
pres s 16 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12
amd 2000 No. 4 s 94 sch**Advice as to compliance**

s 17 prev s 17 om 1998 No. 13 s 11

pres s 17 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12
amd 2002 No. 7 s 5

Access to outdoor swimming pools must be kept secure

s 18 prev s 18 amd 1984 No. 114 s 9; 1991 No. 52 s 2.19
om 1998 No. 13 s 11
pres s 18 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12

Apportionment of cost of constructing dividing fence

s 19 prev s 19 amd 1991 No. 52 s 2.20; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11
pres s 19 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12

Building tribunals

s 19A ins 1991 No. 52 s 2.21
om 1998 No. 13 s 11

Membership of building tribunal

s 19B ins 1991 No. 52 s 2.21
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Procedure of building tribunal

s 19C ins 1991 No. 52 s 2.22
om 1998 No. 13 s 11

Constitution of building tribunal

s 19D ins 1991 No. 52 s 2.22
om 1998 No. 13 s 11

Referee not to act as member of building tribunal in certain cases

s 19E ins 1991 No. 52 s 2.22
om 1998 No. 13 s 11

Appeals about swimming pool fencing

s 20 prev s 20 sub 1991 No. 52 s 2.23
om 1998 No. 13 s 11
pres s 20 ins 1993 No. 70 s 804 sch
sub 1998 No. 13 s 12

PART 3A—BUILDING INDUSTRY COMPLAINTS TRIBUNAL

pt hdg om 1991 No. 52 s 2.24

Building Industry Complaints Tribunal

s 20A om 1991 No. 52 s 2.24

Appointment of members of Tribunal

s 20B om 1991 No. 52 s 2.24

Term of Appointment of Tribunal member

s 20C om 1991 No. 52 s 2.24

Casual vacancies

s 20D om 1991 No. 52 s 2.24

Functions of Tribunal

s 20E om 1991 No. 52 s 2.24

Proceedings of Tribunal

s 20F om 1991 No. 52 s 2.24

Secretary to assist Tribunal

s 20G om 1991 No. 52 s 2.24

PART 4—SHOW CAUSE AND ENFORCEMENT NOTICES

pt hdg prev pt 4 hdg om 1998 No. 13 s 11
pres pt 4 hdg sub 1998 No. 13 s 14

Show cause notices

s 21 prev s 21 om 1998 No. 13 s 11
pres s 21 ins 1998 No. 13 s 15
amd 2000 No. 4 s 12

Enforcement notices

s 22 prev s 22 amd 1978 No. 47 s 7; 1987 No. 69 s 6; 1991 No. 52 s 2.25; 1995 No. 57 s 4 sch 2
om 1998 No. 13 s 11
pres s 22 amd 1984 No. 45 s 29; 1991 No. 52 s 2.67; 1993 No. 70 s 804 sch; 1998 No. 31 s 61
sub 1998 No. 13 s 15
amd 1998 No. 31 s 61; 2000 No. 4 s 13

Specific requirements of enforcement notices

s 23 prev s 23 amd 1991 No. 52 s 2.26
om 1998 No. 13 s 11
pres s 23 amd 1984 No. 45 s 30; 1991 No. 52 s 2.68; 1993 No. 70 s 804 sch
sub 1998 No. 13 s 15

Appeals against enforcement notices

prov hdg amd 1991 No. 52 s 2.69
s 24 prev s 24 om 1998 No. 13 s 11
pres s 24 amd 1984 No. 45 s 31; 1991 No. 52 s 2.69; 1993 No. 70 s 804 sch
sub 1998 No. 13 s 15
amd 2000 No. 4 s 14

Register of notices given

s 25 prev s 25 amd 1991 No. 52 s 2.27
om 1998 No. 13 s 11
pres s 25 amd 1978 No. 47 s 19; 1991 No. 52 s 2.72
sub 1998 No. 13 s 16

Action local government may take if enforcement notice not complied with

s 26 prev s 26 sub 1991 No. 52 s 2.28
om 1998 No. 13 s 11
pres s 26 sub 1998 No. 13 s 18
amd 2000 No. 4 s 94 sch

Removal of persons in buildings to be demolished

- s 27** prev s 27 amd 1991 No. 52 s 2.29; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11
pres s 27 amd 1993 No. 70 s 804 sch; 2000 No. 5 s 461 sch 3

PART 4A—APPROVAL OF LOCAL GOVERNMENTS

- pt hdg** ins 1978 No. 47 s 10
om 1998 No. 13 s 11

PART 5—ACCREDITING BODIES AND BUILDING CERTIFIERS

- pt hdg** prev pt 5 hdg sub 1978 No. 47 s 11
amd 1981 No. 53 s 10
om 1998 No. 13 s 13
pres pt 5 hdg ins 1998 No. 13 s 19

Division 1—Accreditation

- div hdg** prev div 1 hdg om 1998 No. 13 s 13
pres div 1 hdg ins 1998 No. 13 s 19

Authorisation of accrediting bodies

- s 28** prev s 28 sub 1978 No. 47 s 8
amd 1984 No. 114 s 10
om 1998 No. 13 s 11
pres s 28 ins 1998 No. 13 s 19

Advisory and technical subcommittees

- s 28A** ins 1978 No. 47 s 9
om 1998 No. 13 s 11

Function of accrediting bodies

- s 29** prev s 29 amd 1991 No. 52 s 2.30
om 1998 No. 13 s 11
pres s 29 ins 1998 No. 13 s 19
amd 1998 No. 31 s 62

Persons must not perform or exercise building certifying functions without accreditation

- s 30** prev s 30 amd 1988 No. 52 s 44 sch 3; 1991 No. 52 s 2.31; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11
pres s 30 ins 1998 No. 13 s 19
sub 1998 No. 31 s 63

Approval to be obtained

- s 30A** ins 1978 No. 47 s 10
amd 1984 No. 45 s 18; 1991 No. 52 s 2.32; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Action by local authority in respect of application

- prov hdg** amd 1991 No. 52 s 2.33
s 30B ins 1978 No. 47 s 10
sub 1981 No. 53 s 7

amd 1984 No. 45 s 19; 1984 No. 114 s 11; 1987 No. 69 s 7; 1991 No. 52 s 2.33; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Local government to tell applicant of planning law requirements

s 30BA ins 1984 No. 114 s 12
sub 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Times within which applications for approval to the carrying out of building work to be decided

s 30BB ins 1984 No. 114 s 12
amd 1991 No. 52 s 2.34; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

When application for approval to the carrying out of building work to be refused

s 30BC ins 1984 No. 114 s 12
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

