

*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

*Legislative Assembly Chamber,
Brisbane,*

The Clerk of the Parliament.

23 July 2020

In the name and on behalf of the Queen, I assent to this Bill.

Paul de Jersey
*Government House,
Brisbane,*

23 July 2020



Queensland

No. 24 of 2020

A BILL for

An Act to amend the Architects Act 2002, the Building Act 1975, the Building Industry Fairness (Security of Payment) Act 2017, the Professional Engineers Act 2002, the Queensland Building and Construction Commission Act 1991, the Retirement Villages Act 1999 and the Acts mentioned in schedule 1 for particular purposes, and to repeal the Retirement Villages (Transitional) Regulation 2019



Queensland

Building Industry Fairness (Security of Payment) and Other Legislation Amendment Bill 2020

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2020

A Bill

for

An Act to amend the *Architects Act 2002*, the *Building Act 1975*, the *Building Industry Fairness (Security of Payment) Act 2017*, the *Professional Engineers Act 2002*, the *Queensland Building and Construction Commission Act 1991*, the *Retirement Villages Act 1999* and the Acts mentioned in schedule 1 for particular purposes, and to repeal the *Retirement Villages (Transitional) Regulation 2019*

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

2 Commencement

- (1) Sections 115D and 115F are taken to have commenced on 1 January 2020.
- (2) The following provisions commence on a day to be fixed by proclamation—
 - (a) parts 2 to 5;
 - (b) part 6, divisions 2 (other than sections 115A to 115F and section 125), 3 and 4;
 - (c) part 9;
 - (d) schedule 1.
- (3) Also, section 125, to the extent it inserts new sections 80 to 82, commences on a day to be fixed by proclamation.

Part 2 Amendment of Architects Act 2002

3 Act amended

This part amends the *Architects Act 2002*.

Note—

See also the amendments in schedule 1.

4 Amendment of s 11 (Fitness to practise as an architect)

(1) Section 11—

insert—

(ba) if the applicant has been a member of an association of architects, whether in Australia or a foreign country, and the membership was suspended or cancelled—the reason for its suspension or cancellation;

(2) Section 11(c)—

omit, insert—

(c) an order about the applicant made under section 130 or 131 of this Act or section 80 of the repealed Act;

(ca) a proceeding taken against the applicant for a matter mentioned in section 36 under a law applying, or that applied, in the Commonwealth, another State or a foreign country;

(3) Section 11(e)—

omit, insert—

(e) if the applicant was required to undergo a health assessment—

(i) whether the applicant complied with the requirement; and

(ii) whether the applicant cooperated with the medical practitioner appointed to perform the assessment;

(ea) whether a health assessment report for the applicant states that the applicant is unable

to competently and safely practise as an architect;

(eb) whether the board reasonably believes a materially false or misleading representation or document is included in the application;

(4) Section 11(ba) to (f)—

renumber as section 11(c) to (j).

5 Amendment of s 28 (Grounds for cancellation)

(1) Section 28(b) and (c)—

omit, insert—

(b) the architect is—

(i) affected by bankruptcy action; or

(ii) an executive officer of a corporation affected by control action; or

(2) Section 28—

insert—

(ea) an order about the architect is made under section 130 or 131; or

(eb) a proceeding is taken against the architect for a matter mentioned in section 36 under a law applying in the Commonwealth, another State or a foreign country; or

(ec) the architect is convicted of—

(i) an indictable offence; or

(ii) an offence against this Act; or

(iii) another offence, relating to the practice of architecture, against a law applying in the State, the Commonwealth, another State or a foreign country; or

(3) Section 28(g)—

omit, insert—

- (i) the architect is required to undergo a health assessment and—
 - (i) the architect does not comply with the requirement; or
 - (ii) the architect does not cooperate with the medical practitioner appointed to perform the assessment; or
 - (j) a health assessment report for the architect states that the architect is unable to competently and safely practise as an architect.
- (4) Section 28(d) to (f)—
renumber as section 28(c) to (h).

6 Amendment of s 29 (Procedure for cancellation)

- (1) Section 29—

insert—

- (2A) The board may also ask for more information by giving the architect a notice stating—
 - (a) the information sought; and
 - (b) the time, at least 21 days after the notice is given, by which the information is required.
- (2) Section 29(3), ‘period,’—

omit, insert—

period and any requested information received by the stated time,

- (3) Section 29(4), ‘subsection (3)’—

omit, insert—

subsection (4)

- (4) Section 29(2A) to (5)—

renumber as section 29(3) to (6).

7 Amendment of s 29A (Immediate suspension of registration)

Section 29A(1)—

omit, insert—

- (1) This section applies if the board reasonably believes—
 - (a) a ground exists to cancel an architect's registration under section 28; and
 - (b) it is in the public interest to immediately suspend the architect's registration.

8 Insertion of new s 31A

After section 31—

insert—

31A Proof of giving false and misleading statements and documents

- (1) This section applies to a proceeding for an offence against section 30 or 31.
- (2) It is sufficient proof the statement was made, or the document was given, to the board to prove it was made or given to a person authorised to receive it.
- (3) It does not matter whether the authorisation was a delegation, agency or any other form of authorisation by which someone acts through another.

9 Insertion of s 32AA

After section 32—

insert—

32AA Notification of prescribed changes

- (1) An architect must give notice to the board of a prescribed change for the architect within 21 days after the change, unless the architect has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) In this section—

prescribed change, for an architect, means a change relating to a matter that the board may consider under section 11 when deciding whether a person is fit to practise as an architect.

10 Replacement of s 32A (Notification of disciplinary action by other bodies)

Section 32A—

omit, insert—

32A Notification of disciplinary event by other bodies

- (1) An architect must, within 21 days after a disciplinary event for the architect, give notice to the board of the disciplinary event, unless the architect has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) In this section—

disciplinary event, for an architect, means a proceeding taken against the architect in relation to—

- (a) the architect's membership of an association of architects; or
- (b) the architect's registration to practise as an architect under a law applying in the Commonwealth, another State or a foreign country.

11 Insertion of new pt 2B

After section 35H—

insert—

Part 2B Audits of architects

35I Approved audit programs

- (1) The board may approve a program (an *approved audit program*) to audit 1 or more architects.
- (2) The purpose of the approved audit program is to find out if an architect to whom the program applies (an *audited architect*) has complied with—
 - (a) a code of practice approved under section 108; or
 - (b) part 7.
- (3) The approved audit program must state all of the following—
 - (a) the purpose of the program;
 - (b) when the program starts and ends;
 - (c) the criteria used to select an architect for the program;
 - (d) who will carry out the program;
 - (e) any other matter relevant to carrying out the program.

35J Power to require production of documents

- (1) The board may, by notice given to an audited architect, require the audited architect to give the board a copy of, or access to, a document about a stated matter in the audited architect's possession or control.

- (2) The notice must require the copy of, or access to, the document to be given within a stated reasonable period and in a stated reasonable way.
- (3) The audited architect must comply with the requirement, unless the audited architect has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) For subsection (3), it is a reasonable excuse for the audited architect not to comply with the requirement if complying with the requirement might tend to incriminate the audited architect or expose the audited architect to a penalty.

12 Amendment of s 36 (Grounds for disciplining an architect)

Section 36—

insert—

- (d) the architect has contravened an undertaking entered into by the architect and the board under section 73(2)(b);
- (e) the architect has contravened a condition of the architect's registration.

13 Amendment of s 50 (Issue of identity card)

Section 50(1), 'appointed by it'—

omit.

14 Amendment of s 51 (Production or display of identity card)

Section 51—

insert—

- (3) For subsection (1), an investigator does not

exercise a power in relation to a person only because the inspector has entered a public place under section 62A(1)(b).

15 Replacement of s 55 (Power to require information or attendance)

Section 55—

omit, insert—

55 Power to require information or attendance

- (1) For an investigation, the board or an investigator may, by notice given to a person, require the person to—
 - (a) give the board or investigator information related to the investigation by a stated reasonable time; or
 - (b) attend before the board or investigator at a stated reasonable time and place to answer questions, or produce documents, related to the investigation.
- (2) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.
- (3) In this section—

information includes a document.

Example of information—

architectural plans or drawings

16 Amendment of s 56 (Offences)

- (1) Section 56, heading—

omit, insert—

56 Offence to contravene information or attendance requirement

- (2) Section 56(1), from ‘required’ to ‘section 55’—

omit, insert—

of whom a requirement is made under section 55(1)(a)

- (3) Section 56(2), from ‘given’ to ‘section 55’—

omit, insert—

of whom a requirement is made under section 55(1)(b)

- (4) Section 56(3), after ‘the person’—

insert—

or expose the person to a penalty

17 Insertion of new pt 3, divs 7A to 7C

Part 3—

insert—

Division 7A Entry of places by investigators

Subdivision 1 Power to enter

62A General power to enter places

- (1) An investigator may enter a place if—

- (a) an occupier at the place consents under subdivision 2 to the entry and section 62D has been complied with for the occupier; or
- (b) it is a public place and the entry is made when the place is open to the public; or

- (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 62I has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any conditions of the consent and ceases if the consent is withdrawn.
- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subdivision 2 Entry by consent

62B Application of subdivision

This subdivision applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 62A(1)(a).

62C Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an investigator may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

62D Matters investigator must tell occupier

Before asking for the consent, the investigator must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
 - (i) the occupier is not required to consent; and
 - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

62E Consent acknowledgement

- (1) If the consent is given, the investigator may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and
 - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
 - (c) that the occupier has been told—
 - (i) that the occupier is not required to consent; and
 - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (d) that the occupier gives the investigator or another investigator consent to enter the place and exercise the powers; and
 - (e) the day and time the consent was given; and
 - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the

investigator must immediately give a copy to the occupier.

- (4) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

62F Application for warrant

- (1) An investigator may apply to a magistrate for a warrant for a place.
- (2) The investigator must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

62G Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that a stated investigator or any investigator may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the powers of an investigator; and
 - (c) particulars of the offence that the magistrate considers appropriate; and
 - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate's name; and
 - (h) the day and time of the warrant's issue; and
 - (i) the day, within 14 days after the warrant's issue, the warrant ends.

62H Defect in relation to a warrant

A warrant is not invalidated by a defect in—

- (a) the warrant; or
 - (b) compliance with this subdivision;
- unless the defect affects the substance of the warrant in a material particular.

62I Entry procedure

- (1) This section applies if an investigator named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the investigator's identity card or another document evidencing the investigator's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the investigator is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.
- (3) However, the investigator need not comply with subsection (2) if the investigator believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Division 7B General powers of investigators after entering places

62J Application of division

- (1) The powers under this division may be exercised if the investigator enters a place under section 62A.
- (2) However, if an investigator enters a place to get the occupier's consent to enter a place, this division applies to the investigator only if the consent is given or the entry is otherwise authorised.

62K General powers

- (1) The investigator may do any of the following (each a *general power*)—
 - (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) take for examination a thing, or a sample of or from a thing, at the place;
 - (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this division;
 - (f) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The investigator may take a necessary step to allow the exercise of a general power.
- (3) If the investigator takes a document from the place to copy it, the investigator must copy the document and return it to the place as soon as practicable.
- (4) If the investigator takes from the place an article

or device reasonably capable of producing a document from an electronic document to produce the document, the investigator must produce the document and return the article or device to the place as soon as practicable.

(5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

62L Power to require reasonable help

- (1) The investigator may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the investigator reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the investigator must give the person an offence warning for the requirement.

62M Offence to contravene help requirement

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

Division 7C Power to seize evidence

62N Seizing evidence at a public place that may be entered without consent or warrant

- (1) This section applies if an investigator enters a public place.
- (2) The investigator may seize a thing at the public place if the investigator reasonably believes the thing is evidence of an offence against this Act.

62O Seizing evidence at a place that may only be entered with consent or warrant

- (1) This section applies if—
 - (a) an investigator is authorised to enter a place under this part only with the consent of the occupier of the place or a warrant; and
 - (b) the investigator enters the place after obtaining the necessary consent or warrant.
- (2) If the investigator enters the place with the occupier's consent, the investigator may seize a thing at the place if—
 - (a) the investigator reasonably believes the thing is evidence of an offence under this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the investigator enters the place under a warrant, the investigator may seize the evidence for which the warrant was issued.
- (4) The investigator may also seize anything else at the place if the investigator reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

62P Power to secure seized thing

- (1) Having seized a thing under this division, an investigator may—
 - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (b) move the thing from the place of seizure.
- (2) For subsection (1)(a), the investigator may, for example—
 - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or
 - (c) require a person the investigator reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an investigator could do under subsection (1)(a).

