



Queensland

# Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No. 2) 2016

## Subordinate Legislation 2016 No. 184

made under the

*Queensland Building and Construction Commission Act 1991*  
*State Penalties Enforcement Act 1999*

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## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No. 2) 2016*.

### **2 Commencement**

This regulation commences immediately after the commencement of the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014*, section 36.

## **Part 2 Amendment of Queensland Building and Construction Commission Regulation 2003**

### **3 Regulation amended**

This part amends the *Queensland Building and Construction Commission Regulation 2003*.

### **4 Omission of pt 2, div 1, hdg (General)**

Part 2, division 1, heading—  
*omit.*

### **5 Amendment of s 4 (Number of storeys of a building)**

Section 4, after ‘building,’—  
*insert—*

other than for section 67WE(1)(c) of the Act,

**6 Omission of pt 2, div 2 (Residential construction work)**

Part 2, division 2—

*omit.*

**7 Replacement of pt 5 (Statutory insurance scheme)**

Part 5—

*omit, insert—*

**Part 5                      Statutory insurance  
scheme**

**Division 1                Name of scheme**

**23 Name of statutory insurance scheme**

For section 67X(4) of the Act, the name of the statutory insurance scheme is the Queensland Home Warranty Scheme.

**Division 2                Work under the scheme**

**24 Work not covered under the statutory insurance scheme**

(1) For section 67WB(1)(f) of the Act, the following work is prescribed—

- (a) work on or for a duplex or multiple dwelling if the duplex or multiple dwelling is more than 3 storeys;

*Examples for paragraph (a)—*

- work for tiling the kitchen in a single residential unit in a 4-storey duplex

- work for renovating the bathroom of a single residential unit in a 10-storey multiple dwelling
- (b) work on or for a building used or proposed to be used for a purpose related to the use of a duplex, or proposed duplex, of more than 3 storeys;
- (c) work on or for a building used or proposed to be used for a purpose related to the use of a multiple dwelling, or proposed multiple dwelling, of more than 3 storeys;
- (d) work on or for a building that is—
- (i) on, or proposed to be on, the site of a residence or proposed residence; and
  - (ii) used, or proposed to be used, primarily for a purpose that is not related to the use of the residence or proposed residence;
- (e) work on or for a class 1b, 3, 4, 5, 6, 7b, 8 or 9 building;
- (f) work on or for a class 7a building unless the building is, or is proposed to be, used with a class 2 building;
- (g) work for the erection, construction or installation of a swimming pool if the swimming pool is, or is proposed to be, used primarily for a purpose that is not related to the use of a residence or proposed residence;
- (h) work for the erection, construction or installation of a structure that is not fixed.

*Example for paragraph (h)—*

work for installing a portable spa pool

(2) In this section—

***swimming pool*** see the *Building Act 1975*, schedule 2.

## 25 Primary insurable work

For section 67WC(1)(e) of the Act, the following building work is prescribed—

- (a) building work for the renovation, alteration, extension, improvement or repair of the building envelope for a residence or related roofed building;

*Examples for paragraph (a)—*

- painting an external wall of a residence or related roofed building
- extending the building envelope for a residence by constructing a patio

- (b) building work for a structure attached to the external part of a residence or related roofed building if the structure does not have any other supporting structure;

*Examples for paragraph (b)—*

- an awning or handrail that is attached to a residence and does not have any other supporting structure
- a soffit or cladding

- (c) building work for a structure attached to the external part of a residence or related roofed building if the structure is for—

- (i) the primary water supply to the residence or related roofed building; or
- (ii) sewerage or drainage for the residence or related roofed building; or
- (iii) stormwater discharge for the residence or related roofed building;

*Examples for paragraph (c)—*

- installing a water tank for the primary water supply to a residence
- altering an existing water pipe for the primary water supply to a residence

- repairing a downpipe or gutter that drains stormwater from a related roofed building to a stormwater drain
  - extending a sanitary drain that connects a residence to a main of a sewerage system
- (d) building work for an elevated platform, including a verandah and deck, that is attached to a residence or related roofed building;
- (e) building work for stairs, a ramp or a similar structure providing access to a residence or related roofed building if the stairs, ramp or structure are, or are to be, permanently attached to the residence or related roofed building;
- (f) building work for the installation, repair or replacement of support structures for a residence or related roofed building.

*Examples for paragraph (f)—*

- replacement of a stump for a residence or related roofed building
- installation or repair of a retaining wall that supports a residence or related roofed building
- installation of underpinning for a residence or related roofed building

## **26 Work that is not primary insurable work**

- (1) For section 67WC(2)(e) of the Act, the following work is prescribed—
- (a) work mentioned in schedule 1AA, section 21, 26, 29, 30, 32, 36, 40 or 45;
- (b) installation of electrical appliances intended to be permanently fixed to a residence or related roofed building;

- (c) installation, renovation, repair or replacement of any of the following—
  - (i) a cubbyhouse;
  - (ii) a structure for housing animals;  
*Example for subparagraph (ii)—*  
a doghouse
  - (iii) a shade sail or fixed umbrella;
  - (iv) telephone or data cables;
  - (v) a water meter;
  - (vi) a water tank that is not for the primary water supply to a residence or related roofed building;
- (d) construction of a slab if—
  - (i) the slab is not within, or not attached or connected to, the building envelope of a residence or related roofed building;  
or
  - (ii) the work for the construction of the slab does not include the erection or construction of a residence, related roofed building or swimming pool on the slab.

(2) In this section—

***electrical appliance*** means an instrument, apparatus or device that is connected to an electricity supply by means of a flexible cord plug and socket outlet.

***swimming pool*** see the *Building Act 1975*, schedule 2.

## **26A Calculating number of storeys of building**

For section 67WE(4) of the Act, the number of storeys of a building is calculated by excluding 1

storey of the building if more than 50% of the floor area of at least 1 storey of the building is designed to accommodate motor vehicles.

*Example—*

If a building has 3 storeys containing residential units and another storey where more than 50% of the floor area of the storey is designed to accommodate motor vehicles, the number of storeys of the building is 3.

## **Division 3            Assistance**

### **26B Terms of cover**

- (1) For section 67Y of the Act, the terms of cover under which a consumer is entitled to assistance under the statutory insurance scheme are stated in schedule 2C.
- (2) The terms of cover apply to the following work—
  - (a) residential construction work;
  - (b) work performed by either of the following if the work is associated with residential construction work—
    - (i) an architect in the architect's professional practice;
    - (ii) an engineer in the engineer's professional practice.
- (3) The terms of cover applying to a claim under the statutory insurance scheme relating to residential construction work are the terms of cover stated in schedule 2C when—
  - (a) if the consumer for the work obtains optional additional cover—the optional additional cover comes into force for the work; or

- (b) otherwise—cover under the statutory insurance scheme comes into force for the work.

*Note—*

See section 68I of the Act for when cover under the statutory insurance scheme comes into force for residential construction work.

### **26C Optional additional cover**

- (1) For section 67Z(4) of the Act, schedule 2C provides for other matters relating to optional additional cover.
- (2) For section 67Z(5) of the Act, definition *optional additional cover*, the additional assistance provided to a person and the additional compensation to be paid under the statutory insurance scheme are stated in schedule 2C.

### **26D Associate of building contractor not entitled to assistance under statutory insurance scheme**

- (1) For section 68(4) of the Act, if a building contractor carries out residential construction work, a person who is an associate of the building contractor is not entitled to assistance under the statutory insurance scheme in relation to the work.
- (2) In this section—  
*associate*, of a building contractor, means—
  - (a) if the building contractor is an individual—
    - (i) the individual's spouse or child; or
    - (ii) a person who is a trustee of a trust of which the individual is a trustee or beneficiary; or

- (iii) a person who is a trustee of a trust of which an associate of the individual is a trustee or beneficiary; or
  - (iv) a corporation of which the individual is an executive officer; or
  - (v) a corporation in which the individual or the individual's spouse or child holds a controlling interest or is able to substantially influence the corporation's affairs; or
- (b) if the building contractor is a corporation—
- (i) an executive officer of the corporation; or
  - (ii) a person who holds a controlling interest in the corporation or is able to substantially influence the corporation's affairs; or
- Examples for subparagraph (ii)—*
- a shareholder with a significant shareholding
  - a financier
  - a senior employee
  - an executive officer of another corporation that holds a controlling interest in the corporation
- (iii) the spouse or child of a person mentioned in subparagraph (i), (ii) or (vii); or
  - (iv) a person who is a trustee of a trust of which the corporation is a trustee or beneficiary; or
  - (v) a person who is a trustee of a trust of which an associate of the corporation is a trustee or beneficiary; or

(vi) a related body corporate of the corporation; or

(vii) the corporation's nominee.

*building contractor* does not include a subcontractor who carries out building work for a building contractor.

*related body corporate* see the Corporations Act, section 50.

## **Division 4      Calculating insurable value**

### **26E Application of division**

This division prescribes, for section 68D(5) of the Act, the way to calculate the insurable value of particular residential construction work.

### **26F Work for multiple dwelling**

- (1) This section applies if residential construction work includes any of the following work—
  - (a) residential construction work for the erection or construction of a multiple dwelling;
  - (b) residential construction work for the alteration or repair of the footings or slab of a multiple dwelling;
  - (c) residential construction work for the renovation, alteration, extension, repair or replacement of all or part of the roof, including its supporting structure, and guttering of a multiple dwelling if the insurable value of the work is more than \$5000;

- (d) residential construction work for the renovation, alteration, extension, improvement or repair of the common property for a community titles scheme if—
    - (i) the work is in or on a multiple dwelling in the community titles scheme; and
    - (ii) the insurable value of the work is more than \$20,000;
  - (e) residential construction work for the renovation, alteration, extension, improvement or repair of 2 or more residential units in a multiple dwelling if—
    - (i) the residential units are owned by the same person; and
    - (ii) the insurable value of the work is more than \$20,000.
- (2) The insurable value of the residential construction work for each living unit for which the work is to be carried out is calculated by dividing the insurable value of the residential construction work by the number of living units for which the work is to be carried out.