No right of objection under s 31

s 30BD ins 1984 No. 114 s 12
amd 1991 No. 52 s 2.35
om 1998 No. 13 s 11

Interpretation

s 30BE ins 1984 No. 114 s 12
om 1993 No. 70 s 804 sch

Application of ss 30BA, 30BB and 30BC

s 30BF ins 1984 No. 114 s 12
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Local government to consider amenity and aesthetics on applications to erect certain buildings

prov hdg amd 1991 No. 52 s 2.36
s 30BG ins 1987 No. 69 s 8
amd 1991 No. 52 s 2.36; amd 1993 No. 70 s 804 sch; 1995 No. 57 s 4 sch 2
om 1998 No. 13 s 11

Provision of security in certain cases

s 30BH ins 1991 No. 52 s 2.37
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Application for preliminary decision

s 30C ins 1981 No. 53 s 8
amd 1984 No. 45 s 20; 1984 No. 114 s 13; 1991 No. 52 s 2.38; 1993 No. 70 s 804 sch
om 1998 No. 13 s 11

Application of Act etc. to offshore building work

- prov hdg** amd 1984 No. 45 s 21
s 30D ins 1981 No. 53 s 9
 amd 1984 No. 45 s 21; 193 No. 70 s 804 sch
 om 1998 No. 13 s 11

Meaning of terms

- s 30E** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Control of swimming pool fencing

- s 30F** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Fencing of above-ground outdoor swimming pools

- s 30I** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Incorporation of buildings as part of fencing—existing swimming pools

- s 30J** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Incorporation of buildings as part of fencing—new swimming pools

- s 30K** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Further provision about incorporation of class 10 building as part of fencing

- s 30L** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Variations

- s 30M** ins 1993 No. 70 s 804 sch
 amd 1995 No. 50 s 3 sch
 om 1998 No. 13 s 12

Exemptions—waterfront land

- s 30O** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Exemptions—land over 4 000 m²

- s 30P** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Exemptions—fencing enclosing swimming pool and existing building

- s 30Q** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Effect of variation or exemption subject to conditions

- s 30R** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Time for compliance

- s 30T** ins 1993 No. 70 s 804 sch
 om 1998 No. 13 s 12

Liability of State for offences

s 30Y ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Offences

s 30Z ins 1993 No. 70 s 804 sch
om 1998 No. 13 s 12

Division 1A—Objections against failure by local governments to decide applications

div hdg ins 1984 No. 45 s 26
om 1998 No. 13 s 13

Division 1B—Objections against decisions by local governments on amenity and aesthetics

div hdg ins 1987 No. 69 s 12
om 1998 No. 13 s 13

Division 1C—Objection by the Commissioner of Fire Service

div hdg ins 1991 No. 52 s 2.55
om 1998 No. 13 s 13

Division 2—Jurisdiction

div hdg prev div 2 hdg amd 1991 No. 52 s 2.57
om 1998 No. 13 s 13
pres div 2 hdg ins 1998 No. 13 s 19

Jurisdiction of building certifiers

prov hdg amd 1987 No. 69 s 9
s 31 prev s 31 amd 1978 No. 47 s 12; 1981 No. 53 s 11; 1984 No. 45 s 22; 1987
No. 69 s 9; 1991 No. 52 s 2.39; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 31 ins 1998 No. 13 s 19

Division 3—Auditing building certifiers

div hdg prev div 3 hdg om 1998 No. 13 s 13
pres div 3 hdg ins 1998 No. 13 s 19

Accrediting body must audit building certifier's work

s 32 prev s 32 amd 1978 No. 47 s 13; 1984 No. 45 s 23; 1987 No. 69 s 10; 1991
No. 52 s 2.40; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 32 ins 1998 No. 13 s 19

Division 3A—References to Minister against referee's determination relating to amenity of neighbourhood or aesthetics

div hdg om 1981 No. 53 s 16

Division 4—Complaints

div hdg prev div 4 hdg om 1998 No. 13 s 13
pres div 4 hdg ins 1998 No. 13 s 19

Making a complaint against a building certifier

prov hdg sub 1991 No. 52 s 2.41
s 33 prev s 33 amd 1984 No. 45 s 24; 1987 No. 69 s 11; 1991 No. 52 s 2.41; 1993
No. 70 s 804 sch

om 1998 No. 13 s 13
pres s 33 ins 1998 No. 13 s 19

Building certifier must be advised of complaint

prov hdg amd 1991 No. 52 s 2.42
s 34 prev s 34 amd 1991 No. 52 s 2.42; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 34 ins 1998 No. 13 s 19

Accrediting body must investigate complaint

prov hdg amd 1991 No. 52 s 2.43
s 35 prev s 35 amd 1981 No. 53 s 12; 1984 No. 45 s 25; 1991 No. 52 s 2.43; 1993
No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 35 ins 1998 No. 13 s 19

Amendment of notice of objection

s 35A ins 1981 No. 53 s 13
amd 1991 No. 52 s 2.44
om 1998 No. 13 s 13

Division 5—Investigations

div hdg ins 1998 No. 13 s 19

Accrediting body may require documents to be produced

prov hdg amd 1991 No. 52 s 2.45
s 36 prev s 36 amd 1991 No. 52 s 2.45; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 36 ins 1998 No. 13 s 19

Objection to building tribunal

prov hdg amd 1991 No. 52 s 2.46
s 36A ins 1984 No. 45 s 26
amd 1991 No. 52 s 2.46
om 1998 No. 13 s 13

Constitution of building tribunal

s 36AA ins 1991 No. 52 s 2.47
om 1998 No. 13 s 13

Procedure on objection

s 36B ins 1984 No. 45 s 26
amd 1991 No. 52 s 2.48; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Reference to building tribunal

s 36C sub 1991 No. 52 s 2.49
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Powers of building tribunal

prov hdg amd 1991 No. 52 s 2.50
s 36D ins 1984 No. 45 s 26

amd 1991 No. 52 s 2.50; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Disability of members of Tribunal

s 36E om 1991 No. 52 s 2.51

Constitution of panel

s 36F ins 1987 No. 69 s 12
amd 1991 No. 52 s 2.52
om 1998 No. 13 s 13

Duty of panel

s 36G ins 1987 No. 69 s 12
amd 1991 No. 52 s 2.53; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Powers of panel

s 36H ins 1987 No. 69 s 12
om 1998 No. 13 s 13

Decision of panel

s 36I ins 1987 No. 69 s 12
amd 1991 No. 52 s 2.54; 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Objection to decision

s 36J ins 1991 No. 52 s 2.55
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Institution of objection

s 36K ins 1991 No. 52 s 2.55
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Constitution of building tribunal

s 36L ins 1991 No. 52 s 2.55
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Duty of building tribunal

s 36M ins 1991 No. 52 s 2.56
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Powers of building tribunal

s 36N ins 1991 No. 52 s 2.56
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13

Notice of determination to be given to parties

s 36O ins 1991 No. 52 s 2.56
om 1998 No. 13 s 13

Inspection of documents

- prov hdg** amd 1991 No. 52 s 2.58
s 37 prev s 37 sub 1981 No. 53 s 14
 amd 1991 No. 52 s 2.58
 om 1998 No. 13 s 13
 pres s 37 ins 1998 No. 13 s 19