62Q Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 62P(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

62R Offence to interfere

- (1) If access to a seized thing is restricted under section 62P, a person must not tamper with the

thing or with anything used to restrict access to the thing without—

- (a) an investigator's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If access to a place is restricted under section 62P, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an investigator's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

62S Receipt and information notice for seized thing

- (1) This section applies if an investigator seizes anything under this division unless—

- (a) the investigator reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the investigator to comply with this section.

- (2) The investigator must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

- (a) a receipt for the thing that generally describes the thing and its condition; and
- (b) an information notice about the decision to seize it.

- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by

leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.

- (4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.
- (5) The investigator may delay giving the receipt and information notice if the investigator reasonably suspects giving them may frustrate or otherwise hinder an investigation by the investigator under this part.
- (6) However, the delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

62T Access to seized thing

- (1) Until a seized thing is forfeited or returned, the investigator who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

62U Return of seized things

- (1) If a seized thing is not forfeited, the investigator must return it to its owner—

- (a) at the end of 1 year; or
 - (b) if proceedings involving the thing are started within 1 year, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subsection (1), unless a thing that has been seized as evidence is forfeited, the investigator must immediately return it to its owner if the investigator stops being satisfied its continued retention as evidence is necessary.

62V Forfeiture of seized things

- (1) The board may decide a thing that has been seized under this division is forfeited to the board if the board or an investigator—
- (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return it to an owner; or
 - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, for subsection (1)(a) and (b), the board or investigator is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.

- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and

- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

62W Information notice about forfeiture decision

- (1) If the board decides under section 62V(1) to forfeit a seized thing, the board must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 62V(1)(a) or (b), the information notice may be given by leaving it at the place where the seized thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she applies to the tribunal for a review of the decision.
- (4) However, subsections (1) to (3) do not apply if—
 - (a) the decision was made under section 62V(1)(a) or (b); and
 - (b) the place where the seized thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by the former owner.

62X When thing becomes property of the board

A thing becomes the property of the board if the thing is forfeited to the board under section 62V.

62Y How property may be dealt with

- (1) This section applies if, under section 62X, a thing becomes the property of the board.
- (2) The board may deal with the thing as the board considers appropriate, including, for example, by destroying it or giving it away.
- (3) The board must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the board sells the thing, the board must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.

18 Amendment of s 73 (Board’s decision on investigation about architects)

Section 73(2)(d), from ‘condition,’ to ‘architect,’—
omit, insert—
condition

19 Amendment of s 75 (Board’s decision about other investigations)

Section 75(2)(b), after ‘conduct’—
insert—

, including, for example, to submit to an audit of the services carried out by the person

20 Amendment of s 80 (Functions of board)

(1) Section 80—
insert—

(ca) to approve a program to audit architects under part 2B;

- (2) Section 80(i), ‘(h)’—
omit, insert—
 - (i)
- (3) Section 80(ca) to (i)—
renumber as section 80(d) to (j).

21 Replacement of s 90 (Report about person’s criminal history)

Section 90—

omit, insert—

90 Criminal history reports

- (1) The chief executive may make inquiries about a person to help decide whether the person—
 - (a) is suitable for appointment as a member of the board under section 82(2); or
 - (b) is suitable to act in the office of a member under section 88(2); or
 - (c) has a conviction for an offence mentioned in section 86(1)(b).
- (2) Without limiting subsection (1), the chief executive may ask the police commissioner for—
 - (a) a report about the person’s criminal history; and
 - (b) a brief description of the nature of the offence giving rise to a conviction mentioned in the person’s criminal history.
- (3) However, the chief executive may make a request under subsection (2) about a person only if the person has given the chief executive written consent for the request.
- (4) The police commissioner must comply with the request.

- (5) The duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

22 Amendment of s 102 (Keeping register)

- (1) Section 102(3)(e), 'section 29(3)'—

omit, insert—

section 29(4)

- (2) Section 102(3)—

insert—

(ga) whether the person is registered as a practising architect or non-practising architect;

- (3) Section 102(3)(ga) and (h)—

renumber as section 102(3)(h) and (i).

23 Insertion of new s 107A

After section 107—

insert—

107A Delegation

- (1) The board may delegate the board's functions under this Act to any of the following—
- (a) a board member;
 - (b) a committee of board members;
 - (c) the registrar;
 - (d) an appropriately qualified employee of the board;

(e) an appropriately qualified public service employee providing services for the board under section 100A.

(2) In this section—

functions includes powers.

24 Amendment of s 115 (Claims about provision of architectural services)

Section 115(2), ‘an architect’—

omit, insert—

a practising architect

25 Amendment of s 116 (Providing information about architects)

(1) Section 116(2), ‘architect’—

omit, insert—

practising architect

(2) Section 116(3), from ‘an architect’ to ‘other architect’—

omit, insert—

a practising architect under subsection (2), the person also must inform the other person of the name and contact details of any other practising architect

26 Amendment of s 117 (Information on correspondence about architectural services)

Section 117(2), ‘architect’—

omit, insert—

practising architect

27 Amendment of s 121 (Review of particular decisions)

(1) Section 121(2)(c), ‘section 29(3)’—

omit, insert—

section 29(4)

(2) Section 121(2)—

insert—

(ca) a person who has been given, or is entitled to be given, an information notice about a decision to forfeit a seized thing under section 62W;

(da) a person whose registration is subject to a condition imposed under section 73(2)(d);

(3) Section 121(2)(ca) to (e)—

renumber as section 121(2)(d) to (g).

28 Replacement of s 138 (Summary proceedings for offences)

Section 138—

omit, insert—

138 Proceedings for offences

(1) A proceeding for an offence against this Act is to be heard and decided summarily.

(2) The proceeding must start—

(a) within 1 year after the commission of the offence; or

(b) within 1 year after the offence comes to the complainant’s knowledge, but within 2 years after the commission of the offence.

29 Insertion of new s 141B

After section 141A—

insert—

**141B Statutory declarations to verify information
required under the Act**

- (1) This section applies if a person is required under this Act to give information to the board.
- (2) The board may ask the person to verify the information by statutory declaration.
- (3) If the person gives the information to the board but does not comply with a request under subsection (2), the person is taken to have not given the information to the board.

30 Insertion of new pt 11, div 4

Part 11—

insert—

**Division 4 Transitional provision for
Building Industry Fairness
(Security of Payment) and
Other Legislation
Amendment Act 2020**

**168 Continued limitation of time for particular
summary proceedings**

- (1) This section applies if, immediately before the commencement, a proceeding for an offence against this Act could not be started because of the pre-amended Act, section 138(2).
- (2) The pre-amended Act, section 138(2) continues to apply to a proceeding for the offence.
- (3) In this section—

pre-amended Act means this Act as in force immediately before the commencement.

31 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *criminal history* and *investigator*—
omit.
- (2) Schedule 2—
insert—

approved audit program, for part 2B, see section 35I(1).

audited architect, for part 2B, see section 35I(2).

criminal history, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders Act 1986*, other than spent convictions.

electronic document means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

former owner see section 62W(1).

general power see section 62K(1).

help requirement see section 62L(1).

identity card means an identity card issued under section 50.

investigator means—

- (a) a person appointed as an investigator under section 48(1); or
- (b) a member nominated by the board to conduct an investigation mentioned in section 80(c).

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

owner, of a thing that has been seized under part 3, division 7C, includes a person who would be entitled to possession of the thing had it not been seized.

place includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

police commissioner means the commissioner of the police service.

vehicle—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

Part 3 **Amendment of Building Act 1975**

32 Act amended

This part amends the *Building Act 1975*.

Note—

See also the amendments in schedule 1.

33 Replacement of s 12 (What is the *Building Code of Australia* (or *BCA*))

Section 12—

omit, insert—

12 What is the *Building Code of Australia* (or *BCA*)

- (1) The *Building Code of Australia* (or *BCA*) is the document called ‘National Construction Code’, volume 1 and volume 2 (including the Queensland Appendixes) published by the entity known as the Australian Building Codes Board (the *board*).
- (2) The reference to the document called ‘National

Construction Code’ in subsection (1) includes the edition of the code as amended from time to time by amendments published by the board.

34 Replacement of s 13 (What is the *Queensland Development Code* (or *QDC*))

Section 13—

omit, insert—

13 What is the *Queensland Development Code* (or *QDC*)

- (1) The *Queensland Development Code* (or *QDC*) is the parts, or aspects of the parts, of the document called ‘Queensland Development Code’ that are prescribed by regulation.
- (2) A regulation made under this section must state the day on which the part or aspect of the part takes effect.
- (3) The chief executive must publish the Queensland Development Code on the department’s website.

35 Amendment of s 21 (Building work that is accepted development for the Planning Act)

Section 21(5), definition *relevant provisions*, paragraph (a)(ii), ‘boundary clearance and site cover’—

omit, insert—

residential design and siting

36 Amendment of s 33 (Alternative provisions to QDC boundary clearance and site cover provisions for particular buildings)

- (1) Section 33, heading, ‘boundary clearance and site cover’—

omit, insert—

residential design and siting

- (2) Section 33(1)(b), ‘single detached class 1’—
omit, insert—
relevant
- (3) Section 33(2) and (4), ‘boundary clearance and site cover’—
omit, insert—
residential design and siting
- (4) Section 33(6)—
insert—

relevant building means a building that is—

- (a) a single detached class 1 building; or
(b) a building of a class and type prescribed by regulation.

37 Amendment of s 37 (Provision for changes to building assessment provisions)

Section 37—

insert—

- (5) A regulation may provide the following, to the extent stated in the regulation—
- (a) subsection (2) does not apply in relation to the building work for an amendment of a building assessment provision;
- (b) a building development approval for the building work may be given only if the approval is given under the building assessment provisions as amended.
- (6) The Minister may recommend to the Governor in Council the making of a regulation under subsection (5) only if—

- (a) the Minister has conducted an impact assessment of the making of the regulation; and
- (b) the Minister is satisfied the regulation is necessary to reduce or remove a risk of serious injury or illness to an individual having regard to—
 - (i) the impact assessment; and
 - (ii) if the regulation is not made, any other way to manage the risk.

38 Amendment of s 49 (Functions of private certifier (class B))

Section 49(b), ‘boundary clearance and site cover’—

omit, insert—

residential design and siting

39 Amendment of s 50 (Restrictions on building certifying functions that a private certifier (class B) can perform)

Section 50(2), ‘boundary clearance and site cover’—

omit, insert—

residential design and siting

40 Amendment of s 61 (Alterations to safe existing work may be approved on basis of earlier building assessment provisions)

Section 61—

insert—

- (2A) However, subsection (2) does not apply to the extent a regulation mentioned in section 37(5) states an amendment of a building assessment provision does not apply and the approval must be

given under the building assessment provisions as amended.

41 Insertion of new s 124A

After section 124—

insert—

124A Obligation to give owner inspection documentation for particular inspections

- (1) This section applies if, at any time before the inspection of the final stage of assessable building work—
 - (a) the building certifier has performed an inspection of an earlier stage of the work; and
 - (b) the building certifier is satisfied that the stage of the work complies with the building development approval; and
 - (c) the building certifier gives a certificate in the approved form to certify the stage of the work.
- (2) The owner of the building may, by notice given to the building certifier, ask for a copy of any inspection documentation for the inspection performed by the building certifier.
- (3) The building certifier must, within 5 business days after receiving the notice, give the owner all the inspection documentation under subsection (2), unless the certifier has a reasonable excuse.

Maximum penalty—20 penalty units.

42 Amendment of s 127 (Building certifier's duty to act in public interest in performing building certifying function)

Section 127—

insert—

- (3) The duty to act in the public interest, when performing a building certifying function, prevails to the extent of any inconsistency with any other obligation under this Act or to another person.
- (4) The duty to act in the public interest is taken not to create a conflict of interest under section 128.

43 Amendment of s 136 (Offence for private certifier not to act in public interest in performing private certifying function)

Section 136—

insert—

- (3) The duty to act in the public interest, when performing a private certifying function, prevails to the extent of any inconsistency with any other obligation under this Act or to another person.
- (4) The duty to act in the public interest is taken not to create a conflict of interest under section 137.