*Note—*

See also sections 26M and 26N.

### **26G Work for duplex**

- (1) This section applies if—
  - (a) residential construction work includes duplex work; and
  - (b) section 26F does not apply in relation to the work.
- (2) The insurable value of the residential construction work for each living unit for which the work is to be carried out is calculated by dividing the

insurable value of the residential construction work by the number of living units for which the work is to be carried out.

*Note—*

See also sections 26M and 26N.

(3) In this section—

***duplex work*** means any of the following work—

- (a) residential construction work for the erection or construction of a duplex;
- (b) residential construction work for the alteration or repair of the footings or slab of a duplex;
- (c) residential construction work for the renovation, alteration, extension, repair or replacement of all or part of the roof, including its supporting structure, and guttering of a duplex if the insurable value of the work is more than \$5000;
- (d) residential construction work for the renovation, alteration, extension, improvement or repair of the common property for a community titles scheme if—
  - (i) the work is in or on a duplex in the community titles scheme; and
  - (ii) the insurable value of the work is more than \$20,000;
- (e) residential construction work for the renovation, alteration, extension, improvement or repair of both residential units in a duplex if the insurable value of the work is more than \$20,000.

## **26H Work for 2 or more detached dwellings**

(1) This section applies if—

- (a) residential construction work includes building work for 2 or more detached dwellings; and
  - (b) section 26F or 26G does not apply in relation to the work.
- (2) The insurable value of the residential construction work for each living unit is calculated by dividing the insurable value of the residential construction work by the number of living units for which the work is to be carried out.

*Note—*

See also section 26N.

## **Division 5            Miscellaneous**

### **26I Matters for notice of cover**

- (1) For section 68F(2) of the Act, the following matters must be included in a notice of cover for residential construction work—
- (a) a description of the work;
  - (b) the name and licence number of the licensed contractor carrying out, or who is to carry out, the work;
  - (c) the address, including the lot on plan description, of the site where the work is being or is to be carried out;
  - (d) an amount representing the commission's assessment of the insurable value of the work when issuing the notice;
  - (e) the insurance premium paid for the work;
  - (f) whether optional additional cover has been obtained for the work;

- (g) general information about when cover under the statutory insurance scheme comes into force;
  - (h) general information about the time within which a claim under the statutory insurance scheme must be made.
- (2) In this section—  
*licensed contractor* see schedule 2C, section 2.

### **26J Refund of part of insurance premium**

- (1) For section 70C of the Act, this section prescribes how to calculate the part of an insurance premium refundable because a variation of the value of residential construction work results in a decrease in the value of the work.
- (2) The part of the insurance premium is the difference between the amount of the premium paid for the residential construction work before the variation and the amount of the premium that would have been payable on the decreased value.

### **26K Amount for tenders for rectification work**

The amount prescribed for section 71A(4) of the Act is \$20,000.

### **26L When work is taken to have started**

- (1) For section 71F of the Act, residential construction work is taken to start for the purposes of part 5 of the Act when—
  - (a) if the work includes the erection or construction of a footing system or slab or the provision of sewerage or drainage on a site—the erection or construction of the footing system or slab, or the provision of

sewerage or drainage, physically starts on the site; or

- (b) otherwise—work for the renovation, alteration, extension, improvement or repair of an existing building on a site physically starts on the site.

(2) In this section—

*physically starts*, for residential construction work, does not include starting any of the following—

- (a) the preparation of plans or specifications for the performance of the work;
- (b) design work;
- (c) administration services;
- (d) earthmoving or excavating;
- (e) site work related to the residential construction work.

### **26M Residential unit for which residential construction work carried out**

(1) This section applies if—

- (a) residential construction work is for the renovation, alteration, extension, improvement or repair of the common property for a community titles scheme; and
- (b) the work is in or on a duplex or multiple dwelling in the community titles scheme.

(2) The work is taken to be carried out for all residential units in the duplex or multiple dwelling.

(3) However, subsection (2) does not apply if the residential construction work for the common property is only for common property the subject

of an exclusive use by-law under the *Body Corporate and Community Management Act 1997*.

## 26N Living units

For this part, and schedule 2C—

- (a) a single detached dwelling is taken to be 1 living unit; and
- (b) a residential unit is taken to be 1 living unit; and
- (c) a duplex is taken to be 2 living units.

## 27 Insurance information statement

- (1) An interested person for land or a manufactured home may, on payment of the insurance information statement fee stated in schedule 1, ask the commission for an insurance information statement about the land or manufactured home.
- (2) The commission must comply with the request.
- (3) In this section—

*home owner*, of a manufactured home, means a home owner under the *Manufactured Homes (Residential Parks) Act 2003*.

*interested person*, for land or a manufactured home, means—

- (a) an owner of the land; or
- (b) a home owner of the manufactured home; or
- (c) a prospective purchaser of the land or manufactured home; or
- (d) the agent of a person mentioned in paragraph (a), (b) or (c).

*owner*, of land, includes the body corporate that

under an approved determination of native title under the *Native Title Act 1993* (Cwlth) has the exclusive right to regulate possession, occupation, use and enjoyment of the land.

*Note—*

See also schedule 2 of the Act, definition *owner*.

***prospective purchaser***, of land or a manufactured home, means a person who the commission is satisfied—

- (a) if the land or manufactured home is offered or advertised for sale—is investigating purchasing the land or manufactured home; or
- (b) has entered into a contract with the owner of the land or the home owner of the manufactured home for the purchase of the land or manufactured home.

## **8 Amendment of sch 1A (Board's policies approved under section 19 of the Act)**

(1) Schedule 1A, items 1, 3 and 4—  
*omit.*

(2) Schedule 1A, items 2 to 6—  
*renumber* as items 1 to 3.

## **9 Amendment of sch 2AA (Demerit offences)**

(1) Schedule 2AA, entry for section 68(1)—  
*omit.*

(2) Schedule 2AA—  
*insert—*

s 68B(3)	4
s 68C(2)	4

## 10 Insertion of new sch 2C

After schedule 2B—

*insert—*

### **Schedule 2C Terms of cover for statutory insurance scheme**

sections 26B and 26C

## **Part 1 Preliminary**

### **1 Overview and application of schedule**

- (1) Part 2 provides for the assistance a consumer for residential construction work is entitled to claim under the statutory insurance scheme if the work is incomplete.
- (2) Part 3 provides for the assistance a consumer for residential construction work is entitled to claim under the statutory insurance scheme if the work is defective.
- (3) However, the assistance provided under part 2 or 3 is subject to—
  - (a) any limitations stated in the part, including limitations about the time for making a claim; and

- (b) the maximum amount of assistance the commission may pay for the work under part 4; and
- (c) the general provisions stated in part 5; and
- (d) the provisions about claims stated in part 6.

## 2 Definitions

In this schedule—

***built work*** means a structure or part of a structure, or another thing, resulting from residential construction work.

***defective work*** see section 14.

***defined event*** means—

- (a) vandalism or forcible removal of built work; or
- (b) fire, storm or tempest.

***ends***, for a fixed price residential contract, see section 4.

***fire*** means a fire or explosion other than the following—

- (a) a fire or explosion where there is no flame;
- (b) a fire that has not escaped the normal confines of a cooking, heating or electrical appliance;
- (c) a fire or explosion caused by—
  - (i) spontaneous fermentation or heating or a process involving the application of heat; or
  - (ii) earthquake or subterranean fire; or
  - (iii) riot, civil commotion, war, invasion, act of foreign enemy, a terrorist act, hostilities (regardless of whether war is

declared), civil war, rebellion, revolution, insurrection or military or usurped power; or

- (iv) arson, vandalism or forcible removal of built work or another unlawful act;
- (d) an explosion that results in built work being damaged from exposure to water or another liquid, including, for example, petrol or oil but not including water from a pipe damaged by the explosion or water used to extinguish a fire.

***fixed price residential contract*** see section 3.

***forcible removal***, of built work—

- (a) means the removal by force of built work that is fixed by a person—
  - (i) acting without the consent of the consumer for the residential construction work; and
  - (ii) who is not the invitee of the consumer; and
- (b) does not include the removal of the built work as a result of a terrorist act.

***incomplete work provisions*** means—

- (a) section 7; and
- (b) section 9; and
- (c) section 10, to the extent it applies to a claim for a defined event that is vandalism or forcible removal of built work; and
- (d) section 15; and
- (e) section 20.

***insolvent*** includes external administration (for example, liquidation, receivership or compromise entered into with creditors) under the

Corporations Act or a similar law of a foreign jurisdiction.

***interest schedule lot entitlement*** see the *Body Corporate and Community Management Act 1997*, section 46.

***liability amount***, for a consumer for residential construction work—

- (a) means the amount of the consumer's remaining liability under—
  - (i) if the contract for carrying out the work has ended—the contract immediately before the contract ended; or
  - (ii) otherwise—the contract for carrying out the work; and
- (b) does not include—
  - (i) any amount for liquidated damages or damages for delay that the consumer may be entitled to set-off against the remaining liability; or
  - (ii) an amount for which the licensed contractor who carried out the work has waived payment for valuable consideration, or is liable to the consumer in relation to the contract.

***licensed contractor*** includes a building contractor who, at or before the time a contract for the carrying out of residential construction work is entered into, makes a representation mentioned in section 68H(1)(b) of the Act.

***lot*** see the *Body Corporate and Community Management Act 1997*, schedule 6.

***prime cost item***, for a fixed price residential contract, means an item, including, for example, a fixture or fitting—

- (a) that has not been selected, or the price of which is not known, by the consumer or the licensed contractor when the contract is entered into; and
- (b) for which the contract provides for the licensed contractor to make a reasonable allowance for the cost of its supply and delivery.