Power to enter and inspect building

- s 38** prev s 38 amd 1978 No. 47 s 15; 1984 No. 45 s 27; 1991 No. 52 s 2.59; 1993
 No. 70 s 804 sch
 om 1998 No. 13 s 13
 pres s 38 ins 1998 No. 13 s 19

Cooperating with investigation or audit

- s 39** prev s 39 amd 1991 No. 52 s 2.60
 om 1998 No. 13 s 13
 pres s 39 ins 1998 No. 13 s 19

Decision after investigation or audit completed

- s 40** prev s 40 amd 1991 No. 52 s 2.61
 om 1998 No. 13 s 13
 pres s 40 ins 1998 No. 13 s 19

Accrediting body's decision may be appealed

- s 41** prev s 41 amd 1991 No. 52 s 2.62; amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13
 pres s 41 ins 1998 No. 13 s 19

Division 6—Chief executive and court powers

- div hdg** ins 1998 No. 13 s 19

Chief executive may investigate building certifier

- prov hdg** amd 1993 No. 70 s 804 sch
s 42 prev s 42 amd 1981 No. 53 s 15; 1984 No. 45 s 28; 1987 No. 69 s 13; 1991
 No. 52 s 2.63; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13
 pres s 42 ins 1998 No. 13 s 19
 amd 1998 No. 31 s 64

Chief executive's decision

- prov hdg** amd 1993 No. 70 s 804 sch
s 43 prev s 43 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13
 pres s 43 ins 1998 No. 13 s 19

Appeal to the court against the chief executive's decision

- s 44** prev s 44 sub 1978 No. 47 s 16
 om 1998 No. 13 s 13
 pres s 44 ins 1998 No. 13 s 19

Court may make certain disciplinary findings

- s 45** prev s 45 amd 1993 No. 70 s 804 sch
 om 1998 No. 13 s 13
 pres s 45 ins 1998 No. 13 s 19

Approved forms

- s 46** prev s 46 amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 46 sub 1978 No. 47 s 22
amd 1991 No. 52 s 2.78; 1993 No. 70 s 804 sch
sub 1998 No. 13 s 20

Fees for statutory functions

- s 46A** prev s 46A om 1981 No. 53 s 16
pres s 46A ins 2001 No. 100 s 88

Institution of reference to Minister

- s 46B** om 1981 No. 53 s 16

Powers of Minister

- s 46C** om 1981 No. 53 s 16

Giving security in certain cases

- prov hdg** pres s 47 prov hdg amd 1991 No. 52 s 2.79
s 47 pres s 47 amd 1984 No. 45 s 34; 1987 No. 69 s 14; 1991 No. 52 s 2.64; 1993
No. 70 s 804 sch
om 1998 No. 13 s 13
pres s 47 ins 1978 No. 47 s 23
sub 1993 No. 70 s 804 sch; 1998 No. 13 s 20

Information to be supplied by the State

- prov hdg** prev s 48 prov hdg amd 1987 No. 69 s 15; 1991 No. 52 s 2.65
s 48 prev s 48 amd 1987 No. 69 s 15; 1991 No. 52 s 2.65
om 1998 No. 13 s 13
pres s 48 sub 1991 No. 52 s 2.80; 1993 No. 70 s 804 sch; 1998 No. 13 s 20
amd 1998 No. 31 s 65

Owner liable for offences under Standard Building Regulation

- prov hdg** pres s 49 prov hdg amd 1993 No. 70 s 804 sch; 1998 No. 13 s 21(1)
s 49 prev s 49 amd 1981 No. 53 s 17; 1987 No. 69 s 16; 1991 No. 52 s 2.66
om 1998 No. 13 s 13
pres s 49 ins 1991 No. 52 s 2.80
amd 1993 No. 70 s 804 sch; 1998 No. 13 s 21(2)–(3)

Prosecution of offences

- s 50** amd 1993 No. 70 s 804 sch; 1998 No. 13 s 22; 1998 No. 31 s 66

Regulation-making power

- s 52** amd 1978 No. 47 s 24; 1984 No. 114 s 14
sub 1993 No. 70 s 804 sch
amd 1998 No. 13 s 24; 2002 No. 7 s 6

Approval to be sought where building erected without approval

- s 52A** ins 1991 No. 52 s 2.70
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 15

Day when Standard Building Regulation was made by Statutory Instruments Act 1992

- s 53** prev s 53 om R1 (see RA s 40)
 prev s 53 sub 1991 No. 52 s 2.71
 om 1998 No. 13 s 15
 pres s 53 ins 1998 No. 13 s 25

PART 7—SAVINGS AND TRANSITIONAL PROVISIONS

- pt hdg** sub 1993 No. 70 s 804 sch

Swimming pool fencing compliance—hardship

- s 54** prev s 54 amd 1978 No. 47 s 18; 1993 No. 70 s 804 sch
 om 1998 No. 13 s 15
 pres s 54 ins 1993 No. 76 s 3 sch 1
 sub 1993 No. 70 s 804 sch
 amd 1998 No. 13 s 26

References to Standard Building Law etc.

- s 55** ins 1993 No. 70 s 804 sch
 sub 1998 No. 13 s 27

Existing referees

- prov hdg** amd 1978 No. 47 s 20; 1991 No. 52 s 2.73
s 56 prev s 56 amd 1978 No. 47 s 20; 1981 No. 53 s 18; 1991 No. 52 s 2.73
 om 1998 No. 13 s 17
 pres s 56 ins 1998 No. 13 s 28

Existing registrar

- s 57** prev s 57 amd 1978 No. 47 s 21; 1991 No. 52 s 2.74
 om 1998 No. 13 s 17
 pres s 57 ins 1998 No. 13 s 28

Lawfully constructed buildings and structures protected

- prov hdg** amd 1991 No. 52 s 2.75
s 58 amd 1991 No. 52 s 2.75
 om 1998 No. 13 s 17
 pres s 58 ins 1998 No. 13 s 28

Lawfully constructed swimming pool fences protected

- s 59** ins 1998 No. 13 s 28

Erection on impregnated land prohibited

- s 61** amd 1984 No. 45 s 32; 1991 No. 52 s 2.76
 om 1998 No. 13 s 19

Right of entry to remedy offence

- s 62** amd 1984 No. 45 s 33
 om 1998 No. 13 s 19

Notice given to body corporate taken to be given to proprietors

- s 63A** ins 1991 No. 52 s 2.77
 om 1998 No. 13 s 19

Notice given to body corporate taken to be given to lot owners

s 63B ins 1997 No. 28 s 295 sch 3
om 1998 No. 13 s 19

Offences generally and penalty

s 64C ins 1991 No. 52 s 2.80
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 20