44 Replacement of s 143 (Notice of engagement to local government)

Section 143—

omit, insert—

143 Notice of engagement—owner clients

- (1) This section applies if—
 - (a) a private certifier is engaged by a client to perform private certifying functions for a building or building assessment work; and
 - (b) the owner of the building is the client or the applicant under the relevant building development application.

- (2) The private certifier must, within 5 business days after the engagement starts, give notice of the engagement to the local government, unless the certifier has a reasonable excuse.

Maximum penalty—40 penalty units.

143A Notice of engagement and contact details— other clients

- (1) This section applies if—
- (a) a private certifier is engaged by a client to perform private certifying functions for a building or building assessment work; and
 - (b) the owner of the building is not the client or the applicant under the relevant building development application.

- (2) The client must, within 10 business days after the engagement starts, give the private certifier the owner's name and contact details, unless the client has a reasonable excuse.

Maximum penalty—20 penalty units.

- (3) The private certifier must, within 15 business days after the engagement starts, give the owner notice of the following, unless the certifier has a reasonable excuse—
- (a) the private certifier's name; and
 - (b) the details, in an approved form, of the responsibilities of the private certifier performing the work.

Maximum penalty—40 penalty units.

- (4) The private certifier must, within 15 business days after the engagement starts, give notice of the engagement to the local government, unless the certifier has a reasonable excuse.

Maximum penalty—40 penalty units.

- (5) Within 5 business days after becoming aware of a change in the owner's name or contact details, the client must give notice of the change to the private certifier, unless the client has a reasonable excuse.

Maximum penalty—20 penalty units.

143B Owner may require performance of additional certifying functions

- (1) This section applies if—
- (a) a building certifier is, or was, engaged by a client to perform certifying functions for a building; and
 - (b) the owner of the building is not the client.
- (2) The owner may by notice (an *additional certification notice*) given to the client, direct the client to ask the building certifier to perform a certifying function.
- (3) An additional certification notice must—
- (a) be given to the client within 10 business days of the owner receiving a notice under section 143A(3); and
 - (b) state the following—
 - (i) the details of the certifying function to be performed by the building certifier;
 - (ii) that the client must give a copy of the additional certification notice to the building certifier within 5 business days after receiving the notice.
- (4) The client must give a copy of the additional certification notice to the building certifier within 5 business days after receiving the notice, unless the client has a reasonable excuse.

Maximum penalty—20 penalty units.

- (5) The building certifier must perform the certifying function stated in the additional certification notice on or before the agreed day, unless the certifier has a reasonable excuse.

Maximum penalty—40 penalty units.

- (6) Also, the building certifier must give the owner and client, within 5 business days after performing the certifying function, copies of all documents relevant to that function, unless the certifier has a reasonable excuse.

Maximum penalty—20 penalty units.

- (7) The agreed day, or an agreement to determine the agreed day, must be decided within 10 business days after the day (the *relevant day*) the client gives a copy of the additional certification notice to the building certifier.

- (8) If the agreed day or agreement is not decided under subsection (7), the building certifier must—

(a) nominate a day, or a way to determine the agreed day, within 15 business days after the relevant day; and

(b) tell the client and owner which day is nominated as the agreed day or the way the agreed day is to be determined.

- (9) Subsections (5) and (6) do not apply to the building certifier if, before the following times, the owner tells the certifier that the additional certification notice is withdrawn—

(a) the agreed day or agreement is decided under subsection (7);

(b) the agreed day is nominated under subsection (8).

- (10) The owner is liable for the reasonable costs of the performance of a certifying function by the building certifier under the additional

certification notice.

(11) In this section—

agreed day, for performing a certifying function under subsection (5), means—

- (a) the day agreed to by, or worked out under an agreement between, all of the following—
 - (i) the client;
 - (ii) the building certifier;
 - (iii) the owner;
 - (iv) if the client is not the builder of the building work the subject of the certifying function—the builder; or
- (b) the day nominated by the building certifier under subsection (8).

builder means the person who will be carrying out the building work the subject of the certifying function.

certifying function, for a building certifier, means a building certifying function relating to compliance of a building with the BCA or QDC.

45 Amendment of s 150 (Obligation to keep inspection documentation)

Section 150, ‘5 years’—

omit, insert—

7 years

46 Amendment of s 155 (Who may apply)

(1) Section 155(1), from ‘the individual’—

omit, insert—

the individual—

- (a) holds a current accreditation issued by an accreditation standards body; or
 - (b) has the qualifications and experience prescribed by regulation.
- (2) Section 155(2)(a)—
omit, insert—
- (a) the individual—
 - (i) holds a current accreditation issued by an accreditation standards body; or
 - (ii) has the qualifications and experience prescribed by regulation; and

47 Amendment of s 156 (Requirements for licence application)

Section 156(c)(iv)—

omit, insert—

- (iv) for the level of licence applied for—
 - (i) a copy of the applicant's certificate of accreditation from an accreditation standards body; or
 - (ii) evidence of the qualifications and experience the applicant is required to have for the level.

48 Amendment of s 167 (Applying for renewal)

Section 167(3)(c)—

omit, insert—

- (c) for the level of licence applied for, evidence that the applicant—
 - (i) continues to hold accreditation from an accreditation standards body; or

- (ii) has the qualifications and experience the applicant is required to have for the level; and

49 Amendment of s 171 (Power to amend, cancel or suspend licence)

Section 171(1)—

insert—

Note—

QBCC is required to cancel a building certifier's licence if the building certifier becomes a disqualified individual—see section 214K.

50 Amendment of s 172 (Power to change licence level)

Section 172(1), from 'no longer' to 'standards body'—

omit, insert—

does not hold accreditation from an accreditation standards body, and does not have qualifications and experience prescribed under section 155,

51 Amendment of s 179 (Register of building certifiers)

- (1) Section 179(3)(d)(ii), from 'if' to 'conduct—'—

omit.

- (2) Section 179(3)—

insert—

- (f) any demerit points allocated to the building certifier, the demerit offences for which they were allocated and the dates the points took effect;
- (g) if the building certifier has been a disqualified individual—details of the

circumstances that led to the disqualification.

(3) Section 179—

insert—

(3A) However, QBCC may decide not to record, under subsection (3)(d), particulars about unsatisfactory conduct engaged in by a building certifier if QBCC is satisfied the conduct has not—

- (a) compromised the health and safety of a person; or
- (b) had a direct detrimental impact on another person, including, for example, a client or owner of a building for whom building certifying functions or private certifying functions are performed.

52 Replacement of s 184 (Accreditation standards bodies)

Section 184—

omit, insert—

184 Accreditation standards bodies

- (1) An *accreditation standards body* is an entity prescribed by regulation to be an accreditation standards body.
- (2) An entity may be prescribed under subsection (1) only if it has identifiable competence and expertise in issuing accreditation to building certifiers.

53 Amendment of s 185 (Function of accreditation standards body)

(1) Section 185(2)—

insert—

- (d) submit the body's educational and experiential standards and professional development scheme to the chief executive for review at least once every 5 years from the day the standards or scheme was first approved by the chief executive; and
- (e) if, on a review mentioned in paragraph (d), the chief executive directs the body to make stated changes to the body's educational and experiential standards or professional development scheme—make the stated changes; and
- (f) if the body's educational and experiential standards or professional development scheme are amended other than as mentioned in paragraph (e) or for a minor or technical change—submit the amended standards or scheme to the chief executive for approval.

(2) Section 185—

insert—

- (2A) An accreditation standards body must publish, on its website, a copy of its current educational and experiential standards and professional development scheme.

(3) Section 185(2A) and (3)—

renumber as section 185(3) and (4).

54 Amendment of s 186 (Criteria for deciding suitability of applicants and licensees)

(1) Section 186(2)—

insert—

- (fa) if the applicant or holder does not hold a current accreditation issued by an

accreditation standards body—whether the applicant or holder has qualifications and experience prescribed under section 155;

(fb) whether the applicant or holder is a disqualified individual;

(2) Section 186—

insert—

(3) A person is not a suitable person to hold a licence if the person is a disqualified individual.

55 Amendment of s 190 (Making a complaint against a building certifier)

(1) Section 190—

insert—

(2A) A complaint about conduct of a building certifier may only be made before the cut-off day, unless the certifier's conduct has or may have caused significant financial loss or other serious harm.

(2) Section 190(4)—

omit, insert—

(4) QBCC may dismiss any complaint without taking further action under this division if—

(a) QBCC has asked for further particulars under subsection (3) and the further particulars are not given or are not verified by statutory declaration; or

(b) QBCC is satisfied the complaint—

(i) is frivolous or vexatious; or

(ii) lacks substance or credibility.

(3) Section 190—

insert—

(6) In this section—

cut-off day, for making a complaint about conduct of a building certifier, means—

- (a) for conduct relating to certification of building work the subject of a building development approval, 7 years after—
 - (i) a certificate of occupancy or final inspection certificate is issued for the building work; or
 - (ii) if the building development approval lapses before a certificate of occupancy or final inspection certificate is issued for the building work—the building development approval lapses; or
- (b) for conduct relating to building work for which a building development application has been made to which paragraph (a) does not apply, 1 year after—
 - (i) a private certifier is engaged for the application; or
 - (ii) if a private certifier is not engaged for the application—the application is received by the local government; or
- (c) otherwise—1 year after the complainant becomes aware of the conduct.

56 Insertion of new ch 6, pt 5

Chapter 6—

insert—

Part 5

Disqualified individuals

Division 1

Preliminary

214A Definitions for part

In this part—

accumulate—

If a demerit point is allocated to a person, the person is taken to have *accumulated* the demerit point at the time it took effect under section 214F.

conviction, of a person for a demerit offence, includes the following in relation to the offence—

- (a) a court finding the person guilty or accepting the person's plea of guilty, whether or not a conviction is recorded;
- (b) the person paying a fine under an infringement notice, in full;
- (c) the person paying the first instalment of a fine under an infringement notice;
- (d) the registration by the registrar of a default certificate for an infringement notice given to the person.

default certificate see the *State Penalties Enforcement Act 1999*, schedule 2.

demerit offence means an offence against a provision of this Act prescribed by regulation.

demerit point means a demerit point allocated by QBCC under this part for a conviction for a demerit offence.

disqualification notice see section 214K(2).

disqualified individual see section 214B.

infringement notice see the *State Penalties Enforcement Act 1999*, schedule 2.

registrar see the *State Penalties Enforcement Act 1999*, schedule 2.

214B Disqualified individual

A person is a *disqualified individual* if—

- (a) the person has been given a disqualification notice; and
- (b) the person's period of disqualification under section 214L has not ended.

214C When period of 3 years starts

- (1) This section applies to QBCC in deciding whether a person has accumulated 30 demerit points within a period of 3 years.
- (2) If the person has previously been given 1 or more disqualification notices, the period mentioned in subsection (1) must start at a time after the most recent disqualification notice was given to the person.

214D Operation of part

This part has effect despite anything in part 3.

Division 2 Calculation of demerit points

214E Demerit points for demerit offences

- (1) This section applies in relation to a person who has a conviction for a demerit offence.
- (2) QBCC must allocate to the person the number of demerit points prescribed by regulation for the offence.
- (3) A regulation may prescribe up to 10 demerit points for a particular offence.
- (4) This section is subject to section 214G.

214F When demerit points are allocated and take effect

- (1) QBCC must allocate demerit points to a person for a conviction for a demerit offence as soon as practicable after the points take effect.
- (2) Demerit points for a conviction for a demerit offence take effect—
 - (a) if a court finds the person guilty—on the day after the last day on which the person may appeal the finding; or
 - (b) if a court accepts the person’s plea of guilty—on the day the plea is accepted; or
 - (c) if the person pays the fine under an infringement notice in full—on the day the fine is paid; or
 - (d) if the person applies to the administering authority to pay the fine under an infringement notice by instalments—on the day the administering authority receives the first instalment; or
 - (e) if the administering authority gives a default certificate to SPER for registration—on the day the default certificate is registered.
- (3) However, if a conviction for a demerit offence is appealed, demerit points for the conviction must not be allocated until the appeal is finally dealt with or withdrawn.
- (4) Also, if a conviction for a demerit offence is appealed and after the appeal there is no conviction, demerit points stop having effect.
- (5) In this section—

administering authority see the *State Penalties Enforcement Act 1999*, schedule 2.

SPER see the *State Penalties Enforcement Act*

1999, schedule 2.