***provisional sum***, for a fixed price residential contract, means an amount that is an estimate of the cost of providing particular services under the contract (including the cost of supplying materials needed for the work under the contract) if the licensed contractor, after making all reasonable inquiries, can not state a definite amount for the services when the contract is entered into.

***rectification work*** see section 15(1).

***reinstatement work*** see section 10(2).

***storm*** does not include the following—

- (a) heavy or persistent rain by itself;
- (b) water rising up from the ground, including from natural causes;
- (c) an increase in sea level, including a tsunami or other storm surge.

***structural defect***, for primary insurable work, means—

- (a) if the work is for a residence or related roofed building—
  - (i) a defect in the work that causes or contributes to deflection or movement of the footing or slab of the residence or building so that the residence or building no longer complies with the building assessment provisions under the *Building Act 1975*; or

- (ii) the work does not comply with a performance requirement under the Building Code of Australia, part B1 or part 2.1 for the residence or building; or
- (iii) a defect in the work that causes the residence or building to be uninhabitable or not reasonably accessible; or
- (b) if the work is for a swimming pool—a defect in the work that allows water to escape through the shell of the swimming pool; or
- (c) if the work is on or for a residence, related roofed building or swimming pool—a defect in the work that adversely affects the health or safety of persons who occupy or use the residence, building or swimming pool; or
- (d) if the work is on or for a residence or related roofed building—a defect in the work that allows water penetration of the residence or building.

***substantially complete***, for residential construction work, means at least 1 of the following applies in relation to the work—

- (a) the final payment under the contract for the work is made;
- (b) if the residential construction work is for the erection or construction of a residence—the residence is occupied;
- (c) the built work is able to be used for its intended purpose despite the work not complying with the contract because of a cosmetic difference.

***swimming pool*** see the *Building Act 1975*,

schedule 2.

***terrorist act*** see the *Police Powers and Responsibilities Act 2000*, section 211.

***vandalism***, of built work—

- (a) means vandalism of the work by a person—
  - (i) acting without the consent of the consumer for the residential construction work; and
  - (ii) who is not the invitee of the consumer; and
- (b) does not include vandalism of built work as a result of a terrorist act.

### **3 Meaning of *fixed price residential contract***

- (1) A ***fixed price residential contract*** is a contract between a consumer and a licensed contractor for residential construction work for which the price is fixed except for the effect of the following—
  - (a) prime cost items;
  - (b) provisional sums;
  - (c) increases to reflect increased costs of labour or materials or delays in carrying out the work.
- (2) However, the following contracts are not included for subsection (1)—
  - (a) a construction management contract;
  - (b) a contract for the erection, construction, renovation, alteration, extension, improvement or repair of 3 or more living units.

#### **4 When fixed price residential contract ends**

- (1) A fixed price residential contract *ends* if—
- (a) the contract is validly terminated on the default of the licensed contractor; or
  - (b) the licensed contractor dies; or
  - (c) the licensed contractor is a company and the company no longer exists; or
  - (d) both of the following apply—
    - (i) the licensed contractor is bankrupt or insolvent, or takes advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction;
    - (ii) the licensed contractor's licence is cancelled.
- (2) In this section—  
*validly terminated*, for a fixed price residential contract, does not include mutual abandonment of the contract by the parties to the contract.

## **Part 2 Incomplete residential construction work**

### **Division 1 Assistance if work not started**

#### **5 Assistance if work not started**

- (1) This section applies to a consumer for residential construction work if—
- (a) the work is to be carried out under a fixed price residential contract; and

- (b) the contract ends within 2 years after the contract date; and
- (c) work under the contract has not started before the contract ends.

*Note—*

See section 26L of the regulation for when residential construction work is taken to start.

- (2) The consumer is entitled to claim assistance for the amount of the insurable deposit for the contract that is not otherwise refunded to the consumer under the contract.
- (3) However, no assistance can be given to the consumer unless the consumer makes the claim before the day that is 3 months after the day the contract ends.

- (4) In this section—

***deposit***, for a fixed price residential contract, includes any payment for residential construction work received by the licensed contractor prior to work under the contract starting at the place where the work is to be completed under the contract, including, for example, any insurance premium paid.

***insurable deposit***, for a fixed price residential contract, means the least of the following amounts—

- (a) the deposit paid by the consumer to the licensed contractor under the contract;
- (b) if the insurable value of the off-site work is more than 50% of the contract price—20% of the contract price;
- (c) if the contract price is less than \$20,000—10% of the contract price;
- (d) if the contract price is \$20,000 or more—5% of the contract price.

*off-site work*, for a fixed price residential contract, means work under the contract performed at a place that is not the place where the residential construction work is to be completed under the contract.

## **Division 2 Assistance if work started**

### **Subdivision 1 Preliminary**

#### **6 Application of division**

This division applies to a consumer for residential construction work if—

- (a) the work is carried out under a fixed price residential contract; and
- (b) the contract ends within 2 years after the day work starts under the contract; and

*Note—*

See section 26L of the regulation for when residential construction work is taken to start.

- (c) the work is incomplete; and
- (d) for work for the common property for a community titles scheme if the work is, or is to be, carried out in or on a multiple dwelling in the scheme—at least half the residential units in the multiple dwelling are occupied when the contract is entered into and when it ends.

### **Subdivision 2 Completion of work**

## **7 Assistance for completion of work**

- (1) The consumer is entitled to claim assistance for the reasonable cost of completing the residential construction work.
- (2) However, the consumer is not entitled to claim the assistance if—
  - (a) the residential construction work is prohibited under a relevant law; or
  - (b) approval required to complete the residential construction work under a relevant law can not be obtained.
- (3) If the consumer is not entitled to claim assistance as mentioned in subsection (2), the consumer is entitled to claim the following assistance—
  - (a) the reasonable cost of demolishing the built work;
  - (b) an amount equivalent to the amount the consumer has paid under the contract, when the claim is made, for the built work that is demolished.
- (4) However, the consumer is not entitled to claim the assistance mentioned in subsection (3) if—
  - (a) the residential construction work is prohibited under a relevant law; and
  - (b) the consumer assisted, authorised or encouraged the contravention of the relevant law.
- (5) The assistance mentioned in subsection (1) or (3) the consumer is entitled to claim in relation to the residential construction work must be reduced by—
  - (a) for assistance mentioned in subsection (1)—the consumer’s liability amount for the work; and

- (b) if the consumer makes a payment to, or for, the licensed contractor for the work before the payment is due under the contract—the reasonable cost of completing the work for which the payment was made; and
  - (c) if the insurable value of the work exceeds the contract price for the work by more than 30%—the amount by which the insurable value of the work exceeds the contract price.
- (6) No assistance can be given to the consumer unless the consumer makes a claim mentioned in this section before the day that is 3 months after the day the contract for the work ends.
- (7) In this section—
- relevant law*, for residential construction work, means the following—
- (a) the *Queensland Heritage Act 1992*;
  - (b) the *Sustainable Planning Act 2009*.

## **8 Assistance not available for completing particular work**

The consumer is not entitled to claim assistance mentioned in section 7 for building work services carried out by a construction manager.

## **9 Assistance for accommodation, removal and storage costs**

- (1) This section applies if—
- (a) the commission allows a claim for assistance mentioned in section 7(1) (the *completion claim*); and
  - (b) the residential construction work the subject of the completion claim is for a residence that is—

- (i) occupied by the consumer or, if the residence is unoccupied, intended to be occupied by the consumer; and
  - (ii) uninhabitable because the work is incomplete.
- (2) In addition to the assistance mentioned in section 7(1), the consumer is entitled to claim assistance for the accommodation, removal and storage costs of the consumer incurred by the consumer during all or part of the claim period for the completion claim.
- (3) However, no assistance can be given to the consumer for the accommodation, removal and storage costs unless the consumer makes the claim for the costs within 28 days after the day the claim period for the completion claim ends.
- (4) In this section—
  - accommodation, removal and storage costs***, of a consumer, means the reasonable costs of the following—
    - (a) alternative accommodation of the consumer;
    - (b) removal;
    - (c) storage.
  - claim period***, for the completion claim, means—
    - (a) the initial claim period for the completion claim; and
    - (b) the subsequent claim period for the completion claim.
  - initial claim period***, for the completion claim, means the period—
    - (a) starting on the latest of the following—

- (i) the day the contract for the residential construction work the subject of the completion claim ends;
  - (ii) the day the consumer makes the completion claim;
  - (iii) if a day for practical completion of the work is stated in, or is decided under, the contract—that day; and
- (b) ending on the earliest of the following—
- (i) when the residence is habitable;
  - (ii) the day the consumer for the work contracts with a licensed contractor to complete the work the subject of the completion claim;
  - (iii) 7 days after the day the consumer is given written notice that the completion claim has been allowed.

*subsequent claim period*, for the completion claim, means the period—

- (a) starting on the day the consumer for the residential construction work the subject of the completion claim contracts with a licensed contractor to complete the work the subject of the completion claim; and
- (b) ending when the residence is habitable.

### **Subdivision 3 Vandalism, forcible removal, fire, storm or tempest**

#### **10 Assistance for defined event**

- (1) This section applies if—

- (a) the built work the subject of an allowed completion claim is damaged or destroyed as a result of a defined event; and
- (b) the damage to or destruction of the built work happened—
  - (i) during the claim period for the allowed completion claim; and
  - (ii) as a consequence of the work being incomplete.
- (2) The consumer is entitled to claim assistance for the reasonable cost of work (***reinstatement work***) necessary to reinstate the built work to the same state that it was in immediately before the defined event that caused the damage to or destruction of the work.
- (3) The assistance mentioned in subsection (2) must be reduced by the amount, if any, by which the consumer's liability amount for the residential construction work the subject of the allowed completion claim exceeds the reasonable cost of completing the work.
- (4) However, no assistance can be given to the consumer unless the consumer makes the claim for the reinstatement work within 14 days after the day the damage to or destruction of the built work would have come to the attention of the consumer if the consumer was taking reasonable steps to monitor and protect the built work.
- (5) In this section—

***allowed completion claim*** means a claim for assistance mentioned in section 7(1) if the commission—

  - (a) allows the claim; or
  - (b) disallows the claim only because either or both of the following apply—

- (i) the maximum amount the commission may pay under part 4 in relation to the claim has been reached;
- (ii) the consumer's liability amount for the residential construction work the subject of the claim exceeds the reasonable cost of completing the work.