Continuing offences

s 64D ins 1991 No. 52 s 2.80
om 1998 No. 13 s 20

Application for approval where building work commenced

s 66A ins 1991 No. 52 s 2.81
om 1998 No. 13 s 23

Certain applications not made unless fees paid

s 66B ins 1991 No. 52 s 2.81
amd 1993 No. 70 s 804 sch
om 1998 No. 13 s 23

Amendment of s 33(16A) of Local Government Act

s 69 om R1 (see RA s 40)

Amendment of s 35 of Local Government Act

s 70 om R1 (see RA s 40)

Fire zones

prov hdg amd 1981 No. 53 s 19; (see RA s 39)
s 71 amd 1981 No. 53 s 19; 1993 No. 70 s 804 sch
om 1995 No. 57 s 4 sch 2

Repeal of s 50(6) of Local Government Act

s 72 om R1 (see RA s 40)

Amendment of s 20A of City of Brisbane Town Planning Act

s 73 om 1990 No. 61 s 8.8(1) 1st sch

Saving of existing appeals

s 74 om 1990 No. 61 s 8.8(1) 1st sch

Ordinance 801 of City of Brisbane Ordinances inoperative. Fire zones

prov hdg amd 1981 No. 53 s 20
s 75 amd 1981 No. 53 s 20
om 1995 No. 57 s 4 sch 2

Standard Building By-laws 1991 is regulation

s 77 ins 1993 No. 70 s 804 sch
om R1 (see RA s 37)

Numbering and renumbering of Act

s 83 ins 1998 No. 13 s 28
om R3 (see RA s 37)

SCHEDULE—STANDARD BUILDING BY-LAWS 1991

sub 1991 No. 52 s 2.82

amd 1991 SL No. 181

om 1993 No. 76 s 3 sch

8 List of forms notified or published in the gazette**Form 9 Version 1—Application to vary the Standard Building Regulation**

pubd gaz 29 May 1998 p 651

Form 10 Version 1—Building and Development Tribunals Appeal Notice

pubd gaz 29 May 1998 p 651

Form 11 Version 1—Certification of Classification

pubd gaz 8 May 1998 p 184

Form 12 Version 1—Statement of Classification

pubd gaz 8 May 1998 p 184

Form 13 Version 1—Change of Classification Application

pubd gaz 8 May 1998 p 184

Form 14 Version 1—Certification of Classification for a building or structure built before 1 April 1976

pubd gaz 8 May 1998 p 184

Form 15 Version 1—Compliance Certificate—Design/Appraisal

pubd gaz 8 May 1998 p 184

Form 16 Version 1—Compliance Certificate—Construction

pubd gaz 8 May 1998 p 184

Form 17 Version 1.0—Inspection of Pool and Fencing

pubd gaz 14 February 2003 p 523

9 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS [Reprint No. 3]

under the Reprints Act 1992 s 43 as required by Building Act 1975 s 83

Previous	Renumbered as
4.....	2
5.....	3
6.....	4
7.....	5
8.....	6
9.....	7
10.....	8
11.....	9

Building Act 1975

Previous	Renumbered as
12.....	10
13.....	11
14.....	12
pt 4B	pt 3
30G	13
30H	14
30N	15
30S.....	16
30U	17
30V	18
30W	19
30X	20
pt 6.....	pt 4
50A	21
50.....	22
51.....	23
52.....	24
55.....	25
59.....	26
60.....	27
pt 6B	pt 5
63C	28
63D	29
63E.....	30
63F.....	31
63G	32
63H	33
63I	34
63J	35
63K	36
63L.....	37
63M.....	38
63N	39
63O	40
63P.....	41
63Q	42
63R	43
63S.....	44
63T.....	45
pt 7.....	pt 6
64.....	46
64A	47
64B	48
64E.....	49
65.....	50
66.....	51
67.....	52
67(2)(b)	52(2)(a)

Previous	Renumbered as
67(2)(c) .....	.52(2)(b)
67(2)(d) .....	.52(2)(c)
68 .....	.53
pt 8 .....	.pt 7
76 .....	.54
78 .....	.55
79 .....	.56
80 .....	.57
81 .....	.58
82 .....	.59

10 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Integrated Planning and Other Legislation Amendment Act 2001 No. 100 s 87 reads as follows—

87 Amendment of s 3 (Definitions)

Section 3(1), definition “**building work**”—

omit, insert—

‘**“building work”** means—

- (a) building, repairing, altering, underpinning (whether by vertical or lateral support), moving or demolishing a building or other structure; or
- (b) work regulated under the *Standard Building Regulation 1993*; or
- (c) excavating or filling—
 - (i) for, or incidental to, the activities mentioned in paragraph (a); or
 - (ii) that may adversely affect the stability of a building or other structure, whether on the land on which the building or other structure is situated or on adjoining land; or
- (d) supporting (whether vertically or laterally) land for activities mentioned in paragraph (a).’

Plumbing and Drainage Act 2002 No. 77 ss 161–165, 167–191 reads as follows—

161 Amendment of s 3 (Definitions)

(1) Section 3(1), definitions “**accrediting auditor**”, “**accrediting body**”, “**building certifier**”, “**complaint**”, “**disciplinary finding**”, “**professional misconduct**” and “**show cause notice**”—

omit.

(2) Section 3(1)—

insert—

‘ “**accreditation standards body**” means an entity authorised under a regulation made under section 28 to be an accreditation standards body.

“**assessable development**” see the *Integrated Planning Act 1997*, schedule 10.²⁵

“**auditor**” see section 36(1).

“**BSA**” means the Queensland Building Services Authority established under the *Queensland Building Services Authority Act 1991*.

“**building certifier**”—

- (a) means an individual licensed as a building certifier by BSA; and
- (b) in part 5A—includes a former building certifier.

“**building certifying function**” means any of the following functions—

- (a) assessing and deciding under section 31²⁶ development applications for building work;
- (b) inspecting or accepting certification on the building or demolishing of buildings and structures for compliance with this Act;
- (c) issuing, for buildings, certificates of classification or statements of classification;
- (d) taking enforcement action in relation to development approvals issued by a building certifier.

²⁵ *Integrated Planning Act 1997*, schedule 10 (Dictionary)

²⁶ Section 31 (Jurisdiction of building certifiers)

“building tribunal” means the Queensland Building Tribunal established under the Tribunal Act.

“code of conduct” see section 32.

“complaint” means a complaint made under part 5 about a building certifier or former building certifier.

“development application” see the *Integrated Planning Act 1997*, schedule 10.

“development approval” see the *Integrated Planning Act 1997*, schedule 10.

“development permit” see the *Integrated Planning Act 1997*, section 3.1.5(3).²⁷

“former building certifier” means a person who—

- (a) was a building certifier when a building certifying function, the subject of a complaint, was performed; but
- (b) is not licensed when—
 - (i) the complaint, or the decision taken about the complaint under section 40(1), is made; or
 - (ii) the building tribunal makes an order under section 45A.

“local planning instrument” see the *Integrated Planning Act 1997*, schedule 10.²⁸

“national accreditation framework” means the framework, as amended from time to time, approved by the entity known as the Australian Building Codes Board.