214G Limit on demerit points from single investigation or audit

- (1) This section applies if a person is convicted of 2 or more demerit offences discovered by QBCC as a result of an investigation or audit under part 4.
- (2) The maximum demerit points that may be allocated to the person for the convictions for the demerit offences is 20.
- (3) Nothing in this section prevents more demerit points being allocated to the person for convictions for demerit offences discovered by QBCC as a result of a later investigation or audit under part 4.
- (4) However, more demerit points must not be allocated if—
 - (a) an earlier investigation or audit and a later investigation or audit relate to the same complaint or information received by QBCC from the same source; or
 - (b) for demerit offences discovered by QBCC as a result of a later investigation or audit—
 - (i) the offences were committed before an earlier investigation or audit but were not discovered as a result of the earlier investigation or audit; and
 - (ii) other demerit offences were discovered by QBCC as a result of the earlier investigation or audit; and
 - (iii) the other demerit offences resulted in the allocation of demerit points.

214H QBCC must notify person about demerit points

- (1) This section applies if QBCC allocates demerit points to a person.
- (2) QBCC must, as soon as practicable after the demerit points are allocated, give the person notice of—
 - (a) the number of demerit points allocated; and
 - (b) the demerit offences for which the points were allocated; and
 - (c) the date the points took effect.

Division 3 Disqualification

214I Procedure if QBCC considers person has accumulated 30 demerit points

- (1) This section applies if QBCC considers that a person has accumulated 30 demerit points in a period of 3 years.
- (2) QBCC must give the person a notice stating—
 - (a) details of the demerit offences for which the demerit points have accumulated and the dates the points took effect; and
 - (b) the effect of the person becoming a disqualified individual for accumulating 30 demerit points in a period of 3 years; and
 - (c) an invitation to the person to make written submissions, within a stated period, to satisfy QBCC that the person has not accumulated 30 demerit points in a period of 3 years.
- (3) The stated period must be at least 28 business days after the notice is given to the person.

- (4) QBCC must consider any submissions made by the person within the stated period.

214J Ending procedure without further action

- (1) This section applies if, after considering submissions made by the person, QBCC is satisfied the person has not accumulated 30 demerit points in a period of 3 years.
- (2) QBCC must, as soon as practicable, advise the person in writing that no further action under this part will be taken in relation to the notice given under section 214I(2).

214K Notice of disqualification

- (1) This section applies if—
 - (a) after considering submissions made by the person, QBCC still considers the person has accumulated 30 demerit points in a period of 3 years; or
 - (b) the person did not make any submissions.
- (2) QBCC must, by notice (a *disqualification notice*) given to the person—
 - (a) inform the person that—
 - (i) QBCC considers the person has accumulated 30 demerit points in a period of 3 years; and
 - (ii) the person is a disqualified individual for the period applying under section 214L and stated in the notice; and
 - (b) if the person holds a building certifier's licence—cancel the person's licence.
- (3) The disqualification notice must be an information notice.

- (4) To remove any doubt, it is declared that part 3, division 5 does not apply to a cancellation under subsection (2).

214L Period of disqualification

- (1) This section applies to a person who is given a disqualification notice.
- (2) The person is a disqualified individual for the period decided by QBCC (the *period of disqualification*) that is not longer than—
- (a) if, within the last 10 years, a previous disqualification notice was given to the person—3 years; or
- (b) otherwise—1 year.
- (3) For subsection (2)(a), a previous notice must not be counted if—
- (a) the previous notice was given more than 10 years before the notice mentioned in subsection (1); or
- (b) QBCC’s decision under the previous notice was reversed or annulled on review by an internal review or the tribunal under the QBCC Act, part 7, division 3.

57 Insertion of new ch 11, pt 21

Chapter 11—

insert—

Part 21

Transitional provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

347 Definitions for part

In this part—

new, for a provision, means the provision as in force from the commencement.

previous, for a provision, means the provision as in force from time to time before the commencement.

348 Section 124A does not apply to building certifier engaged before commencement

Section 124A does not apply to a building certifier in relation to inspection documentation for building work if the building certifier was engaged to inspect the building work before the commencement.

349 Application of s 143B for owner of building

Section 143B applies in relation to the owner of a building only if the building certifier mentioned in section 143B(1)(a) for the building is engaged by the client on or after the commencement.

350 Application of s 185 to existing educational and experiential standards

For section 185(2)(d), an educational and experiential standard and professional

development scheme in force on the commencement is taken to have been first approved by the chief executive on the commencement.

351 Application of disqualified person provisions

For new chapter 6, part 5, demerit points do not take effect for convictions for demerit offences committed before the commencement.

352 Existing certificates of classification

- (1) This section applies to a certificate of classification in force immediately before the commencement.
- (2) The certificate of classification is taken to be a certificate of occupancy.

353 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature about any matter—
 - (a) for which it is necessary to make provision to allow or to facilitate the doing of anything to achieve the transition from the pre-amended Act to the amended Act; and
 - (b) for which this Act does not provide or sufficiently provide.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the commencement.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 2 years after the commencement.

58 Omission of sch 1 (The QDC on 14 June 2011)

Schedule 1—

omit.

59 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *AIBS*, *alternative solution*, *certificate of classification*, *commencement* (both occurrences), *previous* (all occurrences) and *QDC boundary clearance and site cover provisions*—

omit.

- (2) Schedule 2—

insert—

accumulate, for chapter 6, part 5, see section 214A.

certificate of occupancy, for a building or structure, means—

- (a) a certificate about its BCA classification in force under section 106; or
- (b) an interim certificate of occupancy in force under section 104.

conviction, of a person for a demerit offence, for chapter 6, part 5, see section 214A.

default certificate, for chapter 6, part 5, see section 214A.

demerit offence see section 214A.

demerit point see section 214A.

disqualification notice, for chapter 6, part 5, see section 214K(2).

disqualified individual see section 214B.

infringement notice, for chapter 6, part 5, see section 214A.

performance solution means a material, system, method of building or other thing, other than the following, intended to be used by a person to comply with relevant performance requirements—

- (a) if the relevant performance requirements are under the BCA—a building solution under the BCA that complies with the deemed-to-satisfy provisions under the BCA for the performance requirements;
- (b) if the relevant performance requirements are under the QDC—an acceptable solution under the QDC for the performance requirements.

QDC residential design and siting provisions means the parts, or aspects of parts, of the QDC prescribed by regulation.

registrar, for chapter 6, part 5, see section 214A.

stage, of assessable building work, means a stage of the work, prescribed by regulation, at which the work may be inspected.

- (3) Schedule 2, definition *information notice*, paragraph (b), after ‘246CY,’—

insert—

or a decision of the QBCC relating to accumulation of demerit points under section 214K,

- (4) Schedule 2, definition *special structure*, ‘part A3’—

omit, insert—

part A6

Part 4 **Amendment of Building Industry Fairness (Security of Payment) Act 2017**

60 **Act amended**

This part amends the *Building Industry Fairness (Security of Payment) Act 2017*.

61 **Amendment of s 2 (Commencement)**

(1) Section 2(1) and (1A)—

omit, insert—

(1) Chapter 9, part 1, divisions 1 to 4 commence on a day to be fixed by proclamation.

(2) Section 2(2), ‘division 2 or 3’—

omit, insert—

divisions 1 to 4

62 **Amendment of s 3 (The main purpose of Act)**

Section 3(2)(a)—

omit, insert—

(a) requiring the use of statutory trusts for particular contracts related to the building and construction industry; and

63 **Replacement of ch 2 (Project bank accounts)**

Chapter 2—

omit, insert—

Chapter 2 Statutory trusts

Part 1 Preliminary

7 Purpose of chapter

The main purpose of this chapter is to ensure that funds paid to the contracted party for particular contracts are held in a trust to protect the interests of subcontractors.

8 Definitions for chapter

In this chapter—

approved financial institution means a financial institution approved by the commissioner under section 55.

building means a fixed structure that is wholly or partly enclosed by walls or is roofed.

contract administration, in relation to project trust work wholly or partly designed by a person, includes the following—

- (a) preparing tender documentation and calling and selecting tenders;
- (b) preparing, or helping the person's clients with the preparation of, contracts;
- (c) preparing additional documentation for the person's clients or building contractors;
- (d) arranging and conducting on-site meetings and inspections;
- (e) arranging progress payments;
- (f) arranging for certificates, including certificates from a local government, to be issued;

- (g) providing advice and help to the person's clients including during the maintenance period allowed under a contract.

contracted party, for a contract, means the party to the contract who is required to perform work under the contract, whether by—

- (a) carrying out the work personally; or
- (b) directly or indirectly causing the work to be carried out.

contracted work, for a contract, means the work required to be carried out under the contract.

contracting party, for a contract, means the party to the contract for whom the contracted work is to be carried out.

contract price see section 9.

hospital and health service means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

mechanical services work see the *Queensland Building and Construction Commission Act 1991*, schedule 2.

project trust work see section 8A.

protected work see section 8B.

State authority—

- (a) means—
 - (i) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or by authority of the State for a public or State purpose; or
 - (ii) a corporation that is—
 - (A) owned or controlled by the State, a local government or an entity

mentioned in subparagraph (i);
and

- (B) prescribed by regulation to be a State authority; or
 - (iii) a subsidiary of a corporation mentioned in subparagraph (ii); or
 - (iv) a part of an entity mentioned in subparagraphs (i) to (iii); or
 - (v) a hospital and health service; but
- (b) does not include an entity prescribed by regulation not to be a State authority.

trust records see section 52(1).

variation, of a contract, means an addition to, or an omission from, the contracted work.

8A Meaning of *project trust work*

- (1) *Project trust work* means any of the following work—
- (a) the erection or construction of a building;
 - (b) the renovation, alteration, extension, improvement or repair of a building;
 - (c) the provision of lighting, heating, ventilation, air conditioning, water supply, sewerage or drainage in connection with a building;
 - (d) any site work (including the construction of retaining structures) related to work of a kind mentioned in paragraph (a), (b) or (c);
 - (e) the preparation of plans or specifications for the performance of any other work mentioned in this subsection;

- (f) contract administration if carried out by a person for the construction of a building wholly or partly designed by the person;
- (g) fire protection work within the meaning of the *Queensland Building and Construction Commission Act 1991*, schedule 2;
- (h) site testing within the meaning of the *Queensland Building and Construction Commission Act 1991*, schedule 2 and classification carried out in preparation for the erection or construction of a building on the site;
- (i) the carrying out of a building inspection;
- (j) the inspection or investigation of a building, and the provision of advice or a report, for the following—
 - (i) termite management systems for the building;
 - (ii) termite infestation in the building;
- (k) work performed by an architect under the *Architects Act 2002* in the architect's professional practice if the work is associated with a building;
- (l) work performed by a registered professional engineer under the *Professional Engineers Act 2002* in the engineer's professional practice if the work is associated with a building;
- (m) work performed by a surveyor under the *Surveyors Act 2003* in the surveyor's professional practice if the work is associated with a building;
- (n) electrical work under the *Electrical Safety Act 2002* if the work is associated with a building;

- (o) the erection of scaffolding that is associated with a building;
 - (p) earthmoving and excavating that is associated with a building;
 - (q) certification work performed by a building certifier under the *Building Act 1975* in the certifier's professional practice if the work is associated with a building;
 - (r) the assessment of energy efficiency of a building;
 - (s) work performed by a fire safety adviser under the *Building Fire Safety Regulation 2008* if the work is associated with a building;
 - (t) the laying of wet pour rubber, including the laying of a blended mix of graded rubber particles and binder to provide a continuous surface if the work is associated with a building;
 - (u) the installation of prefabricated components of a building;
 - (v) mechanical services work that is associated with a building.
- (2) ***Project trust work*** also includes work prescribed by regulation to be project trust work.
- (3) However, ***project trust work*** does not include work prescribed by regulation not to be project trust work.