*claim period*, for an allowed completion claim, means the period—

- (a) starting on the day the allowed completion claim is made; and
- (b) ending on the earliest of the following—
  - (i) 6 months after the day the contract for the residential construction work the subject of the allowed completion claim ends;
  - (ii) the day the consumer contracts with a licensed contractor to complete the residential construction work the subject of the allowed completion claim;
  - (iii) 7 days after the day the consumer is given written notice that the allowed completion claim has been allowed or disallowed.

## **11 No entitlement to assistance for particular loss**

The consumer is not entitled to claim assistance mentioned in section 10(2) for—

- (a) damage to or destruction of built work that is caused gradually as a result of repeated exposure of the work to fire or smoke; or

- (b) residential construction work carried out using goods or materials not supplied by the licensed contractor, or the licensed contractor's agent, under the contract; or
- (c) damage to or destruction of property, other than the built work, as a result of a defined event, including, for example, damage to or destruction of a building that exists on the site of the residential construction work before the work starts; or
- (d) the cost of removing a tree stump, or any part of a tree that has not fallen or caused damage to the built work; or
- (e) building work services.

## **12 Threshold for vandalism or forcible removal**

For each occurrence of vandalism or forcible removal of built work, the consumer is entitled to claim only the reasonable cost of reinstatement work mentioned in section 10(2) that is more than \$2500.

## **13 Requirement to report vandalism or forcible removal**

Before making a claim for assistance mentioned in section 10(2) relating to vandalism or forcible removal of built work, the consumer must report the vandalism or forcible removal to the Queensland Police Service.

*Note—*

See section 65(3) for the evidence that must be included in a notice of claim in relation to vandalism or forcible removal of built work.

# **Part 3 Defective work**

## 14 Application of part

This part applies to residential construction work that is primary insurable work if it is defective (*defective work*).

## 15 Assistance for defective work

- (1) The consumer of the residential construction work is entitled to claim assistance for the reasonable cost of the following work (*rectification work*)—
- (a) rectifying the defective work;
  - (b) any other building work reasonably required to be carried out to a relevant building as a consequence of the defective work.

*Example for subsection (1)(b)—*

work reasonably required to repair a wall in a residence that has cracked because defective work to the concrete slab supporting the wall has resulted in subsidence of the slab

- (2) However, to the extent all of the following apply to the defective work, the consumer is not entitled to claim assistance mentioned in subsection (1) but may be entitled to claim assistance mentioned in subsection (3)—
- (a) the primary insurable work is defective because the work does not comply with the plans or specifications for the work;  
*Example for paragraph (a)—*
    - a ceiling constructed at a height of 2.9m when the plans and specifications state a height of 3m
  - (b) the primary insurable work complies with all of the following—
    - (i) the *Building Act 1975*;
    - (ii) the Building Code of Australia;

- (iii) the Queensland Development Code within the meaning of the *Building Act 1975*;
- (c) the use of the built work is not significantly affected as a result of the defective work.
- (3) To the extent subsection (2) applies to the defective work, the consumer is entitled to claim the loss in value of the built work as a result of the defective work.
- (4) The assistance the consumer is entitled to claim under this section in relation to the residential construction work must be reduced by the consumer's liability amount for the work.
- (5) In this section—  
***relevant building*** means—
  - (a) if primary insurable work was carried out for a residence, other than a residential unit, and paragraph (e) does not apply—the residence; or
  - (b) if primary insurable work was carried out for a related roofed building—the related roofed building; or
  - (c) if primary insurable work was carried out for a swimming pool, other than a swimming pool that is in or on a multiple dwelling—the swimming pool; or
  - (d) if primary insurable work was carried out for a residential unit and paragraph (e) does not apply—the residential unit; or
  - (e) if primary insurable work was carried out for the common property for a community titles scheme and the work was carried out in or on a duplex or multiple dwelling in the scheme—the duplex or multiple dwelling

and each residential unit in the duplex or multiple dwelling.

## **16 Limit on assistance**

- (1) A consumer is entitled to claim assistance mentioned in section 15 in relation to a structural defect in the residential construction work if the consumer first becomes aware, or ought reasonably to have become aware, of the structural defect within—
  - (a) for residential construction work that is not substantially complete within 6 months after the cover commencement day for the work—the period—
    - (i) starting on the day that is 6 months after the cover commencement day; and
    - (ii) ending 6 years and 6 months after the period starts; or
  - (b) otherwise—6 years and 6 months after the cover commencement day for the work.
- (2) Also, a consumer is entitled to claim assistance mentioned in section 15 in relation to a defect, other than a structural defect, in the residential construction work if the consumer first becomes aware, or ought reasonably to have become aware, of the defect within 6 months after the day the work is substantially complete.
- (3) No assistance can be given to the consumer unless the consumer makes a claim mentioned in section 15—
  - (a) for a structural defect—within 3 months after the day the consumer first becomes aware, or ought reasonably to have become aware, of the defect in the work; or

- (b) for a defect other than a structural defect—within 7 months after the day the residential construction work is substantially complete.
- (4) In this section—
- cover commencement day*, for residential construction work, means—
- (a) if the consumer for the work obtains optional additional cover—the day the optional additional cover comes into force for the work; or
  - (b) otherwise—the day cover under the statutory insurance scheme comes into force for the work.

*Note—*

See section 68I of the Act for when cover under the statutory insurance scheme comes into force for residential construction work.

## **17 Reasonable cost of rectification work for particular common property**

- (1) This section applies if—
  - (a) the defective work is carried out in a building, in a community titles scheme, that includes 1 or more lots used for residential purposes and 1 or more lots used for commercial purposes; and
  - (b) the rectification work mentioned in section 15(1) includes work for the common property for the scheme.
- (2) The reasonable cost of the rectification work mentioned in section 15(1) for the common property must be calculated using the formula—

$$C \times \frac{R}{A}$$

where—

*C* is the total cost of the rectification work required for the common property.

*R* is the sum of the interest schedule lot entitlements of the lots in the building that are used for residential purposes.

*A* is the sum of the interest schedule lot entitlements for all lots in the building.

### **18 No entitlement to assistance in particular circumstances**

The consumer is not entitled to assistance mentioned in section 15 if—

- (a) the consumer has unreasonably refused the licensed contractor who carried out the defective work access to the site to carry out rectification work; or
- (b) the licensed contractor who carried out the defective work has a continuing legal obligation to complete the work.

### **19 No entitlement to assistance for particular loss**

The consumer is not entitled to claim assistance mentioned in section 15 for any of the following—

- (a) if the primary insurable work is for the erection, construction or installation of a swimming pool—
  - (i) a defect in the work for the swimming pool that is not a structural defect; or
  - (ii) surfacing of an area outside the coping for the swimming pool; or

- (iii) work associated with the erection, construction or installation of the swimming pool, including, for example, paving, supplying or installing water features, swimming pool slides, diving boards and swimming pool equipment and housings; or
- (iv) steps for the swimming pool that are not fixed structures;
- (b) if the primary insurable work is for the erection or construction of a related roofed building and the slab for the building is constructed other than under the contract for carrying out the work—damage to the building caused or contributed to by the slab;
- (c) if the primary insurable work is for an existing residence or related roofed building—damage to the residence or building that is—
  - (i) not directly caused by the carrying out of the work; or
  - (ii) not directly contributed to by the carrying out of the work.

## **20 Assistance for accommodation, removal and storage costs**

- (1) This section applies if—
  - (a) the commission allows a claim for assistance mentioned in section 15(1); and
  - (b) the primary insurable work the subject of the claim is for a residence that is—

- (i) occupied by the consumer or, if the residence is unoccupied, intended to be occupied by the consumer; and
  - (ii) uninhabitable because the work is defective, or will become uninhabitable while the work necessary under the claim is carried out.
- (2) In addition to the assistance mentioned in section 15(1), the consumer is entitled to claim assistance for the accommodation, removal and storage costs of the consumer incurred by the consumer—
  - (a) while the rectification work is being carried out; and
  - (b) as a result of the residence being uninhabitable.
- (3) However, no assistance can be given to the consumer for the accommodation, removal and storage costs unless the consumer makes the claim for the costs during the period or before the time mentioned in section 16(1)(a) or (b).
- (4) In this section—

*accommodation, removal and storage costs*, of a consumer, means the reasonable costs of the following—

  - (a) alternative accommodation of the consumer;
  - (b) removal;
  - (c) storage.

## **Part 4                    Maximum amounts**

### **Division 1            Preliminary**

## **21 Application of part**

This part states the maximum amount the commission may pay for all claims relating to residential construction work if cover under the statutory insurance scheme is in force for the work.

## **22 Maximum amount inclusive of tax**

An amount mentioned in this part is inclusive of any tax payable for the residential construction work.

## **Division 2 Work to which section 26F of the regulation applied**

### **23 Application of division**

This division states the maximum amount the commission may pay for all claims relating to residential construction work if section 26F of the regulation applied for calculating the insurable value of the work.