“professional misconduct”, for a building certifier or former building certifier, includes the following—

- (a) conduct that—
 - (i) shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building certifying functions; and

²⁷ *Integrated Planning Act 1997*, section 3.1.5 (Approvals under this Act)

²⁸ *Integrated Planning Act 1997*, schedule 10 (Dictionary)

- (ii) compromises the health or safety of a person or the amenity of a person's property or significantly conflicts with a local planning scheme; and

Example of 'significantly conflicts with a local planning scheme'—

The approved building work compromises the outcomes sought by the planning scheme.

- (iii) is contrary to a function under this Act or another Act regulating building certifiers (including private certifiers for building work), including, for example—

- (A) disregarding relevant and appropriate matters; and

- (B) acting outside the scope of the building certifier's powers; and

- (C) acting beyond the scope of the building certifier's competence; and

- (D) contravening the code of conduct; and

- (E) falsely claiming the building certifier has the qualifications, necessary experience or licence to be engaged as a building certifier;

- (b) seeking, accepting or agreeing to accept a benefit, whether for the benefit of the building certifier or another person, as a reward or inducement to act in contravention of—

- (i) this Act; or

- (ii) another Act regulating building certifiers, including private certifiers for building work;

- (c) failing to comply with an order of the BSA or the building tribunal;

- (d) fraudulent or dishonest behaviour in performing building certifying functions;

- (e) other improper or unethical conduct;

- (f) repeated unsatisfactory conduct.

“register” means the register of building certifiers required to be kept under section 29(i).

“self-assessable development” means all development declared under a local planning instrument to be self-assessable development.

“show cause notice”—

- (a) for part 4—see section 21(1); and
- (b) for part 5A—see section 41A(1).

“show cause period” see section 41A(2)(c).

“Tribunal Act” means the *Queensland Building Tribunal Act 2000*.

“unsatisfactory conduct”, for a building certifier or former building certifier, includes the following—

- (a) conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing building certifying functions;
- (b) conduct that is contrary to a function under this Act or another Act regulating building certifiers (including private certifiers for building work), including, for example—
 - (i) disregarding relevant and appropriate matters; and
 - (ii) acting outside the scope of the building certifier’s powers; and
 - (iii) acting beyond the scope of the building certifier’s competence; and
 - (iv) contravening the code of conduct;
- (c) conduct that is of a lesser standard than the standard that might reasonably be expected of the building certifier by the public or the building certifier’s professional peers.’.

162 Amendment of s 4 (Standard Building Regulation)

Section 4(1)(b), ‘accrediting’—

omit, insert—

‘licensing’.

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

Section 10(3), ‘the Building Code of Australia.’—

omit, insert—

‘a document adopted by, or to which a reference is made in, the Standard Building Regulation.’.

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

Section 12A, definitions “**development application**” and “**development approval**”—

omit.

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

Section 13(3)—

omit, insert—

‘(3) A local law is of no effect if the local law allows the construction of fencing around outdoor swimming pools on residential land to a standard less effective than the standard required by section 14.

167 Replacement of pt 5 hdg

Part 5, heading—

omit, insert—

‘PART 5—ACCREDITATION AND PROVISIONS ABOUT BUILDING CERTIFIERS’.

168 Replacement of s 28 (Authorisation of accrediting bodies)

Section 28—

omit, insert—

‘28 Authorisation of accreditation standards body

‘(1) A regulation may authorise an entity to be an accreditation standards body.

‘(2) An entity must not be authorised as an accreditation standards body unless the body has identifiable competence and expertise in issuing accreditation to building certifiers.

‘(3) More than 1 entity may be authorised as an accreditation standards body.’.

169 Insertion of new s 28A

After section 28—

insert—

‘28A Function of accreditation standards body

‘(1) The function of an accreditation standards body is to issue accreditation to individuals proposing to apply to be building certifiers.

‘(2) For subsection (1), an accreditation standards body must—

- (a) set educational and experiential standards for each level of licensing as a building certifier; and
- (b) ensure the standards comply with the national accreditation framework for building certifiers; and
- (c) establish a professional development scheme approved by the chief executive.’.

170 Insertion of new pt 5, div 1A, hdg

Before section 29—

insert—

‘Division 1A—Functions of BSA and licensing of building certifiers’.

171 Replacement of s 29 (Function of accrediting bodies)

Section 29—

omit, insert—

‘29 Function of BSA

‘The functions of BSA under this Act are as follows—

- (a) to license individuals as building certifiers;
- (b) to endorse building certifiers’ licences to issue development permits for building work if the building certifiers have the competencies prescribed under a regulation;
- (c) to monitor compliance by building certifiers with licensing requirements;
- (d) to carry out audits of work by building certifiers;

- (e) to investigate written complaints made to BSA about alleged noncompliance by building certifiers or former building certifiers with the code of conduct or this or another Act;
- (f) to take disciplinary action against building certifiers or former building certifiers for unsatisfactory conduct or professional misconduct;
- (g) to give the chief executive and each local government, at least once each year, a list of building certifiers and a summary of disciplinary action taken against building certifiers;
- (h) to keep a register of building certifiers;
- (i) to keep available for purchase by any person, on payment of a reasonable fee, a list of building certifiers.’.

172 Insertion of new s 29A

After section 29—

insert—

‘29A Application for licence

‘(1) An individual may apply to BSA to be licensed as a building certifier.

‘(2) The application must be made in the way prescribed under a regulation.’.

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

Section 30—

omit, insert—

‘30 Person must not perform building certifying functions without licence

‘(1) A person must not perform a building certifying function unless the person is a building certifier.

Maximum penalty—165 penalty units.

‘(2) Subsection (1) does not apply to a corporation or local government if the function is performed on behalf of the corporation or local

government by a building certifier employed by the corporation or local government to perform the function.

‘30A Restrictions on building certifier without endorsement

‘(1) A building certifier must not issue a development permit for building work, unless the building certifier’s licence is endorsed by BSA to issue development permits for building work.

Maximum penalty—165 penalty units.

‘(2) If a building certifier’s licence is not endorsed by BSA to issue development permits for building work, the building certifier may certify in the approved form that the proposed building work complies with the Standard Building Regulation.

‘(3) An assessment manager or building certifier may, in good faith and without checking, rely on the certification.

‘30B Keeping register

‘(1) The register may be kept in the way BSA considers appropriate, including, for example, in an electronic form.

‘(2) The register must contain the following particulars for each building certifier—

- (a) the building certifier’s name and contact details;
- (b) details of the building certifier’s eligibility for licensing as a building certifier;
- (c) if the BSA makes a decision about the building certifier under section 40(1) or (4)—details of the decision;
- (d) if the building tribunal makes an order about the building certifier—details of the order, other than any details identified in the order as details not to be included in the register;
- (e) other particulars prescribed under a regulation.