8B Meaning of *protected work*

- (1) ***Protected work*** means any of the following work—
- (a) the construction, alteration, repair, restoration, maintenance, extension,

- demolition or dismantling of buildings, whether permanent or not, forming, or to form, part of land;
- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works forming, or to form, part of land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for land drainage or coast protection;
 - (c) the installation in any building or other works of fittings forming, or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communications systems;
 - (d) the external or internal cleaning of buildings and other works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;
 - (e) any operation that forms an integral part of, or is preparatory to or is for completing, work of the kind referred to in paragraph (a), (b) or (c), including—
 - (i) site clearance, earthmoving, excavation, tunnelling and boring; and
 - (ii) the laying of foundations; and
 - (iii) the erection, maintenance or dismantling of scaffolding; and

- (iv) the prefabrication of components to form part of any building or other works, whether carried out on-site or off-site; and
 - (v) site restoration, landscaping and the provision of roadways and other access works;
 - (f) the painting or decorating of the internal or external surfaces of any building or other works;
 - (g) the testing of soils and road making materials during the construction and maintenance of roads;
 - (h) the prefabrication of complete buildings or components of a building or other works, whether carried out on-site or off-site;
 - (i) any other work of a kind prescribed by regulation.
- (2) However, ***protected work*** does not include any of the following work—
- (a) the drilling for, or extraction of, oil or natural gas;
 - (b) the extraction, whether by underground or surface working, of minerals, including tunnelling or boring, or constructing underground works, for that purpose;
 - (c) work prescribed by regulation not to be protected work.
- (3) To remove any doubt, it is declared that project trust work is protected work unless the work is prescribed under subsection (2)(c).

Note—

The scope of work that is protected work is broader than the scope of work that is project trust work.

9 Meaning of *contract price*

- (1) The *contract price*, for a contract, means the amount the contracted party is entitled to be paid under the contract or, if the amount can not be accurately calculated, the reasonable estimate of the amount the contracted party is entitled to be paid under the contract.
- (2) In working out the amount under subsection (1), an amount for GST is not to be included.

Part 2 Project trusts

Division 1 Preliminary

10 Definitions for part

In this part—

head contract means a contract for project trust work that is not also a subcontract of another contract.

minimum contract price means an amount prescribed by regulation.

project trust account means the account for a project trust at a financial institution.

related services means—

- (a) architectural, design, surveying or quantity surveying services relating to protected work; or
- (b) building advisory services, engineering advisory services, interior or exterior decoration advisory services or landscaping advisory services if relating to protected work; or

- (c) soil testing services relating to protected work.

subcontractor beneficiary, for a project trust, means a subcontractor who is a beneficiary of the trust under section 11A(4).

10A Who is a *related entity*

- (1) A person is a ***related entity*** for another person if—
 - (a) for individuals—they are members of the same family; or
 - (b) for an individual and a corporation—the individual or a member of the individual’s family—
 - (i) is a majority shareholder, director or secretary of the corporation or a related body corporate of the corporation; or
 - (ii) has an interest of 50% or more in the corporation; or
 - (c) for an individual and a trustee of a trust—the individual or a related entity under another provision of this section is a beneficiary of the trust; or
 - (d) for corporations—they are related bodies corporate; or
 - (e) for a corporation and a trustee of a trust—the corporation or a related entity under another provision of this section is a beneficiary of the trust; or
 - (f) for trustees of 2 or more trusts—
 - (i) a person is a beneficiary of both trusts; or
 - (ii) a person is a beneficiary of 1 trust and a related entity under another provision

of this section is a beneficiary of the other trust.

(2) Also, a person is a *related entity* for another person if the persons acquire interests in a land holding trust and the acquisitions form, evidence, give effect to or arise from what is substantially 1 arrangement.

(3) In this section—

family, for a person, means—

- (a) the person's spouse; or
- (b) a parent of the person or the person's spouse; or
- (c) a grandparent of the person or the person's spouse; or
- (d) a brother, sister, aunt, uncle, nephew or niece of the person or the person's spouse; or
- (e) a child of the person or the person's spouse; or
- (f) a grandchild of the person or the person's spouse; or
- (g) the spouse of any person mentioned in paragraphs (b) to (f).

land holding trust see the *Duties Act 2001*, schedule 6.

related bodies corporate means bodies corporate that are related under the Corporations Act, section 50.

10B When amount liable to be paid to subcontractor

For this chapter, a person who is a party to a subcontract is liable to pay an amount to the

subcontractor if any of the following circumstances apply—

- (a) the amount is due to be paid by the person to the subcontractor in accordance with the terms of the subcontract;
- (b) under the subcontract, the amount is certified, or otherwise assessed, as payable by the person to the subcontractor;
- (c) the person gives the subcontractor a payment schedule for the amount;
- (d) the person is liable to pay the amount to the subcontractor under section 77;
- (e) the person must pay the amount to the subcontractor under chapter 3, part 4 because of an adjudication of a disputed progress payment for the subcontract;
- (f) the person must pay the amount to the subcontractor because of a final and binding dispute resolution process;
- (g) a court or tribunal orders the person to pay the amount to the subcontractor.

10C References to particular terms in this part

In this part—

- (a) a reference to a contract in association with a reference to a project trust is a reference to the contract for which the trust is required; and
- (b) a reference to a contracting party in association with a reference to a project trust is a reference to the contracting party for the contract for which the trust is required; and
- (c) a reference to a contracted party in association with a reference to a project trust

is a reference to the contracted party for the contract for which the trust is required; and

- (d) a reference to a trustee in association with a reference to a project trust, or a contract for which a project trust is required, is a reference to the trustee for the project trust; and
- (e) a reference to a subcontract in association with a reference to a project trust is a reference to a subcontract of the contract for which the trust is required; and
- (f) a reference to a subcontractor beneficiary in association with a reference to a project trust is a reference to a subcontractor beneficiary for the trust; and
- (g) a reference to a trustee in association with a reference to a project trust account is a reference to the trustee for the trust to which the account relates.

Division 2 Project trusts

11 What is a *project trust*

A *project trust* is a trust—

- (a) over the following amounts—
 - (i) amounts paid by the contracting party to the contracted party under a contract (the *project trust contract*) for which a project trust is required;
 - (ii) amounts paid by the contracted party to subcontractors for the project trust contract;

- (iii) amounts deposited in the project trust account as required under this chapter; and
- (b) primarily for the benefit of subcontractors for the project trust contract.

11A Who are the trustee and beneficiaries of a project trust

- (1) This section applies to a project trust established for a contract (the *project trust contract*).
- (2) The contracted party for the project trust contract is both the trustee and a beneficiary of the project trust.
- (3) The contracted party—
 - (a) becomes the trustee and a beneficiary of the project trust when the trust is established; and
 - (b) ceases to be the trustee and a beneficiary of the project trust when the trust is lawfully dissolved.
- (4) A subcontractor for the project trust contract is a beneficiary of the project trust if—
 - (a) its subcontract is a first tier subcontract of the project trust contract; and

Note—

If the project trust contract is a subcontract of a head contract, a first tier subcontract of the project trust contract would also be a second tier subcontract of the head contract.

- (b) the contracted work for its subcontract is protected work or the supply of related services; and
- (c) the contract price for its subcontract is at least the minimum contract price.

- (5) A subcontractor who is a beneficiary under subsection (4)—
 - (a) becomes a beneficiary of the project trust when its subcontract is entered into; and
 - (b) ceases to be a beneficiary of the project trust when paid all amounts it is entitled to be paid under its subcontract.
- (6) Subsection (7) applies if—
 - (a) the same parties enter into 2 or more separate subcontracts; and
 - (b) the separate subcontracts are for carrying out protected work at the same site or adjacent sites.
- (7) The contract price for each of the separate subcontracts for the purpose of subsection (4)(c) is the total of the contract prices for all the separate subcontracts.

11B What are the beneficial interests in a project trust

- (1) The beneficiaries of a project trust for a contract have a beneficial interest in—
 - (a) for a subcontractor for the contract (as beneficiary)—an amount the subcontractor is entitled to be paid under its subcontract; or
 - (b) for the contracted party for the contract (as beneficiary)—the remainder for the trust.
- (2) In this section—

remainder, for a project trust, means the amount still held in trust after subtracting all amounts subcontractor beneficiaries are entitled to be paid in connection with their subcontracts.

Division 3 Contracts requiring project trusts

Subdivision 1 When project trust required

12 When project trust required for a contract

- (1) This section applies to a contract entered into on or after the commencement of this section.
- (2) A project trust is required for a contract if—
 - (a) the contract is eligible for a project trust under subdivision 2; and
 - (b) the contract is not exempted under subdivision 3; and
 - (c) the contracted party enters into a subcontract for all or part of the contracted work.
- (3) The requirement starts on the first day a project trust is required under subsection (2).
- (4) The requirement continues until the project trust is dissolved under section 21, regardless of any of the following changes—
 - (a) a variation, or any other amendment, of the contract;
 - (b) a change in the contract price;
 - (c) a change in the contracted work.
- (5) If a project trust is required for a contract and a project trust is also required for a subcontract of the contract, separate project trusts are required for the contract and the subcontract.
- (6) Despite subsection (1), if the contract was entered into because of a tender process, this section only

applies to the contract if the tender process was started on or after the commencement of this subsection.

- (7) If the tender process for the contract was started before the commencement of this subsection, this chapter, as in force when the tender process was started, continues to apply for the contract despite any amendment of this chapter after the start of the tender process.

Subdivision 2 Eligible contracts

14 Particular contracts for project trust work

- (1) A contract is eligible for a project trust if—
- (a) the contracting party is the State; and
 - (b) more than 50% of the contract price is for project trust work; and
 - (c) the contract price is \$1 million or more but not more than \$10 million.
- (2) Also, a contract is eligible for a project trust if—
- (a) the contracting party is a State authority that has decided a project trust is to be established for the contract; and
 - (b) more than 50% of the contract price is for project trust work; and
 - (c) the contract price is \$1 million or more.
- (3) In this section—
- State* does not include a State authority.

14A Amendments of contracts requiring project trusts

- (1) This section applies if an amendment is made to a

contract and—

- (a) before the amendment is made, the contract is not eligible for a project trust under section 14; and
- (b) after the amendment is made, the contract is eligible for a project trust under section 14.

Note—

If a contract requires a project trust under section 14 but, after an amendment of the contract is made, it would not require a project trust under section 14, the requirement to have a project trust continues regardless of the amendment. See section 12(4).

- (2) The contract is eligible for a project trust when the amendment takes effect.
- (3) However, if the amendment is only an increase in the contract price, a project trust is required for the contract only if the amendment, together with any earlier amendments of the contract, increases the original contract price by 30% or more.
- (4) In this section—

amendment, of a contract, includes any variation of the contract or change in the contract price.

14B Multiple contracts at same site or adjacent sites

- (1) This section applies if—
 - (a) the same parties enter into 2 or more separate contracts; and
 - (b) the separate contracts are for carrying out project trust work at the same site or adjacent sites.
- (2) The separate contracts are taken to be a single contract (the *larger contract*) for the purpose of applying this division.

Example—

The larger contract would be eligible for a project trust if the contract would be eligible for a project trust under section 14.

- (3) To remove any doubt, it is declared that the exemptions under subdivision 3 apply only to the larger contract and not to the separate contracts.

Note—

If the separate contracts are for small scale residential construction work under section 15C, the exemption under section 15C does not apply to exclude the separate contracts from being taken to be a single contract under subsection (2).

- (4) This section does not apply to separate contracts entered into as a result of separate tender processes.

14C Subcontracts with related entities require project trusts

- (1) A subcontract is eligible for a project trust if—
- (a) the subcontract is a first tier subcontract for a head contract; and
 - (b) a project trust is required for the head contract; and
 - (c) the subcontractor is a beneficiary of the project trust for the head contract; and
 - (d) the subcontractor is a related entity for the contracted party for the head contract.

Note—

The contracted party for the head contract would also be the contracting party for the subcontract.

- (2) To remove any doubt, it is declared that the subcontractor continues to be a beneficiary of the project trust for the head contract.

14D Prescribed contracts require project trusts

A contract is eligible for a project trust if it is of a type of contract prescribed by regulation.

14E Prescribed subcontracts require project trusts

- (1) A subcontract is eligible for a project trust if—
 - (a) the subcontract is a first tier subcontract for a head contract; and
 - (b) a project trust is required for the head contract; and
 - (c) the subcontractor is a beneficiary of the project trust for the head contract; and
 - (d) the subcontract is a type of subcontract prescribed by regulation.
- (2) To remove any doubt, it is declared that the subcontractor continues to be a beneficiary of the project trust for the head contract.

Subdivision 3 Exempt contracts

15 Subcontracts generally

A project trust is not required for a subcontract unless it is a type of subcontract to which section 14C or 14E apply.

15A Contracts with particular entities

A project trust is not required for a contract if the contracting party or contracted party is an entity prescribed by regulation.

15B Contracts between the State and a state authority

A project trust is not required for a contract if the only parties to the contract are the State and a state authority.