### **24 Claims relating to incomplete work, defective work or vandalism or forcible removal of built work—work not substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in the incomplete work provisions in relation to residential construction work that is not substantially complete is—
  - (a) if optional additional cover is in force for the work—\$300,000 multiplied by the number of living units for which the work was carried out; or

- (b) if paragraph (a) does not apply—\$200,000 multiplied by the number of living units for which the work was carried out.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—
    - (i) for all claims mentioned in sections 9 and 20—\$10,000; and
    - (ii) for all claims mentioned in the incomplete work provisions—\$300,000;
  - (b) if paragraph (a) does not apply—
    - (i) for all claims mentioned in sections 9 and 20—\$5,000; and
    - (ii) for all claims mentioned in the incomplete work provisions—\$200,000.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in the incomplete work provisions in relation to the residential construction work—
  - (a) must not be more than the maximum amount stated in section 27 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the residential construction work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a)(ii) or

(b)(ii).

*Example—*

Residential construction work is carried out for a multiple dwelling in a community titles scheme. Under subsection (3), \$9,000 is apportioned to a residential unit in the multiple dwelling as a result of a claim for the common property for the scheme. The maximum amount the commission may pay under subsection (2)(b)(ii) for the residential unit is \$191,000.

## **25 Claims for fire, storm or tempest—work not substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to residential construction work that is not substantially complete is—
  - (a) if optional additional cover is in force for the work—\$300,000 multiplied by the number of living units for which the residential construction work was carried out; or
  - (b) if paragraph (a) does not apply—\$200,000 multiplied by the number of living units for which the work was carried out.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—\$300,000;
  - (b) if paragraph (a) does not apply—\$200,000.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to the residential construction work—

- (a) must not be more than the maximum amount stated in section 27 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the residential construction work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a) or (b).

## **26 Claims relating to defective work—work substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in sections 15 and 20 in relation to residential construction work that is substantially complete is—
- (a) if optional additional cover is in force for the work—\$300,000 multiplied by the number of living units for which the work was carried out; or
  - (b) if paragraph (a) does not apply—\$200,000 multiplied by the number of living units for which the work was carried out.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
- (a) if optional additional cover is in force for the work—
    - (i) for all claims mentioned in section 20—\$10,000; and
    - (ii) for all claims mentioned in sections 15 and 20—\$300,000;
  - (b) if paragraph (a) does not apply—

- (i) for all claims mentioned in section 20—\$5,000; and
  - (ii) for all claims mentioned in sections 15 and 20—\$200,000.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in sections 15 and 20 in relation to the residential construction work—
- (a) must not be more than the maximum amount mentioned in section 27 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a)(ii) or (b)(ii).

## **27 Common property limit**

- (1) The maximum amount the commission may pay for the common property for a community titles scheme for the total of all claims mentioned in sections 7, 9, 10, 15 and 20 in relation to the residential construction work is—
- (a) if optional additional cover is in force for the work—the lesser of the following—
    - (i) \$300,000 multiplied by the number of living units for which the work was carried out;
    - (ii) \$1.3m; or
  - (b) if paragraph (a) does not apply—the lesser of the following—

- (i) \$200,000 multiplied by the number of living units for which the work was carried out;
  - (ii) \$1m.
- (2) The amount mentioned in subsection (1) applies regardless of whether the residential construction work is substantially complete or not substantially complete.

*Example—*

Residential construction work is carried out for 6 residential units in a community titles scheme. Before the work is substantially complete, the commission pays \$50,000 for the common property for the scheme for a claim in relation to the work. After the work is substantially complete, the maximum amount remaining that the commission may pay for the common property in relation to the work is \$950,000 (if optional additional cover is not in force for the work).

## **Division 3            Work to which section 26G of the regulation applied**

### **28 Application of division**

This division states the maximum amount the commission may pay for all claims relating to residential construction work if section 26G of the regulation applied for calculating the insurable value of the work.

### **29 Claims relating to incomplete work, defective work or vandalism or forcible removal of built work—work not substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in the incomplete work provisions in relation to residential construction work that is not substantially complete is—

- (a) if optional additional cover is in force for the work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
- (a) if optional additional cover is in force for the work—
    - (i) for all claims mentioned in sections 9 and 20—\$10,000 divided by the number of living units for which the work was carried out; and
    - (ii) for all claims mentioned in the incomplete work provisions—\$300,000 divided by the number of living units for which the work was carried out;
  - (b) if paragraph (a) does not apply—
    - (i) for all claims mentioned in sections 9 and 20—\$5,000 divided by the number of living units for which the work was carried out; and
    - (ii) for all claims mentioned in the incomplete work provisions—\$200,000 divided by the number of living units for which the work was carried out.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in the incomplete work provisions in relation to the residential construction work—
- (a) must not be more than the maximum amount stated in section 32 for the residential construction work; and

- (b) must be apportioned between each living unit for which the residential construction work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a)(ii) or (b)(ii).

*Example—*

Residential construction work is carried out for a duplex in a community titles scheme. Under subsection (3), \$9,000 is apportioned to each residential unit in the duplex as a result of a claim for the common property for the scheme. The maximum amount the commission may pay under subsection (2)(b)(ii) for each residential unit is \$91,000.

### **30 Claims for fire, storm or tempest—work not substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to residential construction work that is not substantially complete is—
  - (a) if optional additional cover is in force for the work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—\$300,000 divided by the number of living units for which the work was carried out;

- (b) if paragraph (a) does not apply—\$200,000 divided by the number of living units for which the work was carried out.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to the residential construction work—
  - (a) must not be more than the maximum amount stated in section 32 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the residential construction work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a) or (b).

### **31 Claims relating to defective work—work substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in sections 15 and 20 in relation to residential construction work that is substantially complete is—
  - (a) if optional additional cover is in force for the work—\$300,000 multiplied by the number of living units for which the work was carried out; or
  - (b) if paragraph (a) does not apply—\$200,000 multiplied by the number of living units for which the work was carried out.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the

residential construction work was carried out—

- (a) if optional additional cover is in force for the work—
    - (i) for all claims mentioned in section 20—\$10,000; and
    - (ii) for all claims mentioned in sections 15 and 20—\$300,000;
  - (b) if paragraph (a) does not apply—
    - (i) for all claims mentioned in section 20—\$5,000; and
    - (ii) for all claims mentioned in sections 15 and 20—\$200,000.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in sections 15 and 20 in relation to the residential construction work—
- (a) must not be more than the maximum amount mentioned in section 32 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a)(ii) or (b)(ii).

### **32 Common property limit**

- (1) The maximum amount the commission may pay for the common property for a community titles scheme for the total of all claims mentioned in sections 7, 9, 10, 15 and 20 in relation to the residential construction work is—

- (a) if optional additional cover is in force for the work—the lesser of the following—
    - (i) \$300,000 multiplied by the number of living units for which the work was carried out;
    - (ii) \$1.3m; or
  - (b) if paragraph (a) does not apply—the lesser of the following—
    - (i) \$200,000 multiplied by the number of living units for which the work was carried out;
    - (ii) \$1m.
- (2) The amount mentioned in subsection (1) applies regardless of whether the residential construction work is substantially complete or not substantially complete.

*Example—*

Residential construction work is carried out for a duplex in a community titles scheme. Before the work is substantially complete, the commission pays \$50,000 for the common property for the scheme for a claim in relation to the work. After the work is substantially complete, the maximum amount remaining that the commission may pay for the common property in relation to the work is \$350,000 (if optional additional cover is not in force for the work).

## **Division 4      Work to which section 26H of the regulation applied**

### **33 Application of division**

This division states the maximum amount the commission may pay for all claims relating to residential construction work if section 26H of the regulation applied for calculating the insurable

value of the work.

**34 Claims relating to incomplete work, defective work or vandalism or forcible removal of built work—work not substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in the incomplete work provisions in relation to residential construction work that is not substantially complete is—
  - (a) if optional additional cover is in force for the work—\$300,000 multiplied by the number of living units for which the work was carried out; or
  - (b) if paragraph (a) does not apply—\$200,000 multiplied by the number of living units for which the work was carried out.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—
    - (i) for all claims mentioned in sections 9 and 20—\$10,000; and
    - (ii) for all claims mentioned in the incomplete work provisions—\$300,000;
  - (b) if paragraph (a) does not apply—
    - (i) for all claims mentioned in sections 9 and 20—\$5,000; and
    - (ii) for all claims mentioned in the incomplete work provisions—\$200,000.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme

for all claims mentioned in the incomplete work provisions in relation to the residential construction work—

- (a) must not be more than the maximum amount stated in section 37 for the residential construction work; and
  - (b) must be apportioned equally between each living unit for which the residential construction work was carried out.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a)(ii) or (b)(ii).

### **35 Claims for fire, storm or tempest—work not substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to residential construction work that is not substantially complete is—
  - (a) if optional additional cover is in force for the work—\$300,000 multiplied by the number of living units for which the work was carried out; or
  - (b) if paragraph (a) does not apply—\$200,000 multiplied by the number of living units for which the work was carried out.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—\$300,000;
  - (b) if paragraph (a) does not apply—\$200,000.
- (3) Also, the amount the commission may pay for the

common property for a community titles scheme for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to the residential construction work—

- (a) must not be more than the maximum amount stated in section 37 for the residential construction work; and
  - (b) must be apportioned equally between each living unit for which the residential construction work was carried out.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a) or (b).

### **36 Claims relating to defective work—work substantially complete**

- (1) The maximum amount the commission may pay for all claims mentioned in sections 15 and 20 in relation to residential construction work that is substantially complete is—
- (a) if optional additional cover is in force for the work—\$300,000 multiplied by the number of living units for which the work was carried out; or
  - (b) if paragraph (a) does not apply—\$200,000 multiplied by the number of living units for which the work was carried out.
- (2) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
- (a) if optional additional cover is in force for the work—
    - (i) for all claims mentioned in section 20—\$10,000; and

- (ii) for all claims mentioned in sections 15 and 20—\$300,000;
- (b) if paragraph (a) does not apply—
  - (i) for all claims mentioned in section 20—\$5,000; and
  - (ii) for all claims mentioned in sections 15 and 20—\$200,000.
- (3) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in sections 15 and 20 in relation to the residential construction work—
  - (a) must not be more than the maximum amount mentioned in section 37 for the residential construction work; and
  - (b) must be apportioned equally between each living unit for which the work was carried out.
- (4) The amount apportioned for a living unit under subsection (3)(b) is counted for calculating the amount mentioned in subsection (2)(a)(ii) or (b)(ii).