‘30C Inspection of register

‘(1) BSA must—

- (a) keep the register open for inspection, free of charge, at BSA’s office by any person during BSA’s office hours; and

- (b) give a person a copy of the register, or a part of it, on payment of the fee prescribed under a regulation.

‘(2) Also, BSA may make the register available for inspection on its website.’.

174 Amendment of s 31 (Jurisdiction of building certifiers)

Section 31(5), ‘accreditation’—

omit, insert—

‘licence’.

175 Replacement of pt 5, div 3

Part 5, division 3—

omit, insert—

‘Division 3—Code of conduct for building certifiers

‘32 Making code of conduct

‘(1) The chief executive must make a code of conduct with which building certifiers must comply and by which the performance of building certifiers may be measured.²⁹

‘(2) The code of conduct must be approved by a regulation.

‘(3) The code of conduct is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

‘32A Tabling of code

‘If, under section 32, a code of conduct is approved by a regulation, the Minister must table a copy of the code with the regulation in the Legislative Assembly.

²⁹ Copies of the code of conduct are available for inspection during office hours at the department’s head office at 41 George Street, Brisbane. A copy of the code is also available for inspection on the department’s website at www.dlgp.qld.gov.au.

‘32B Notice of approval of code

‘The chief executive must notify building certifiers of the approval of the code of conduct.’.

176 Replacement of pt 5, div 4 hdg

Part 5, division 4, heading—

omit, insert—

**‘PART 5A—COMPLAINTS, INVESTIGATIONS AND
DISCIPLINARY PROCEEDINGS RELATING TO
BUILDING CERTIFIERS**

‘Division 1—Complaints’.

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

(1) Section 33(1)—

omit, insert—

‘(1) A person may make a complaint to BSA about a building certifier if the person believes the building certifier has engaged in unsatisfactory conduct or professional misconduct.’.

(2) Section 33(3), ‘The accrediting body’—

omit, insert—

‘BSA’.

(3) Section 33(4)—

omit, insert—

‘(4) BSA may dismiss any complaint without taking further action under this division if the further particulars are not given or if the complaint or the further particulars are not verified by statutory declaration.

‘(5) BSA must not disclose to another person unproved complaints against a building certifier.’.

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

(1) Section 34(1), ‘the accrediting body’—

omit, insert—

‘BSA’.

(2) Section 34(3)—

omit, insert—

‘(3) If BSA makes a decision about the complaint under section 40, BSA must have regard to the representations when making the decision.’.

179 Insertion of new ss 34A and 34B

After section 34—

insert—

‘34A BSA may recommend mediation to resolve complaint

‘(1) If BSA considers a complaint about a building certifier is capable of resolution by mediation, BSA must give the complainant and the building certifier a written notice stating—

- (a) that BSA considers the complaint is capable of resolution by mediation; and
- (b) attendance at, and participation in, mediation is voluntary; and
- (c) that either party may withdraw from the mediation at any time; and
- (d) when the mediation ends; and
- (e) the effect of giving BSA a certificate about the mediation.

‘(2) BSA may recommend the complainant and the building certifier enter into a process of mediation to resolve the complaint as soon as practicable and before BSA investigates the complaint.

‘34B Mediation process

‘(1) If, at mediation, the parties agree to a resolution to the complaint, the agreement must be signed by, or for, each party and by the mediator (the “**mediation agreement**”).

‘(2) Mediation ends on the earlier of the following—

- (a) if a party withdraws from mediation—the day the party withdraws;
- (b) if the parties agree the mediation has ended—the day the parties agree mediation has ended;
- (c) if there is a mediation agreement—the day the agreement is signed;
- (d) unless BSA extends the period and advises parties in writing of the extension—20 business days after written notice is given under section 34A.

‘(3) As soon as practicable after mediation has ended, the mediator must give BSA a certificate about the mediation in the approved form.

‘(4) If the parties sign an agreement, the complaint is taken to be withdrawn.’.

180 Replacement of s 35 (Accrediting body must investigate complaint)

Section 35—

omit, insert—

‘35 Investigation of complaint

‘(1) This section applies if—

- (a) BSA does not recommend the complainant and the building certifier enter into mediation; or
- (b) BSA recommends the complainant and the building certifier enter into mediation and the complaint is not resolved when the mediation ends.

‘(2) BSA must conduct an investigation into the complaint as soon as practicable.

‘(3) BSA may deal with 1 or more complaints about a building certifier in the same investigation.

‘(4) If during an investigation BSA is satisfied there is a matter about which another complaint could have been made against the building certifier, BSA may deal with the matter in its investigation as if a complaint had been made about the matter.’.

181 Replacement of pt 5, div 5 hdg

Part 5, division 5, heading—

omit, insert—

‘Division 2—Investigations’.

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

(1) Section 36, heading, ‘**Accrediting body**’—

omit, insert—

‘BSA’.

(2) Section 36(1)—

omit, insert—

‘(1) For investigating a complaint or conducting an audit, BSA may, by written notice given to a building certifier, require the building certifier to produce a document to BSA, or a person authorised by BSA (an “auditor”).’.

(3) Section 36—

insert—

‘(4) The building certifier must comply with the notice, unless the building certifier has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.’.

183 Replacement of s 37 (Inspection of documents)

Section 37—

omit, insert—

‘37 Inspection of documents

‘An auditor may inspect any document produced to BSA and copy it or any part of it.’.

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

Section 38, ‘accrediting’—

omit.

185 Amendment of s 39 (Cooperating with investigation or audit)

(1) Section 39(1), ‘the accrediting body’—

omit, insert—

‘BSA’.

(2) Section 39(2), ‘is guilty of’—

omit, insert—

‘engages in’.

(3) Section 39(2)(b), ‘an accrediting body’—

omit, insert—

‘BSA’.

186 Insertion of new ss 39A and 39B

After section 39—

insert—

‘39A False or misleading statements

‘(1) A person must not, in relation to an investigation or audit under this part, state anything to BSA that the person knows is false or misleading in a material particular.

Maximum penalty—165 penalty units.

‘(2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was, without specifying which, false or misleading.

‘39B False or misleading documents

‘(1) A person must not, in relation to an investigation or audit under this part, give BSA a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—165 penalty units.

‘(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells BSA, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to BSA.

‘(3) In a proceeding for an offence against subsection (1), it is enough to state that the document was, without specifying which, false or misleading.’

187 Replacement of ss 40 and 41

Sections 40 and 41—

omit, insert—

‘40 Decision after investigation or audit completed

‘(1) After investigating a complaint or conducting an audit, BSA must decide whether or not the building certifier has engaged in unsatisfactory conduct or professional misconduct.

‘(2) BSA must give the building certifier and the complainant (if any) written notice of the decision taken under subsection (1).

‘(3) BSA must, if the building certifier is employed by a corporation or local government, give the employer a copy of the notice.