15C Contracts for small scale residential construction work

- (1) A project trust is not required for a contract if the only project trust work to be carried out under the contract is residential construction work for less than 3 living units.
- (2) For subsection (1)—
 - (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.
- (3) In this section—

residential construction work means the type of work prescribed by regulation.

residential unit means a part of a building designed for separate occupation as a residence.

15D Contracts for maintenance work

- (1) A project trust is not required for a contract if the only project trust work to be carried out under the contract is maintenance work.
- (2) In this section—

maintenance work—

 - (a) means—
 - (i) testing; and

- (ii) taking samples and restoring the sample site; and
- (iii) work required on an ongoing basis to—
 - (A) prevent deterioration or failure of a thing; or
 - (B) restore a thing to its correct operating specifications; or
 - (C) replace a component at the end of its working life; but
- (b) does not include—
 - (i) improving a building to increase its capabilities or functions; or
 - (ii) improving a building to meet new statutory requirements applying to the building; or
 - (iii) a refurbishment or replacement of a building that extends the life of the building.

15E Contracts for professional design, advisory or contract administration work

- (1) A project trust is not required for a contract if the only work to be carried out under the contract is advisory work or design work carried out, either directly or indirectly, by—
 - (a) an architect under the *Architects Act 2002*; or
 - (b) a registered professional engineer under the *Professional Engineers Act 2002*; or
 - (c) a building designer; or
 - (d) a person who carries on a business as a landscape architect.
- (2) Also, a project trust is not required for a contract

if the only work to be carried out under the contract is contract administration carried out, either directly or indirectly, by a person mentioned in subsection (1) for the construction of a building wholly or partly designed by the person.

(3) In this section—

advisory work means—

- (a) the inspection or investigation of a building; or
- (b) the provision of advice or a report about a building.

building designer means a person who holds a licence of a class mentioned in the *Queensland Building and Construction Commission Regulation 2018*, schedule 2, part 11, 12 or 13.

design work means the preparation of plans or specifications for project trust work.

15F Contracts with less than 90 days until practical completion

- (1) A project trust is not required for a contract if there is less than 90 days between—
 - (a) the first day a project trust would, apart from this section, be required for the contract (the *trigger date*); and

Note—

If the effect of an amendment of a contract is that the contract becomes eligible for a project trust for the first time, the trigger date is the day the amendment takes effect. See section 14A.

- (b) the day practical completion for the contracted work is expected to occur.
- (2) If a project trust is not required for a contract because of subsection (1), the contracted party

must review the application of this section to the contract each time an amendment of the contract is made that is likely to affect the day practical completion for the contracted work is expected to occur.

(3) In this section—

amendment, of a contract, includes any variation of the contract or change in the contract price.

practical completion, for contracted work for a contract, means—

(a) practical completion as provided for under the contract; or

(b) if the contract does not provide for practical completion—when the contracted work would reasonably be estimated to be completed—

(i) in compliance with the contract, including all plans and specifications for the work and all statutory requirements applying to the work; and

(ii) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect the intended use of the work.

Division 4 Project trust administration

Subdivision 1 Establishing project trusts

17 Establishment of project trust

Once a project trust is required for a contract under section 12, the trust is established by the

first of the following being made after the trust is required—

- (a) payment of an amount from the contracting party to the contracted party under the contract;
- (b) payment of an amount from the contracted party to a subcontractor beneficiary for subcontracted work under the contract;
- (c) a deposit in the project trust account as required under this chapter.

Subdivision 2 Project trust accounts

18 Contracted party must open project trust account

- (1) If a project trust is required for a contract under section 12, the contracted party must open an account at a financial institution for the trust as required by this section.

Maximum penalty—500 penalty units.

- (2) The project trust account must be opened within 20 business days after the contracted party enters into the first subcontract for the contract.
- (3) However—
 - (a) if a project trust is not required for the contract until after an amendment of the contract; and

Note—

See section 14A about amendments of contracts affecting the requirement to establish a project trust.

- (b) the contracted party entered into a subcontract for the contract before the amendment of the contract;

the project trust account must be opened within 20 business days after the day the contract is amended.

- (4) The project trust account must not be a virtual account or subordinate to any other account at a financial institution.
- (5) There must not be more than 1 project trust account for the project trust.
- (6) A provision of a contract that provides that the project trust account must be opened less than 20 business days after the contract is entered into is of no effect.

18A Restrictions for project trust account

- (1) A trustee must ensure the project trust account is held at an approved financial institution.
Maximum penalty—200 penalty units.
- (2) A trustee must ensure the project trust account is held under a name that includes the trustee's name and the word 'trust'.
Maximum penalty—200 penalty units.
- (3) A trustee must ensure that deposits of amounts to, and withdrawals of amounts from, the project trust account are made using only methods that create an electronic record of the transfer.
Maximum penalty—500 penalty units.

18B Notice of project trust account's opening, closing or name change

- (1) This section applies if a trustee, or another person on behalf of a trustee, takes any of the following actions in relation to the project trust account—
 - (a) opens the account;

- (b) changes the name of the account;
 - (c) closes the account;
 - (d) transfers the account.
- (2) Within 5 business days after taking the action, the trustee must give to the contracting party, and must give to the commissioner using an approved way, a notice—
- (a) stating the action taken; and
 - (b) including the information prescribed by regulation.

Maximum penalty—200 penalty units.

18C Change of financial institution

- (1) A trustee must not transfer the project trust account to an alternative financial institution unless—
- (a) the alternative financial institution is an approved financial institution; and
 - (b) all amounts held in the account are transferred with the account to the alternative financial institution; and
 - (c) the trustee informs the contracting party, the commissioner and the subcontractor beneficiaries about the transfer as prescribed by regulation.

Maximum penalty—200 penalty units.

Note—

See, also, section 18B for the trustee's obligation to inform the contracting party and the commissioner of closing and opening a project trust account.

- (2) When transferring the project trust account to an alternative financial institution, the trustee may withdraw the amounts of interest credited to the

account by a financial institution.

(3) Nothing in this section enables the trustee to have more than 1 project trust account for a project trust at the same time beyond the period necessary to transfer the project trust account.

(4) In this section—

alternative financial institution, for a project trust account, means a financial institution that is not the financial institution at which the account is currently kept.

Subdivision 3 Payments to project trust account

19 All payments from contracting party to be deposited in project trust account

(1) This section applies to any of the following amounts paid by the contracting party to the contracted party in connection with a contract for which a project trust is required—

(a) an amount paid in accordance with the terms of the contract;

(b) an amount paid because the contracting party is liable under section 77 to pay the amount to the contracted party in connection with the contract;

(c) an amount paid under chapter 3, part 4 because of an adjudication of a disputed progress payment relating to the contract;

(d) an amount paid because of a final and binding dispute resolution process relating to the contract;

(e) an amount paid because of a court order relating to the contract;

- (f) an amount, paid for any other reason, that reduces the unpaid amount of the contract price for the contract.
- (2) The contracting party must deposit the amount into the project trust account for the contract (the ***deposit obligation***) unless—
 - (a) the amount was due to be paid before the trust was established; or
 - (b) the amount is paid into court; or
 - (c) the amount is to be withheld because of a payment withholding request given to the contracting party under section 97B; or
 - (d) the amount is paid directly to a person under chapter 4 in connection with a subcontractor's charge; or
 - (e) the contracting party has a reasonable excuse for failing to deposit the amount into the account.

Maximum penalty—200 penalty units.

- (3) Once the amount is deposited into the project trust account, the deposit is taken to be a payment made by the contracting party to the contracted party and discharges the contracting party's liability to pay that amount to the contracted party.
- (4) If an amount is paid to the contracted party or its agent in contravention of the deposit obligation, the contracted party must deposit the amount into the project trust account as soon as practicable after receiving the amount.

Maximum penalty for subsection (4)—200 penalty units or 2 years imprisonment.

19A Limited purposes for which money may be deposited in project trust account

- (1) A trustee must not cause an amount to be deposited into the project trust account for any purpose other than—
 - (a) paying the trustee, as the contracted party, an amount the contracting party must deposit into the account under section 19(2); or
 - (b) paying a subcontractor beneficiary an amount the contracted party is liable to pay the beneficiary in connection with its subcontract; or
 - (c) repaying an amount withdrawn from the account in error; or
 - (d) making another payment prescribed by regulation.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) This section does not apply to an amount of interest credited to the project trust account by a financial institution.

Subdivision 4 Payments from project trust account

20 All payments to subcontractor beneficiaries to be paid from project trust account

- (1) This section applies if a project trust is required for a contract and the contracted party is liable to pay an amount to a subcontractor beneficiary in connection with its subcontract.
- (2) The contracted party may only pay the amount to the subcontractor beneficiary—

- (a) from the project trust account; and
- (b) by depositing the amount into the account of a financial institution nominated by the beneficiary.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (3) To remove any doubt, it is declared that the obligation to pay an amount from the project trust account applies whether or not the amount is held in the account when it is to be paid.

Note—

See section 51 about covering shortfalls.

- (4) The account nominated by the subcontractor beneficiary under subsection (2)(b) must be—
 - (a) controlled by the beneficiary; and
 - (b) if the beneficiary is also required to establish a project trust for its subcontract—the account for the project trust for the subcontract.
- (5) This section does not apply to—
 - (a) a retention amount withheld from payment to a subcontractor beneficiary if the amount is deposited into a retention trust account of which the subcontractor is, or will be, a beneficiary; and
 - (b) a retention amount to be released to a subcontractor beneficiary from a retention trust account.

20A Limited purposes for which money may be withdrawn from project trust account

- (1) A trustee must not withdraw an amount from the project trust account for any purpose other than—

- (a) paying a subcontractor beneficiary an amount the contracted party is liable to pay the beneficiary in connection with its subcontract; or
- (b) paying the trustee, as the contracted party, an amount the contracting party is liable to pay the contracted party for contracted work but only to the extent the contracted party is not also liable to pay a subcontractor beneficiary for the same work; or
- (c) returning an amount paid in error by the contracting party; or
- (d) depositing a retention amount into a retention trust account; or
- (e) making payment relating to the contract in accordance with an adjudication under chapter 3, part 4; or
- (f) making payment relating to the contract as ordered by a court; or
- (g) making another payment prescribed by regulation.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) A trustee must repay all amounts it withdraws in contravention of subsection (1) as soon as practicable after the trustee becomes aware the withdrawal is in contravention of that subsection.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (3) A trustee is taken to have withdrawn an amount from the project trust account if—
 - (a) the trustee authorises any person to make the withdrawal; or

- (b) the trustee knowingly contributes to the withdrawal being made.
- (4) This section does not apply to the withdrawal of an amount for the project trust account for—
 - (a) an amount of interest as mentioned under section 18C(2); or
 - (b) an amount for fees charged by the approved financial institution for the project trust account.

20B Order of priority

A trustee must not withdraw an amount from the project trust account to pay itself, or make another payment prescribed by regulation, unless there would still be a sufficient amount available in the account after the withdrawal to pay all amounts the contracted party is liable to pay subcontractor beneficiaries at the time of the withdrawal.

Maximum penalty—300 penalty units or 2 years imprisonment.

20C Insufficient amounts available for payments

- (1) This section applies if—
 - (a) a project trust is established for a contract; and
 - (b) the contracted party is liable to pay 2 or more subcontractor beneficiaries (each a *claimant*) an amount at the same time; and
 - (c) the total amount held in the project trust account is insufficient to satisfy in full all of the amounts liable to be paid to the claimants; and
 - (d) when an amount liable to be paid to a claimant is due to be paid, the contracted

party has not complied with its obligation under section 51 to cover the insufficient amount.

- (2) The amount to be paid by the contracted party to each claimant is to be reduced in proportion to the amounts liable to be paid to each.

Example—

If one subcontractor beneficiary is to be paid \$50,000 and another subcontractor beneficiary is to be paid \$30,000 but only \$40,000 is available, the beneficiaries are to be paid \$25,000 and \$15,000 respectively.

- (3) If the contracted party makes a payment complying with subsection (2), the party must, using an approved way, inform the commissioner of the payment as soon as practicable after making it.

Maximum penalty—100 penalty units.

- (4) While there continues to be an insufficient amount held in the project trust account, the contracted party must not pay a subcontractor beneficiary unless the payment complies with subsection (2).

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (5) Nothing in this section relieves the contracted party of the party's liability to pay in full the amounts the party is liable to pay each subcontractor beneficiary.