### **37 Common property limit**

- (1) The maximum amount the commission may pay for the common property for a community titles scheme for the total of all claims mentioned in sections 7, 9, 10, 15 and 20 in relation to residential construction work is—
  - (a) if optional additional cover is in force for the work—the lesser of the following—
    - (i) \$300,000 multiplied by the number of living units for which the work was carried out;
    - (ii) \$1.3m; or

- (b) if paragraph (a) does not apply—the lesser of the following—
  - (i) \$200,000 multiplied by the number of living units for which the work was carried out;
  - (ii) \$1m.
- (2) The amount mentioned in subsection (1) applies regardless of whether the residential construction work is substantially complete or not substantially complete.

## **Division 5            Work for particular buildings**

### **38 Application of division**

This division states the maximum amount the commission may pay for all claims relating to residential construction work if the work was for any of the following buildings or any combination of the following buildings—

- (a) 1 single detached dwelling;
- (b) a related roofed building;
- (c) a swimming pool, other than a swimming pool that is in or on a duplex or multiple dwelling.

### **39 Claims relating to incomplete work, defective work or vandalism or forcible removal of built work—work not substantially complete**

- (1) This section applies to the residential construction work if the work is not substantially complete.
- (2) The maximum amount the commission may pay for all claims mentioned in the incomplete work

provisions in relation to the residential construction work is—

- (a) if optional additional cover is in force for the work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.
- (3) However, for all claims mentioned in sections 9 and 20, the commission must not pay more than—
- (a) if optional additional cover is in force for the work—\$10,000; or
  - (b) if paragraph (a) does not apply—\$5,000.

#### **40 Claims for fire, storm or tempest—work not substantially complete**

- (1) This section applies to the residential construction work if the work is not substantially complete.
- (2) The maximum amount the commission may pay for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to the residential construction work is—
  - (a) if optional additional cover is in force for the work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.

#### **41 Claims relating to defective work—work substantially complete**

- (1) This section applies to the residential construction work if the work is substantially complete.
- (2) The maximum amount the commission may pay for all claims mentioned in sections 15 and 20 in relation to the residential construction work is—
  - (a) if optional additional cover is in force for the work—\$300,000; or

- (b) if paragraph (a) does not apply—\$200,000.
- (3) However, for all claims mentioned in section 20 in relation to the residential construction work, the commission must not pay more than—
  - (a) if optional additional cover is in force for the work—\$10,000; or
  - (b) if paragraph (a) does not apply—\$5,000.

## **Division 6      Other work**

### **42 Application of division**

This division states the maximum amount the commission may pay for all claims relating to residential construction work if divisions 2 to 5 do not apply in relation to the work.

### **43 Claims relating to incomplete work, defective work or vandalism or forcible removal of built work—work not substantially complete**

- (1) This section applies to the residential construction work if the work is not substantially complete.
- (2) The maximum amount the commission may pay for all claims mentioned in the incomplete work provisions in relation to the residential construction work is—
  - (a) if optional additional cover is in force for the work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.
- (3) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—

- (i) for all claims mentioned in sections 9 and 20—\$10,000 divided by the number of living units for which the work was carried out; and
  - (ii) for all claims mentioned in the incomplete work provisions—\$300,000 divided by the number of living units for which the work was carried out;
- (b) if paragraph (a) does not apply—
  - (i) for all claims mentioned in sections 9 and 20—\$5,000 divided by the number of living units for which the work was carried out; and
  - (ii) for all claims mentioned in the incomplete work provisions—\$200,000 divided by the number of living units for which the work was carried out.
- (4) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in the incomplete work provisions in relation to the residential construction work—
  - (a) must not be more than the maximum amount stated in section 46 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the residential construction work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (5) The amount apportioned for a living unit under subsection (4)(b) is counted for calculating the amount mentioned in subsection (3)(a)(ii) or (b)(ii).

#### **44 Claims for fire, storm or tempest—work not substantially complete**

- (1) This section applies to the residential construction work if the work is not substantially complete.
- (2) The maximum amount the commission may pay for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to residential construction work is—
  - (a) if optional additional cover is in force for the work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.
- (3) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—\$300,000 divided by the number of living units for which the work was carried out;
  - (b) if paragraph (a) does not apply—\$200,000 divided by the number of living units for which the work was carried out.
- (4) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in section 10 (as a result of a defined event that is a fire, storm or tempest) in relation to the residential construction work—
  - (a) must not be more than the maximum amount stated in section 46 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the residential construction work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (5) The amount apportioned for a living unit under

subsection (4)(b) is counted for calculating the amount mentioned in subsection (3)(a) or (b).

#### **45 Claims relating to defective work—work substantially complete**

- (1) This section applies to the residential construction work if the work is substantially complete.
- (2) The maximum amount the commission may pay for all claims mentioned in sections 15 and 20 in relation to the residential construction work is—
  - (a) if optional additional cover is in force for the work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.
- (3) However, the commission must not pay more than the following for any 1 living unit for which the residential construction work was carried out—
  - (a) if optional additional cover is in force for the work—
    - (i) for all claims mentioned in section 20—\$10,000 divided by the number of living units for which the work was carried out; and
    - (ii) for all claims mentioned in sections 15 and 20—\$300,000 divided by the number of living units for which the work was carried out;
  - (b) if paragraph (a) does not apply—
    - (i) for all claims mentioned in section 20—\$5,000 divided by the number of living units for which the work was carried out; and
    - (ii) for all claims mentioned in sections 15 and 20—\$200,000 divided by the

number of living units for which the work was carried out.

- (4) Also, the amount the commission may pay for the common property for a community titles scheme for all claims mentioned in sections 15 and 20 in relation to the residential construction work—
  - (a) must not be more than the maximum amount stated in section 46 for the residential construction work; and
  - (b) must be apportioned between each living unit for which the residential construction work was carried out in proportion to the living unit's interest schedule lot entitlement.
- (5) The amount apportioned for a living unit under subsection (4)(b) is counted for calculating the amount mentioned in subsection (3)(a)(ii) or (b)(ii).

#### **46 Common property limit**

- (1) The maximum amount the commission may pay for the common property for a community titles scheme for the total of all claims mentioned in sections 7, 9, 10, 15 and 20 in relation to residential construction work is—
  - (a) if optional additional cover is in force for the residential construction work—\$300,000; or
  - (b) if paragraph (a) does not apply—\$200,000.
- (2) The amount mentioned in subsection (1) applies regardless of whether the residential construction work is substantially complete or not substantially complete.

## **Division 6            Maximum liability**

### **47 Total maximum liability if work not started**

The total maximum amount the commission may pay for all claims mentioned in section 5 relating to residential construction work is—

- (a) if optional additional cover is in force for the work—\$300,000; or
- (b) if paragraph (a) does not apply—\$200,000.

### **48 Total maximum liability if work started**

- (1) This section states the total maximum amount the commission may pay for all claims mentioned in sections 7, 9, 10, 15 and 20 relating to residential construction work.
- (2) For residential construction work that includes the erection or construction of a multiple dwelling, the commission must not pay more than the following amount for each living unit for which the work was carried out—
  - (a) if optional additional cover is in force for the work—\$300,000;
  - (b) if paragraph (a) does not apply—\$200,000.
- (3) For residential construction work, other than work mentioned in subsection (2), for which section 26F of the regulation applied for calculating the insurable value of the work, the commission must not pay more than the following amount for each living unit for which the work was carried out—
  - (a) if optional additional cover is in force for the work—\$900,000;
  - (b) if paragraph (a) does not apply—\$600,000.

- (4) For residential construction work that is not substantially complete and for which section 26G of the regulation applied for calculating the insurable value of the work, the commission must not pay more than—
  - (a) if optional additional cover is in force for the work—\$900,000; or
  - (b) if paragraph (a) does not apply—\$400,000.
- (5) For residential construction work that is substantially complete and for which section 26G of the regulation applied for calculating the insurable value of the work, the commission must not pay more than the following amount for each living unit for which the work was carried out—
  - (a) if optional additional cover is in force for the work—\$300,000;
  - (b) if paragraph (a) does not apply—\$200,000.
- (6) For residential construction work that includes building work for 2 detached dwellings if section 26H of the regulation applied for calculating the insurable value of the work, the commission must not pay more than the following amount for each living unit for which the work was carried out—
  - (a) if optional additional cover is in force for the work—\$900,000;
  - (b) if paragraph (a) does not apply—\$600,000.
- (7) For residential construction work that includes building work for 3 or more detached dwellings if section 26H of the regulation applied for calculating the insurable value of the work, the commission must not pay more than the following amount for each living unit for which the work was carried out—
  - (a) if optional additional cover is in force for the work—\$300,000;

- (b) if paragraph (a) does not apply—\$200,000.
- (8) For residential construction work not mentioned in subsections (2) to (7), the commission must not pay more than—
  - (a) if optional additional cover is in force for the work—\$900,000; or
  - (b) if paragraph (a) does not apply—\$600,000.

## **Part 5                    General provisions                                   about entitlement to                                   assistance**

### **Division 1                Reasonable cost of work**

#### **49    Application of division**

This division applies to a consumer for residential construction work if the consumer is entitled to claim the reasonable cost of—

- (a) completing the residential construction work as mentioned in section 7(1); or
- (b) reinstatement work; or
- (c) rectification work.

#### **50    Uniform appearance**

- (1) The reasonable cost the consumer is entitled to claim for the work includes the cost of using materials that, as far as reasonably possible, match materials already used for the built work, or a building adjoining the work, to create a uniform appearance.
- (2) However, if materials are used that do not match

materials already used for the built work or a building adjoining the work, the reasonable cost the consumer is entitled to claim for the work does not include the cost of replacing undamaged parts of the work or adjoining building to create a uniform appearance.