‘(4) If BSA decides the building certifier has engaged in unsatisfactory conduct, BSA must decide to do 1 or more of the following—

- (a) reprimand the building certifier;
- (b) impose the conditions it considers appropriate on the building certifier’s licence;
- (c) direct the building certifier to complete to the satisfaction of BSA the educational courses stated by BSA;
- (d) direct the building certifier to report on his or her practice as a building certifier at the times, in the way and to the persons stated by BSA;
- (e) require the building certifier to take all necessary steps to ensure the certification of building work—

- (i) complies with this Act; or
 - (ii) for other assessable development related to the building work—is not inconsistent with all other necessary development approvals that apply to the work; or
 - (iii) for self-assessable development that may affect the position, height or form of building work—is not inconsistent with the requirements for the self-assessable development;
- (f) direct the building certifier to take necessary enforcement action under this or another Act, including, for example, by requiring the building certifier to issue an enforcement notice to the builder of the building work or owner of the building;
- (g) if BSA is satisfied the building certifier is generally competent and diligent—advise the building certifier it does not intend to take any further action.

‘(5) BSA must—

- (a) give written notice of its decision under subsection (4) to the building certifier; and
- (b) if the decision is made after investigating a complaint—give the complainant a copy of the notice.

‘(6) If BSA decides the building certifier has engaged in professional misconduct, BSA must apply to the building tribunal to start a disciplinary proceeding against the building certifier.

‘(7) The notice given under subsection (2) or (4) must also state—

- (a) the reasons for the decision; and
- (b) the building certifier or complainant (if any) may apply to the building tribunal for a review of the decision; and
- (c) the application must be made within 20 business days after the day the building certifier receives the notice.

‘(8) Subsection (4) does not prevent BSA taking the matter the subject of the investigation into consideration at a later time as part of a pattern of conduct that may result in a disciplinary proceeding against the building certifier.

‘(9) Subsections (4) and (6) do not prevent BSA from starting a proceeding to prosecute the building certifier for an offence against this Act.

‘41 Review of BSA’s decision

‘(1) This section applies if a building certifier or complainant is dissatisfied with BSA’s decision under section 40(1) or (4).

‘(2) The building certifier or complainant may apply to the building tribunal for a review of the decision as if it were a reviewable decision under the Tribunal Act.

‘(3) The application must be made within 20 business days after the day the appellant receives notice of the decision.’.

188 Replacement of pt 5, div 6

Part 5, division 6—

omit, insert—

‘Division 3—Show cause notice for disciplinary proceedings

‘41A Show cause notice

‘(1) If a local government reasonably believes proper grounds exist for applying to the building tribunal to start a disciplinary proceeding against a building certifier, the local government must before making the application give the building certifier a notice (a **“show cause notice”**).

‘(2) The show cause notice must—

- (a) state the grounds for making the application; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) invite the building certifier to show within a stated period (the **“show cause period”**) why the application should not be made.

‘(3) The show cause period must be a period ending not less than 20 business days after the show cause notice is given to the building certifier.

‘41B Representations and decision

‘(1) The building certifier may make written representations about the show cause notice to the local government in the show cause period.

‘(2) After considering the representations for the show cause notice, the local government must decide to—

- (a) take no further action; or
- (b) apply to the building tribunal to start a disciplinary proceeding against the building certifier.

‘(3) The local government must give the building certifier written notice of its decision and the reasons for the decision.

‘Division 4—Disciplinary proceedings

‘42 Building tribunal may conduct disciplinary proceeding

‘(1) The building tribunal may, on application by BSA or the local government, conduct a disciplinary proceeding to decide whether proper grounds for taking disciplinary action against a building certifier are established.

‘(2) For subsection (1), proper grounds exist for taking disciplinary action if the building certifier has behaved in a way that constitutes professional misconduct.

‘43 Application of Tribunal Act to disciplinary proceeding

‘Subject to this division, the Tribunal Act applies to the disciplinary proceeding as if it were a proceeding under section 108 of that Act.

‘44 Notification of disciplinary proceeding

‘(1) If BSA makes the application, BSA must notify the local government of the application.

‘(2) If the local government makes the application, it must notify BSA of the application.

‘(3) The applicant must file a copy of the notification in the building tribunal.

‘45 Orders relating to current building certifier

‘(1) If the building tribunal decides that proper grounds exist for taking disciplinary action against a building certifier who is licensed at the time of the decision, the tribunal may make 1 or more of the orders mentioned in subsections (2) to (7).

‘(2) The building tribunal may make an order—

- (a) reprimanding the building certifier; or
- (b) imposing conditions it considers appropriate on the building certifier’s licence; or
- (c) directing the building certifier to complete the educational courses stated in the order; or
- (d) directing the building certifier to report on his or her practice as a building certifier at the times, in the way and to the persons stated in the order; or
- (e) suspending the building certifier’s licence for the term the building tribunal considers appropriate; or
- (f) cancelling the building certifier’s licence; or
- (g) disqualifying, indefinitely or for a stated period, the building certifier from obtaining a licence as a building certifier from BSA.

‘(3) The building tribunal may make an order requiring the building certifier—

- (a) to ensure the certification of building work complies with, for example—
 - (i) this or another Act; or
 - (ii) any relevant development approval; or
 - (iii) a local planning instrument; or
- (b) to direct necessary enforcement action be taken under this or another Act, for example, by requiring the building certifier to issue an enforcement notice to the builder of the building works or owner of the building.

‘(4) The building tribunal may, in relation to building work that is defective or incomplete as a result of the professional misconduct, make an order that the building certifier—

- (a) at the building certifier's cost, have the work rectified or completed by a person who is appropriately licensed; or
- (b) pay the complainant or another person an amount sufficient to rectify or complete the work.

'(5) The building tribunal may make an order imposing a penalty on the building certifier of not more than—

- (a) for a first finding of professional misconduct—an amount equivalent to 80 penalty units; or
- (b) for a second finding of professional misconduct—an amount equivalent to 120 penalty units; or
- (c) for a subsequent finding of professional misconduct—an amount equivalent to 160 penalty units.

'(6) If a corporation or local government employed the building certifier to perform building certification work and the corporation or local government did not take all reasonable steps to ensure the building certifier did not engage in professional misconduct, the building tribunal may—

- (a) make an order under subsection (3) or (4) as if the corporation or local government were the building certifier; or
- (b) make an order imposing a penalty on the corporation of not more than—
 - (i) for a first time that the corporation did not take all reasonable steps—an amount equivalent to 80 penalty units; or
 - (ii) for a second time that the corporation did not take all reasonable steps—an amount equivalent to 120 penalty units; or
 - (iii) for a subsequent time that the corporation did not take all reasonable steps—an amount equivalent to 160 penalty units.

'(7) The building tribunal may make any other order it considers appropriate.

'(8) If the building tribunal makes an order under subsection (5) or (6)(b), the tribunal must order that the amount be paid to the person bringing the disciplinary proceedings.