Subdivision 5 Ending project trust

21 Ending project trust

- (1) Once a project trust is established for a contract, the trustee may dissolve the trust only if—

- (a) there are no longer any subcontractor beneficiaries for the trust; or

Note—

A subcontractor beneficiary ceases to be a beneficiary when paid all amounts the contracted party is liable to pay the subcontractor in connection with its subcontract. See section 11A(5)(b).

- (b) the only remaining work to be carried out under the contract is maintenance work.
- (2) A project trust is dissolved by the trustee—
 - (a) closing the project trust account; and
 - (b) giving written notice to the commissioner of the trust having been dissolved.
 - (3) A trustee is taken not to dissolve the project trust by closing the project trust account if the account was only closed for the purpose of transferring the account to another financial institution under section 18C.
 - (4) When dissolving the project trust, the trustee may pay itself the following amounts—
 - (a) any amount for interest that the trustee is entitled to under section 51D;
 - (b) any remaining amount that is not owing to a subcontractor beneficiary.
 - (5) In this section—
maintenance work see section 15D(2).

21A Unauthorised dissolution of project trust

- (1) A person must not purport to dissolve a project trust before it may be dissolved under section 21(1).

Maximum penalty—500 penalty units or 1 year's imprisonment.

- (2) Without limiting subsection (1), the person is taken to purport to dissolve a project trust if the person closes the account for the trust while it is still required.
- (3) Subsection (2) does not apply to a person transferring the project trust account to another financial institution under section 18C.

Division 5 Information sharing

23 Notice of project trust before entering subcontracts

- (1) If a project trust is required for a contract under section 12, the contracted party must give each subcontractor a notice about the use of a project trust account (*notice of project trust*) as required by this section.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) The notice of project trust must—
 - (a) be in writing; and
 - (b) include a statement that a project trust will be used for making payments to the subcontractor; and
 - (c) include the information prescribed by regulation.
- (3) The notice of project trust must be given to the subcontractor—
 - (a) if the project trust is not yet established when the contracted party and the subcontractor enter into a subcontract—within 10 business days after the trust is established; or

(b) if the project trust is already established when the contracted party and the subcontractor enter into a subcontract—before the contracted party and the subcontractor enter into a subcontract.

(4) However—

(a) if a project trust is not required for a contract until after an amendment of the contract; and

Note—

See section 14A about amendments of a contract affecting the requirement to establish a project trust.

(b) the contracted party entered into a subcontract for the contract before the amendment of the contract;

the notice of project trust must be given within 10 business days after opening the project trust account.

23A Subcontractor beneficiary to be informed of particular withdrawals

(1) This section applies if—

(a) a withdrawal is made from a project trust account to make a payment to a subcontractor beneficiary; or

(b) a withdrawal is made from a project trust account to deposit an amount, withheld from payment to a subcontractor beneficiary, in a retention trust account for the benefit of the subcontractor beneficiary.

(2) Within 5 business days after making the withdrawal, the trustee for the project trust must give the subcontractor beneficiary a notice of the withdrawal that includes the information

prescribed by regulation, unless the trustee has a reasonable excuse.

Maximum penalty—100 penalty units.

23B Subcontractor beneficiary may request particular information

- (1) A person who is, or was, a subcontractor beneficiary of a project trust may, in writing, request the trustee give the person the following information to the extent it relates to the person—
 - (a) a statement of balance for the project trust account;
 - (b) a copy of the transactions for the project trust account;
 - (c) a copy of the trust records;
 - (d) a copy of supporting statements given to the contracting party with the payment claims made by the trustee as the contracted party.
- (2) The trustee must give the person the requested information within 10 business days after being given the request, unless—
 - (a) the trustee has a reasonable excuse; or
 - (b) the information is already available to the person; or
 - (c) the information has not changed since it was previously given to the person.

Maximum penalty—100 penalty units.

- (3) The requested information must be given to the person in writing and any words used in the information to explain a transaction must be in the English language.
- (4) It is not a reasonable excuse for the trustee to fail to comply with the request on the grounds that

complying with the request might tend to incriminate the trustee or expose the trustee to a penalty.

(5) In this section—

supporting statement see section 75(9).

Division 6 Obligations of contracting party

24 Contracting party to report related entities

(1) This section applies if—

- (a) a project trust is established for a contract; and
- (b) the contracting party knows, or ought reasonably to know, that a subcontractor beneficiary is a related entity for the contracted party.

(2) The contracting party must, using an approved way, inform the commissioner of the matter within 5 business days after the party first becomes aware, or ought reasonably to have become aware, of the matter.

Maximum penalty—50 penalty units.

24A Contracting party to report failure to establish project trust

(1) This section applies if the contracting party for a contract knows or ought reasonably to know—

- (a) a project trust is required for the contract; and
- (b) a project trust account has not been opened for the trust as required under section 18.

- (2) The contracting party must, using an approved way, report the matter to the commissioner.

Maximum penalty—100 penalty units.

Division 7 Other matters

25 Contracted party to report related entities

- (1) This section applies if—
- (a) a project trust is established for a contract; and
 - (b) the contracted party enters into a subcontract with a related entity for the party.

- (2) The contracted party must, using an approved way, inform the commissioner about entering into the subcontract with the related entity within 5 business days after entering into the subcontract.

Maximum penalty—200 penalty units.

25A Limited liability of contracting party

Nothing in this part creates or supports a right of action against the contracting party for a contract by a subcontractor, or the contracted party, as a beneficiary of a project trust for the contract.

25B No assignment of entitlement by contracted party

An assignment by the contracted party of an entitlement of the party to an amount held in trust for a project trust is of no effect.

Part 3 Retention trusts

Division 1 Preliminary

30 Definitions for part

In this part—

building contract see *Queensland Building and Construction Commission Act 1991*, section 67AAA.

minimum contract price means the contract price amount prescribed by regulation.

retention trust see section 31.

retention trust account means the account for a retention trust at a financial institution.

30A References to particular terms in this part

In this part—

- (a) a reference to a contract in association with a reference to a retention trust is a reference to the contract for which the trust is required; and
- (b) a reference to a contracting party in association with a reference to a retention trust is a reference to the contracting party for the contract for which the trust is required; and
- (c) a reference to a contracted party in association with a reference to a retention trust is a reference to the contracted party for the contract for which the trust is required; and
- (d) a reference to a trustee in association with a reference to a retention trust or a contract for which a retention trust is required is a

reference to the trustee for the retention trust.

Division 2 Retention trusts

31 What is a *retention trust*

A *retention trust* is a trust—

- (a) over the following amounts—
 - (i) retention amounts withheld in the form of cash under particular contracts;
 - (ii) deposits in the retention trust account as required under this chapter; and
- (b) primarily for the benefit of the party who will be entitled to the retention amount.

31A Who are the trustee and beneficiaries of a retention trust

- (1) This section applies to a retention trust established for retention amounts withheld from payment under a contract (the *retention trust contract*).
- (2) The contracting party is both the trustee and a beneficiary of the retention trust.
- (3) The contracting party—
 - (a) becomes the trustee and a beneficiary of the retention trust when the trust is established; and
 - (b) ceases to be the trustee and a beneficiary of the retention trust when the trust is dissolved.
- (4) The contracted party is a beneficiary of the retention trust.
- (5) The contracted party—

- (a) becomes a beneficiary of the retention trust when a retention amount is withheld from payment to the party under the retention trust contract; and
- (b) ceases to be a beneficiary of the retention trust when paid all retention amounts it has a beneficial interest in.

Note—

A retention amount need only be released to a contracted party when required under the relevant contract.

31B What are the beneficial interests in a retention trust

- (1) The beneficiaries of a retention trust have a beneficial interest in—
 - (a) for the contracted party as beneficiary—all retention amounts held in the trust that were withheld from payment to the contracted party; or
 - (b) for the contracting party as beneficiary—all amounts held in the trust after subtracting the beneficial interests mentioned in paragraph (a).

Note—

The contracting party's beneficial interest will generally only exist once the contracted party's beneficial interest has ended under subsection (2).

- (2) However, the contracted party's beneficial interest in a retention amount ends—
 - (a) if and when the contracting party becomes entitled to be paid the amount under the relevant contract; and
 - (b) to the extent the contracting party becomes entitled to be paid the amount under the relevant contract.

Example of when the contracting party becomes entitled to be paid a retention amount—

The contracting party becomes entitled under the contract to be paid a retention amount to pay for corrections to defects in the contracted work.

Division 3 When retention trusts required

32 When retention trust required

- (1) A retention trust is required for a retention amount withheld from payment under a contract (the *withholding contract*) if—
 - (a) the withholding contract is—
 - (i) a head contract; or
 - (ii) a first tier subcontract for a head contract; and
 - (b) the contracting party withholds the retention amount in the form of cash; and
 - (c) a project trust is required for the head contract.
- (2) The requirement starts on the first day the contracting party withholds the retention amount from payment.
- (3) The requirement continues until all of the retention amount has been released to the parties entitled to it under the withholding contract, regardless of any of the following changes—
 - (a) a variation, or any other amendment, of the contract;
 - (b) a change in the contracted work.
- (4) This section does not apply to a retention amount withheld from payment under a contract if—

- (a) the contracting party is the State, the Commonwealth, a state authority, a local government or another entity prescribed by regulation; or
 - (b) the contract price for the contract is at least the minimum contract price.
- (5) In this section—
- head contract*** means—
- (a) a contract that is not also a subcontract for another contract; or
 - (b) a subcontract that is eligible for a project trust under section 14C or 14D.

Division 4 Retention trust administration

Subdivision 1 Establishing retention trusts

33 Establishment of retention trust

- (1) This section applies if, under section 32, a retention trust is required for a retention amount withheld from payment under a contract.
- (2) The retention trust is established by the contracting party withholding the retention amount from payment.

33A Charge over retention amounts held in retention trust

- (1) This section applies if, under section 32, a retention trust is required for a retention amount withheld from payment under a contract.

- (2) In addition to the retention trust, the retention amount is also subject to a charge in favour of the contracted party for securing the release of the amount when the party becomes entitled to the amount.
- (3) However, if and when the contracting party becomes entitled to be paid part of the retention amount under the contract, the charge is released over that part of the retention amount.
- (4) The contracted party may enforce the charge as if the charge had been given to it under a written agreement between it and the contracting party.
- (5) An act done to defeat, or purporting to operate so as to defeat, the charge is of no effect against the contracted party.
- (6) The charge is declared to be a statutory interest to which the *Personal Property Securities Act 2009* (Cwlth), section 73(2) applies.

Subdivision 2 Retention trust accounts

34 Contracting party withholding retention amount must open retention trust account

- (1) This section applies if, under section 32, a retention trust is required for a retention amount withheld from payment under a contract.
- (2) The contracting party must open an account for the retention trust at a financial institution before withholding the retention amount from payment.
Maximum penalty—500 penalty units.
- (3) However, the contracting party need only establish 1 retention trust account for all retention amounts withheld by the party under any number of contracts for which it is the contracting party.

34A Restrictions for retention trust account

- (1) A trustee must ensure the retention trust account is held at an approved financial institution.

Maximum penalty—200 penalty units.

- (2) A trustee must ensure the retention trust account is held under a name that includes the trustee's name and the word 'trust'.

Maximum penalty—200 penalty units.

- (3) A trustee must ensure that deposits of amounts to, and withdrawals of amounts from, the retention trust account are made using only methods that create an electronic record of the transfer.

Maximum penalty—500 penalty units.

- (4) A trustee must not close the retention trust account unless—

(a) all retention amounts held in the account have been released to the parties entitled to it under the relevant contracts; or

(b) the account is transferred to an alternative financial institution under section 34C.

Maximum penalty—200 penalty units.

34B Notice of retention trust account's opening, closing or name change

- (1) This section applies if a trustee, or another person on behalf of the trustee, takes any of the following actions in relation to the retention trust account—

(a) opens the account;

(b) changes the name of the account;

(c) closes the account;

(d) transfers the account.

- (2) Within 5 business days after taking the action, the

trustee must, using an approved way, give the commissioner a notice—

- (a) stating the action taken; and
- (b) including the information prescribed by regulation.

Maximum penalty—200 penalty units.

34C Change of financial institution

(1) A trustee must not transfer the retention trust account to an alternative financial institution unless—

- (a) the alternative financial institution is an approved financial institution; and
- (b) all amounts held in the account are transferred with the account to the alternative financial institution; and
- (c) the trustee informs all contracted parties, from whom retention amounts held in the account have been withheld from payment, about the transfer as prescribed by regulation.