## 51 Cost for certificates

- (1) The reasonable cost the consumer is entitled to claim for the work includes the reasonable cost of—
  - (a) obtaining a certificate in relation to the work; and
  - (b) any inspections of the built work required for obtaining the certificate.
- (2) However, subsection (1) does not apply to a certificate in relation to work carried out in whole or part by the licensed contractor who carried out the residential construction work for which the consumer is entitled to claim assistance.
- (3) In this section—

*certificate* means any of the following—

- (a) a certificate of classification under the *Building Act 1975*, schedule 2;
- (b) a certificate of inspection under the *Building Regulation 2006*, schedule 4;
- (c) a final inspection certificate under the *Building Act 1975*, section 10(d)(ii).

## 52 Input tax credits and GST

- (1) The reasonable cost the consumer is entitled to claim for the work—

- (a) must be reduced by the amount of any input tax credits the commission is satisfied the consumer is entitled to claim in relation to the work for which the reasonable costs are claimed; and
  - (b) does not include any GST payable for a supply made, or that may be made, by the consumer.
- (2) In being satisfied under subsection (1)(a), the commission may have regard to any matter the commission considers relevant in deciding whether the work for which the reasonable costs are claimed will relate to a taxable supply or an input taxed supply, including, for example—
- (a) whether the consumer is registered for the GST; and
  - (b) the enterprise carried on by the consumer; and
  - (c) the way in which the consumer is likely to deal with the residential construction work.
- (3) In this section—

**enterprise** see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), section 9-20.

**input tax credit** see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), section 195-1.

**input taxed supply** means a supply that is input taxed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

**registered**, for GST, means registered under the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

**taxable supply** see the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth), section 9-5.

## **Division 2            No entitlement to assistance in particular circumstances**

### **53 Loss caused or contributed to by particular matters**

- (1) A consumer for residential construction work is not entitled to claim assistance for loss caused or contributed to by any of the following—
  - (a) the defective design of built work if—
    - (i) for residential construction work for a multiple dwelling—the consumer contracted with someone, other than the licensed contractor who carried out the work, for the design; or
    - (ii) otherwise—the design was prepared by someone other than an engineer, an architect, a building designer or the licensed contractor who carried out the work;
  - (b) the gradual deterioration of the built work caused by fair wear and tear or by the lack of maintenance or neglect of the work by the consumer;
  - (c) the failure of any person, other than the following, to undertake reasonable maintenance, inspection and treatment or to carry out the reasonable written recommendations given to the person by the commission—
    - (i) the licensed contractor who carried out the work;

- (ii) an employee, subcontractor, supplier or invitee of the licensed contractor;
  - (d) pressure waves caused by an aircraft or another aerial device;
  - (e) earthquake, erosion, flood, landslip, tidal wave or change of watercourse;
  - (f) failure of an artificial device for the storage or conveyance of water or gas unless the construction of the device is part of the contract for carrying out the work;
  - (g) accidental damage, other than as a result of a failure by the licensed contractor who carried out the work, or an employee or subcontractor of the licensed contractor, to take proper care and skill in carrying out the residential construction work;
  - (h) a defective product;
  - (i) the act or omission of a third party, unless the loss is also caused or contributed to by the following—
    - (i) the licensed contractor who carried out the residential construction work or a subcontractor, supplier or invitee of the licensed contractor;
    - (ii) an engineer, architect or building designer for the work;
  - (j) a terrorist act regardless of any other cause or event contributing at any time to the loss;
  - (k) any action in controlling, preventing, suppressing, retaliating against or responding to a terrorist act.
- (2) Also, a consumer for residential construction work is not entitled to claim assistance in relation to public or legal liability for the payment of compensation relating to death, bodily injury or

illness of any person.

(3) In this section—

***building designer*** means a licensee who holds a licence of a class mentioned in schedule 2, parts 11 to 13.

***third party*** means a person other than the following—

- (a) the licensed contractor who carried out the residential construction work or a subcontractor, supplier or invitee of the licensed contractor;
- (b) an engineer, architect or building designer for the work.

## 54 Electronic data

(1) A consumer for residential construction work is not entitled to claim assistance in relation to the following—

- (a) the destruction, distortion, erasure, corruption, alteration, misinterpretation or misappropriation, in whole or in part, of electronic data;
- (b) an error in creating, amending, entering, deleting or using electronic data;
- (c) the inability or failure, in whole or in part, of the consumer to access, receive, send or use electronic data for any period as a result of any cause.

(2) In this section—

***electronic data***—

- (a) means facts, concepts or information converted to a form usable for communications, display, distribution, interpretation or processing by electronic

and electromechanical processing or electronically controlled equipment; and

- (b) includes programs, software and other coded instructions for the equipment.

## 55 Appliances

- (1) This section applies if—
  - (a) an electrical appliance is supplied as part of the contract for carrying out residential construction work; and
  - (b) as part of the contract the electrical appliance will not be permanently fixed to any of the following on which the residential construction work is or is proposed to be carried out—
    - (i) a residence;
    - (ii) a related roofed building;
    - (iii) land.
- (2) The consumer for the work is not entitled to claim assistance for loss suffered in relation to the electrical appliance.
- (3) In this section—

*electrical appliance* means an instrument, apparatus or device that is connected to an electricity supply by means of a flexible cord plug and socket outlet.

## 56 Work covered by insurance policy

- (1) This section applies if loss suffered in relation to residential construction work is covered by the statutory insurance scheme and an insurance policy.
- (2) The consumer for the work is not entitled to claim

assistance for the work to the extent the work is covered by the insurance policy.

- (3) Subsection (2) applies regardless of whether the consumer makes a claim under the insurance policy.
- (4) In this section—  
*insurance policy* does not include cover under the statutory insurance scheme.

## **57 Release from liability or provision of indemnity**

- (1) This section applies if a consumer for residential construction work—
  - (a) releases the licensed contractor who carries out the work, or another person, from liability for all or part of the work; or
  - (b) indemnifies the licensed contractor who carries out the work, or another person, in relation to all or part of the work.
- (2) The consumer is not entitled to claim assistance for the work to the extent the consumer has released the licensed contractor or other person from liability for the work or indemnified the licensed contractor or other person in relation to the work.

## **58 Access to assess claim**

A consumer for residential construction work is not entitled to claim assistance if the consumer unreasonably refuses the commission access to the built work for the purposes of assessing a claim for the work.

**59 Defect in work apparent before work substantially complete**

A consumer for residential construction work is not entitled to claim assistance in relation to a defect in the work if—

- (a) the residential construction work is substantially complete; and
- (b) the defect was apparent, or ought reasonably to have been apparent, to the consumer before the work was substantially complete.

**60 Work damaged, defective or destroyed before purchase**

- (1) This section applies if—
  - (a) a person purchases land, or a manufactured home, on or for which residential construction work has been carried out; and
  - (b) before completing the contract for the purchase of the land or manufactured home, the person knew or ought reasonably to have known the built work was damaged, defective or destroyed.
- (2) The person is not entitled to claim assistance in relation to the following—
  - (a) the damage, defect or destruction;
  - (b) any damage resulting from the damage, defect or destruction.
- (3) In this section—

*land* includes a lot or common property in a community titles scheme.

## **61 Work no longer covered by statutory insurance scheme**

- (1) This section applies if—
  - (a) when residential construction work is carried out, the work is covered under the statutory insurance scheme; and
  - (b) the work is defective or incomplete; and
  - (c) when a claim for assistance is made, building work carried out on or for the built work would not be covered under the statutory insurance scheme because of section 67WB of the Act.
- (2) The consumer for the residential construction work is not entitled to claim assistance for the work.

*Example of work for which the consumer is not able to claim assistance—*

work on a residence that is converted to a boarding house after the work is carried out but before a claim for assistance is made

## **62 Cost of delay entering into contract**

- (1) This section applies if the commission gives a consumer for residential construction work written notice about the approval for a licensed contractor to—
  - (a) complete residential construction work as mentioned in section 7(1); or
  - (b) carry out reinstatement work; or
  - (c) carry out rectification work.
- (2) The consumer is not entitled to claim assistance for loss that would not have been suffered if the consumer entered into the contract with the licensed contractor within 28 days after receiving the notice.

### **63 Work covered by payment in settlement of claim**

- (1) The commission is not liable to make a payment for a matter the subject of a claim under the statutory insurance scheme relating to residential construction work if the commission has already made a payment for the same matter relating to the work in settlement of the matter.
- (2) However, subsection (1) does not apply if—
  - (a) the payment previously made by the commission was made to a licensed contractor to perform work to rectify the matter; and
  - (b) the work was carried out in the way approved by the commission but did not rectify the matter.

### **64 Demolition, rectification or reinstatement without approval**

- (1) A consumer for residential construction work is not entitled to claim assistance in relation to the work if the consumer does any of the following without the prior written approval of the commission—
  - (a) demolishes the built work;
  - (b) rectifies the work;
  - (c) reinstates the built work.

*Note—*

See section 67(2).

- (2) In this section—

***approval*** does not include the following—

  - (a) a decision of the commission about the scope of works to be carried out to rectify

residential construction work or reinstate  
built work;

- (b) a decision of the commission to grant an  
application for an owner-builder permit.

## **Part 6                      Claims**

### **65 Claim for assistance**

- (1) This section prescribes the requirements for  
section 71C of the Act.
- (2) For a claim for assistance mentioned in section 5  
or 7, the notice of the claim must include the  
following—
  - (a) either—
    - (i) a copy of the contract for the  
residential construction work the  
subject of the claim, including any  
variations to the contract; or
    - (ii) if a copy of the contract is not  
available—written evidence of the  
existence of a contract for the carrying  
out of the work, and any variations to  
the contract;
  - (b) if the contract for the work is validly  
terminated as mentioned in section  
4(1)(a)—evidence that the contract has been  
validly terminated;
  - (c) evidence of all payments made in relation to  
the work;
  - (d) a copy of any plans or specifications for the  
work.
- (3) For a claim for assistance mentioned in section  
10(2) relating to vandalism or forcible removal of

built work, the notice of the claim must include evidence the consumer reported the vandalism or forcible removal to the Queensland Police Service.