'(9) The building tribunal may make an order under subsection (6) or, if the order affects the corporation or local government, under subsection (7),

only if the corporation or local government has been joined as a party to the proceeding under section 45³⁰ of the Tribunal Act.

‘45A Orders relating to former building certifier

‘(1) This section applies if the building tribunal decides that proper grounds exist for taking disciplinary action against a former building certifier.

‘(2) The tribunal may make 1 or more of the orders mentioned in subsections (3) to (8).

‘(3) The building tribunal may make an order requiring the former building certifier to—

- (a) have another person who is appropriately licensed take all necessary steps to ensure the certification of building work complies with—
 - (i) this or another Act; or
 - (ii) any relevant development approval; or
 - (iii) a local planning instrument; or
- (b) pay the complainant or another person an amount sufficient to complete the certification work.

‘(4) The building tribunal may, in relation to building work carried out that is defective or incomplete as a result of the professional misconduct, make an order that the former building certifier—

- (a) at the building certifier’s cost, have the work rectified or completed by a person who is appropriately licensed; or
- (b) pay the complainant or another person an amount sufficient to rectify or complete the work.

‘(5) The building tribunal may make an order imposing a penalty on the former building certifier of not more than—

- (a) for a first finding of professional misconduct—an amount equivalent to 80 penalty units; or
- (b) for a second finding of professional misconduct—an amount equivalent to 120 penalty units; or

30 Section 45 (Joinder of parties) of the Tribunal Act

- (c) for a subsequent finding of professional misconduct—an amount equivalent to 160 penalty units.

‘(6) If a corporation or local government employed the former building certifier to perform building certification work and the corporation or local government did not take all reasonable steps to ensure the former building certifier did not engage in professional misconduct, the building tribunal may—

- (a) make an order under subsection (3) or (4) as if the corporation or local government were the building certifier; or
- (b) make an order imposing a penalty on the corporation of not more than—
 - (i) for a first time that the corporation did not take all reasonable steps—an amount equivalent to 80 penalty units; or
 - (ii) for a second time that the corporation did not take all reasonable steps—an amount equivalent to 120 penalty units; or
 - (iii) for a subsequent time that the corporation did not take all reasonable steps—an amount equivalent to 160 penalty units.

‘(7) The building tribunal may make an order that the former building certifier must—

- (a) not be licensed or re-licensed by BSA for the period stated in the order; or
- (b) never be licensed or re-licensed by BSA.

‘(8) The building tribunal may make any other order it considers appropriate.

‘(9) If the building tribunal makes an order under subsection (5) or (6)(b), the tribunal must order the amount be paid to the person bringing the disciplinary proceedings.

‘(10) The building tribunal may make an order under subsection (6) or, if the order affects the corporation or local government, under subsection (8), only if the corporation or local government has been joined as a party to the proceeding under section 45 of the Tribunal Act.

‘45B Consequences of failure to comply with building tribunal’s orders and directions

‘The building tribunal may, in a disciplinary proceeding against a building certifier, order that the building certifier’s licence be suspended or cancelled if the building certifier fails to comply with an order or direction of the tribunal within the time allowed by the tribunal.

‘45C Recording details of orders

‘An order may state—

- (a) the period in which the details of the order are to be included in the register for the person; and
- (b) the details of the order, if any, that the building tribunal decides are not to be included in the register.’.

189 Amendment of s 46A (Fees for statutory functions)

Section 46A(2), from ‘the person’—

omit, insert—

‘—

- (a) the person liable to pay the fee; and
- (b) the period within which the fee must be paid.’.

190 Amendment of s 50 (Prosecution of offences)

(1) Section 50(4), from ‘any person’—

omit, insert—

‘BSA is the only person who may lay a complaint for an offence against—

- (a) part 5 or 5A; or
- (b) a provision of the Standard Building Regulation that is—
 - (i) made for part 5 or 5A; and
 - (ii) declared under a regulation to be a provision to which this subsection applies.’.

(2) Section 50—

insert—

‘(5) All penalties recovered as a result of proceedings mentioned in subsection (4) must be paid to BSA.’

191 Insertion of new pt 8

After section 59—

insert—

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

‘60 Definitions for pt 8

‘In this part—

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

“**building certifier**” includes a former building certifier.

“**commencing day**” means the day the *Plumbing and Drainage Act 2002*, section 191, commences.

“**unamended Act**” means the *Building Act 1975* as in force immediately before the commencing day.

‘61 Swimming pool fences for existing tourist resort complexes exempted

‘(1) This section applies to a tourist resort complex if, immediately before the commencement of this section—

- (a) the land used for the tourist resort complex is specified under a regulation; and
- (b) the tourist resort complex is not required to construct fencing around a swimming pool on the land.

‘(2) A local law is of no effect if it requires the construction of fencing around the swimming pool on the land, provided the land continues to be specified under a regulation.

‘62 Unsatisfactory conduct and professional misconduct

‘(1) If the building tribunal is deciding whether or not proper grounds exist for taking disciplinary action against a building certifier, the tribunal may take into account conduct of the building certifier before or after the commencing day.

‘(2) If BSA is deciding whether or not to apply to the building tribunal to start a disciplinary proceeding against a building certifier, BSA may take into account conduct of the building certifier before or after the commencing day.

‘(3) If BSA is deciding whether or not a building certifier has engaged in unsatisfactory conduct, BSA may take into account conduct of the building certifier before or after the commencing day.

‘63 Appeals to chief executive against accrediting body’s decision

‘(1) If—

- (a) a person has appealed to the chief executive under the unamended Act against a decision of the accrediting body; and
- (b) the appeal has not been decided before the commencing day;

the chief executive may decide the appeal as if the unamended Act were not amended by the amending Act.

‘(2) If —

- (a) a person could have appealed to the chief executive under the unamended Act against a decision of the accrediting body; and
- (b) the person has not appealed before the commencing day;

the person may apply to the building tribunal for a review of the decision under section 41³¹ as if the decision of the accrediting body were a decision of BSA.

‘64 Appeal to the court against chief executive’s decision

‘(1) If—

- (a) a person has appealed to the court under the unamended Act against a decision of the chief executive; and

31 Section 41 (Review of BSA’s decision)

(b) the appeal has not been decided before the commencing day;
the court may decide the appeal as if the unamended Act were not amended by the amending Act.

‘(2) If—

(a) a person could have appealed to the court under the unamended Act against a decision of the chief executive; and

(b) the person has not appealed before the commencing day;

the person may appeal against the decision under the unamended Act as if the unamended Act were not amended by the amending Act.

‘65 Orders relating to building certifiers

‘(1) This section applies if the building tribunal makes an order under section 45(5) or 45A(5) for a building certifier.

‘(2) In making the order, the building tribunal may disregard any previous finding of professional misconduct against the building certifier made by an accrediting body before the commencing day.

‘(3) However, if the building certifier has, before the commencing day, been prosecuted under section 50 for an offence against this Act and found guilty, the building tribunal may take the offence into account when making the order.’