- (4) If, for a claim for defective work, the consumer is required to give notice under section 66, the notice of the claim must include evidence that the consumer has complied with section 66.
- (5) For all claims, the notice of the claim must be in writing and include any other information the commission reasonably requires to decide the claim.

## **66 Notice of claim to licensed contractor**

- (1) This section applies if a consumer for residential construction work that is substantially complete decides to make a claim under the statutory insurance scheme in relation to the work.
- (2) The consumer must—
  - (a) serve a notice about the facts and circumstances giving rise to the claim on the licensed contractor who carried out the work; and
  - (b) give the licensed contractor a reasonable period stated in the notice to rectify the work.
- (3) However, subsection (2) does not apply if—
  - (a) the licensed contractor dies; or
  - (b) the licensed contractor is a company and the company no longer exists; or
  - (c) both of the following apply—
    - (i) the licensed contractor is bankrupt or insolvent, or takes advantage of the laws of bankruptcy as a debtor under

the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction;

- (ii) the licensed contractor's licence is cancelled.
- (4) The commission must not decide to allow or disallow the claim until after the end of the reasonable period stated in the notice given to the licensed contractor.
- (5) This section does not prevent the consumer from making the claim under the statutory insurance scheme before the end of the reasonable period stated in the notice given to the licensed contractor.

#### **67 Direction to rectify before making decision on claim**

- (1) This section applies if—
  - (a) the commission is given notice of a claim for assistance; and
  - (b) the commission is of the opinion the residential construction work the subject of the claim is defective or incomplete.
- (2) Before deciding to allow or disallow the claim, the commission must decide whether to give a direction to rectify or remedy the work under section 72 of the Act.

#### **68 Time for complying with direction to end before making decision on claim**

- (1) This section applies if the commission gives a direction to rectify residential construction work under section 72 of the Act.
- (2) The commission must not make a decision to allow or disallow a claim under the statutory

insurance scheme in relation to the work until the period for complying with the direction has ended.

- (3) However, the commission may make a decision to allow or disallow the claim before the period for complying with the direction has ended if—
- (a) the licensed contractor dies; or
  - (b) the licensed contractor is a company and the company no longer exists; or
  - (c) both of the following apply—
    - (i) the licensed contractor is bankrupt or insolvent, or takes advantage of the laws of bankruptcy as a debtor under the *Bankruptcy Act 1966* (Cwlth) or a similar law of a foreign jurisdiction;
    - (ii) the licensed contractor's licence is cancelled.

## **69 Notice of approval of claim**

- (1) If the commission decides to allow or disallow a claim under the statutory insurance scheme, the commission must, as soon as practicable after making the decision, give written notice of the decision to—
- (a) the person making the claim; and
  - (b) the licensed contractor who carried out the residential construction work the subject of the claim.
- (2) The notice given to the person making the claim must also include the reasons for the decision.

## **70 Consumer to act in good faith**

- (1) A consumer for residential construction work has

a duty to the commission to act in good faith in relation to a claim for assistance.

*Example of acting in good faith—*

disclosing to the commission any matter the consumer knows, or ought reasonably to know, is relevant to the commission making a decision on the claim

- (2) Subsection (3) applies if the commission makes a payment on a claim under the statutory insurance scheme and the consumer making the claim has not acted in good faith in relation to the claim.
- (3) The commission may recover, as a debt, from the consumer the amount by which the payment exceeds the amount the commission would have paid if the consumer had acted in good faith in relation to the claim.

## **71 Payment of claim for demolishing work**

- (1) This section applies if the commission allows a claim for assistance mentioned in section 7(3).
- (2) The commission must not pay an amount under section 7(3)(b) until the built work the subject of the claim has been demolished.

## **72 Priority of payment on claim**

- (1) This section applies if the commission allows a claim for assistance in relation to residential construction work for 2 or more detached dwellings, or a duplex or multiple dwelling, in a community titles scheme.
- (2) The commission must pay the claim in the following priority—
  - (a) firstly, for work for the common property for which the residential construction work the subject of the claim was carried out;

- (b) secondly, for any building work reasonably required to be carried out to the detached dwellings, or a residential unit in the duplex or multiple dwelling, as a consequence of the work for the common property;
- (c) thirdly, for work for the detached dwellings, or a residential unit in the duplex or multiple dwelling, for which the residential construction work the subject of the claim was carried out.

### **73 Way of making payment on claim**

- (1) If the commission allows a claim for assistance, the commission must pay the claim in 1 or more of the following ways decided by the commission—
  - (a) pay all or part of the claim to the licensed contractor, approved by the commission, who has contracted with the consumer making the claim to—
    - (i) carry out work the subject of the claim; or
    - (ii) demolish the built work as mentioned in section 7(3)(a);
  - (b) pay all or part of the claim to the licensed contractor appointed by the commission to—
    - (i) carry out work the subject of the claim; or
    - (ii) demolish the built work as mentioned in section 7(3)(a);
  - (c) pay all or part of the claim to the consumer making the claim;

- (d) if the claim is in relation to work on a building in a community titles scheme and the commission is satisfied the consumer making the claim owes a contribution or levy to the body corporate for the community titles scheme under the *Body Corporate and Community Management Act 1997*—pay all or part of the claim to the body corporate to the extent necessary to cover the amount owed by the consumer to the body corporate;
  - (e) if the consumer making the claim is a body corporate and the body corporate gives the commission a signed notice requesting all or part of the claim to be paid to 1 or more lot owners—pay all or part of the claim to 1 or more of the lot owners as stated in the notice.
- (2) However, the commission may decide not to make a payment under subsection (1)(a) to a licensed contractor if the consumer—
- (a) has a retention amount under the contract for the residential construction work the subject of the claim; and
  - (b) has not paid the retention amount to the licensed contractor.
- (3) In this section—
- retention amount**, for a contract, means an amount—
- (a) payable as part of the contract price that, under the contract, may be withheld from payment to the licensed contractor—
    - (i) during the progress of the residential construction work the subject of the contract; or

- (ii) for a period after the completion of the residential construction work the subject of the contract; or
  - (iii) both during the progress of the residential construction work the subject of the contract and for a period after the completion of the residential construction work the subject of the contract; and
- (b) withheld for the purpose of giving financial protection to the consumer in relation to the need to correct defects in the residential construction work, or otherwise to secure, wholly or partly, the performance of the contract.

#### **74 Payment of claim includes tax**

If the commission makes a payment on a claim under the statutory insurance scheme, the payment is inclusive of any tax payable on the amount paid.

### **11 Amendment of sch 3 (Dictionary)**

- (1) Schedule 3, definitions *insurance information statement*, *multiple dwelling* and *residential unit*—  
*omit.*
- (2) Schedule 3—  
*insert—*

*built work*, for schedule 2C, see schedule 2C, section 2.

*common property* see the *Body Corporate and Community Management Act 1997*, section 10.

*community titles scheme* see the *Body Corporate and Community Management Act 1997*, section

10.

***defective work***, for schedule 2C, see schedule 2C, section 14.

***defined event***, for schedule 2C, see schedule 2C, section 2.

***detached dwelling*** means a residence that is a single detached dwelling or manufactured home.

***duplex*** means a building comprising only 2 residential units.

***ends***, for a fixed price residential contract, for schedule 2C, see schedule 2C, section 4.

***fire***, for schedule 2C, see schedule 2C, section 2.

***fixed price residential contract***, for schedule 2C, see schedule 2C, section 3.

***forcible removal***, of built work, for schedule 2C, see schedule 2C, section 2.

***incomplete work provisions***, for schedule 2C, see schedule 2C, section 2.

***insolvent***, for schedule 2C, see schedule 2C, section 2.

***insurance information statement***, about land or a manufactured home, means a written statement about—

- (a) whether cover under the statutory insurance scheme is in force for residential construction work relating to the land or manufactured home; and
- (b) if cover under the statutory insurance scheme is in force—whether a claim has been made under the scheme and any amount paid on the claim.

***interest schedule lot entitlement***, for schedule 2C, see the *Body Corporate and Community*

*Management Act 1997*, section 46.

**liability amount**, for a consumer for residential construction work, for schedule 2C, see schedule 2C, section 2.

**licensed contractor**, for schedule 2C, see schedule 2C, section 2.

**living unit**, for part 5 and schedule 2C, means a living unit as mentioned in section 26N.

**lot**, for schedule 2C, see the *Body Corporate and Community Management Act 1997*, schedule 6.

**multiple dwelling**—

- (a) means a building comprising 2 or more separate residential units; and
- (b) does not include a duplex.

**prime cost item**, for a fixed price residential contract, for schedule 2C, see schedule 2C, section 2.

**provisional sum**, for a fixed price residential contract, for schedule 2C, see schedule 2C, section 2.

**rectification work**, for schedule 2C, see schedule 2C, section 15(1).

**reinstatement work**, for schedule 2C, see schedule 2C, section 10(2).

**storm**, for schedule 2C, see schedule 2C, section 2.

**structural defect**, for primary insurable work, for schedule 2C, see schedule 2C, section 2.

**substantially complete**, for residential construction work, for schedule 2C, see schedule 2C, section 2.

**swimming pool**, for schedule 2C, see the *Building Act 1975*, schedule 2.



ENDNOTES

- 1 Made by the Governor in Council on 13 October 2016.
- 2 Notified on the Queensland legislation website on 14 October 2016.
- 3 The administering agency is the Department of Housing and Public Works.

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