Maximum penalty—200 penalty units.

Note—

See, also, section 34B for the trustee's obligation to inform the commissioner of closing and opening a retention trust account.

(2) When transferring the retention trust account to an alternative financial institution, the trustee may withdraw the amounts of interest credited to the account by a financial institution.

(3) In this section—

alternative financial institution, for a retention trust account, means a financial institution that is not the financial institution at which the account is

currently kept.

Subdivision 3 Payments to retention trust account

35 All retention amounts withheld must be deposited in retention trust account

- (1) This section applies if, under section 32, a retention trust is required for a retention amount withheld from payment under a contract.
- (2) The contracting party must ensure the retention amount is held in a retention trust account for the party (the *deposit obligation*).

Maximum penalty—200 penalty units or 2 years imprisonment.

- (3) If the contracting party withheld the retention amount before a retention trust was required under section 32, the party must deposit the amount in the retention trust account within 5 business days after the retention trust is required.

Maximum penalty—200 penalty units.

Note—

See section 14A about amendments of contracts affecting the requirement to establish a project trust.

- (4) A term of a contract is of no effect to the extent it is inconsistent with the deposit obligation.

35A Limited purposes for which money may be deposited in retention trust account

- (1) A trustee must not cause an amount to be deposited into the retention trust account for any purpose other than—

- (a) withholding a retention amount from payment under a contract for which the trustee is the contracting party; or
- (b) repaying an amount withdrawn in error.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (2) This section does not apply to a deposit of an amount that is interest earned on amounts held in a retention trust account.

Subdivision 4 Payments from retention trust account

36 Limited purposes for which money may be withdrawn from retention trust account

- (1) A trustee must not withdraw an amount from the retention trust account for any purpose other than—
 - (a) paying a beneficiary who is a contracted party from whom a retention amount was withheld from payment; or
 - (b) paying the trustee, as contracting party, for the purpose of correcting defects or omissions in contracted work, or otherwise to secure, wholly or partly, the performance of a contract; or
 - (c) paying another person for the purpose of correcting defects or omissions in contracted work.

Note—

As the contracting party for a contract, the trustee’s ability to make a payment mentioned in paragraph (a), (b) or (c) would be governed by the contract under which the retention amount was withheld.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (2) A trustee must not withdraw an amount from the retention trust account for a payment mentioned in subsection (1)(b) until after the defects liability period, applying to the amount, ends.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (3) The trustee must repay all amounts the trustee withdraws in contravention of subsection (1) as soon as practicable after withdrawing the amount.

Maximum penalty—300 penalty units or 2 years imprisonment.

- (4) The trustee is taken to have withdrawn an amount from the retention trust account if—
- (a) the trustee authorises any person to make the withdrawal; or
 - (b) the trustee knowingly contributes to the withdrawal being made.

- (5) This section does not apply to that part of a retention amount withheld from payment under a contract that is beyond the amount that may be lawfully withheld under the contract.

Note—

See the *Queensland Building and Construction Commission Act 1991*, part 4A for limits on retention amounts that may be withheld from payment under a contract.

36A All retention amounts withheld to be released from retention trust account

- (1) This section applies if a contracted party becomes entitled to the release of a retention amount held in a retention trust.

- (2) The trustee must not release the retention amount other than by—
 - (a) withdrawing the amount from the retention trust account; and
 - (b) depositing the amount into the contracted party's account at a financial institution.

Maximum penalty—200 penalty units or 1 year's imprisonment.

Subdivision 5 Ending retention trust

37 Ending retention trust

- (1) If a retention trust is established for a retention amount withheld from payment under a contract, the trust is dissolved if all of the amount has been released to the parties entitled to it under the contract.
- (2) On the dissolution of a retention trust, the trustee may pay itself all amounts held in the trust that are not owing to another beneficiary.

37A Unauthorised dissolution of retention trust

- (1) A trustee must not purport to dissolve the retention trust before it is dissolved under section 37(1).

Maximum penalty—500 penalty units or 1 year's imprisonment.

- (2) Without limiting subsection (1), a trustee is taken to purport to dissolve the retention trust if the trustee closes the retention trust account while the trust is still required under section 32.
- (3) Subsection (2) does not apply to a trustee transferring the retention trust account to another

financial institution under section 34C.

Division 5 Information sharing

40 Notice of retention trust before withholding retention amount

- (1) If, under section 32, a retention trust is required for a retention amount withheld from payment under a contract, the contracting party must give the contracted party a notice about the use of a retention trust (*notice of retention trust*) as required by this section.

Maximum penalty—200 penalty units or 1 year’s imprisonment.

- (2) The notice of retention trust must—
 - (a) be in writing; and
 - (b) include a statement that a retention trust will be used for withholding retention amounts under the contract; and
 - (c) include the information prescribed by regulation.
- (3) The notice of retention trust must be given to the contracted party before withholding the retention amount.
- (4) However, if the retention trust account was not opened before the retention trust is required under section 32, the notice of retention trust must be given to the contracted party within 5 business days after opening the account.

40A Beneficiary to be informed of transactions affecting retention amount

- (1) This section applies if a trustee—

- (a) deposits a retention amount into the retention trust account; or
 - (b) withdraws all or part of a retention amount held in the retention trust account.
- (2) Within 5 business days after making the deposit or withdrawal, the trustee must give to the contracted party from whom the retention amount was withheld a notice of the deposit or withdrawal that includes the information prescribed by regulation, unless the trustee has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (3) This section does not apply to the deposit of a retention amount if the trustee has informed the contracted party of the deposit under section 23A.

40B Beneficiary may request particular information

- (1) A person who is, or was, a beneficiary of a retention trust may, in writing, request the trustee give the person the following information to the extent it relates to the person—
- (a) a statement of balance for the retention trust account;
 - (b) a copy of the transactions affecting the retention trust account;
 - (c) a copy of the trust records.
- (2) The trustee must give the person the requested information within 10 business days after being given the request, unless—
- (a) the trustee has a reasonable excuse; or
 - (b) the information is already available to the person; or
 - (c) the information has not changed since it was previously given to the person.

Maximum penalty—100 penalty units.

- (3) The requested information must be given to the person in writing and any words used in the information to explain a transaction must be in the English language.
- (4) It is not a reasonable excuse for the trustee to fail to comply with the request on the grounds that complying with the request might tend to incriminate the trustee or expose the trustee to a penalty.
- (5) In this section—
trust records see section 52(1).

Division 6 Compulsory training

41 Training before withholding retention amount

- (1) This section applies if, under section 32, a retention trust is required for a retention amount withheld from payment under a contract.
- (2) If the trustee will not be responsible for administering the retention trust account, the trustee must nominate a person who is responsible for administering the retention trust account on behalf of the trustee.
- (3) The trustee may change the nomination mentioned in subsection (2) at any time and must make another nomination if the previous nominee is no longer responsible for administering the retention trust account.
- (4) The trustee must, using an approved way, inform the commissioner of each nomination made under subsection (2).
- (5) The trustee must ensure each person nominated under subsection (2) completes the training

prescribed by regulation (the *retention trust training*) within the period required by regulation.

Maximum penalty—100 penalty units.

- (6) If the trustee does not nominate a person under subsection (2), the trustee must complete retention trust training within the period required by regulation.

Maximum penalty—100 penalty units.

- (7) A regulation may provide for—
- (a) an extension of time for a trustee or nominee to complete the training; or
 - (b) an exemption of a trustee from complying with subsection (5) or (6).
- (8) Subsections (5) and (6) apply to a trustee subject to an extension or exemption under subsection (7) applying to the trustee.
- (9) The trustee is liable for all costs associated with the trustee or a nominated person completing the retention trust training.

Division 7 Other matters

43A No assignment of entitlement by contracting party

An assignment by the contracting party of an entitlement of the party to an amount held in trust for a retention trust is of no effect.

Part 4 Common provisions for project trusts and retention trusts

Division 1 Preliminary

50 Definitions for part

In this part—

account review report see section 57A(2).

registered company auditor see the Corporations Act, section 9.

trust account means a project trust account or retention trust account.

Division 2 Powers, obligations and restrictions for trustees

51 Trustee to cover shortfalls

- (1) This section applies if there is an insufficient amount available in a trust account to pay an amount due to be paid to a beneficiary of the trust.
- (2) The trustee must immediately deposit an amount equal to the shortfall in the trust account (a *shortfall deposit*).

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) In this section—

shortfall, in a trust account, means an amount equal to the difference between the amount available in the trust account for payment and the amount to be paid from the account.

51A Amounts in trust account unavailable for trustee's debts

- (1) An amount paid, or required to be paid, into a trust

account under this chapter can not be—

- (a) used to recover a debt owed to a creditor of the trustee; or
 - (b) attached or taken in execution under a court order or process for the benefit of a creditor of the trustee.
- (2) Subsection (1)—
- (a) applies in relation to the trustee, whether in the capacity of trustee or otherwise; and
 - (b) ceases to apply to an amount once lawfully withdrawn from the trust account; and
 - (c) does not apply to the extent it would interfere with the right of a beneficiary under this Act.
- (3) In this section—
- beneficiary*, of a trust account, does not include a beneficiary who is also the trustee for the account.

51B No power of trustee to invest

- (1) The trustee for a project trust or retention trust must not invest the funds held in trust in any form of investment.
- Maximum penalty—200 penalty units or 1 year’s imprisonment.
- (2) The trustee does not contravene subsection (1) only by earning interest on an amount held in a trust account that is paid by the financial institution at which the account is held.

51C Trustee not entitled to payment for administration of trust or fees

- (1) This section applies to costs incurred for—

- (a) the administration of a project trust or retention trust; or
 - (b) fees payable in relation to a project trust or retention trust.
- (2) The trustee for the project trust or retention trust is not entitled to recover the costs from a beneficiary or the funds held in trust for a beneficiary.
- (3) In this section—
beneficiary, of a project trust or retention trust, does not include a beneficiary who is also the trustee for the trust.

51D Interest earned on amounts held in trust account

- (1) The trustee for a project trust or retention trust is entitled to receive all interest earned on amounts held in the trust account.
- (2) The trustee may withdraw an amount equal to the interest earned on amounts held in the trust account once every 12 months or on the dissolution of the trust, unless the withdrawal would prevent the full payment of another amount that must be paid from the account.

51E Employment or engagement of agents

- (1) This section applies if the trustee for a project trust or retention trust employs, or otherwise engages, a person (an *agent*) to do any act relating to the trust on behalf of the trustee.
- (2) The trustee is liable for all acts and defaults of its agent as if the acts and defaults were the trustee's own acts and defaults.
- (3) The costs of employing or engaging the agent are

not recoverable from funds held in trust for the project trust or retention trust or from any beneficiary of the trust, other than the trustee.

51F Power to delegate

- (1) The trustee for a project trust or retention trust may delegate to a person resident in the State any powers of the trustee relating to the trust, other than this power to delegate.

Note—

See the *Acts Interpretation Act 1954*, section 27A about delegations of functions or powers.

- (2) Subsection (3) applies if—
 - (a) a person (the *delegate*) is delegated a power of a trustee under subsection (1); and
 - (b) the delegate purports to—
 - (i) exercise a different power of the trustee; or
 - (ii) exercise the power while the delegation is not in force; or
 - (iii) exercise the power after the delegation has been revoked by the trustee or by operation of law; and
 - (c) another person relies on the purported exercise of the power by the delegate.
- (3) Unless the other person had actual notice that the delegate was not authorised to exercise the power, the purported exercise of the power is taken to be as valid as if it were exercised under a delegation that was in force and authorised the purported exercise of the power.
- (4) The costs relating to the delegation are not recoverable from funds held in trust for a project trust or retention trust or from any beneficiary for

the trust, other than the trustee.

- (5) The trustee must keep evidence of the delegation for a period of 7 years.

51G Right of trustee to apply to Supreme Court for directions

- (1) The trustee for a project trust or retention trust may apply to the Supreme Court for directions about—
 - (a) an amount held in trust; or
 - (b) the administration of the trust; or
 - (c) the exercise of a power by the trustee.
- (2) A copy of the application must be given to all beneficiaries for the trust unless otherwise directed by the Supreme Court.

Division 3 Trust records

52 Trust records

- (1) The trustee for a project trust or retention trust must keep records for the trust (the *trust records*) as required by this section.

Maximum penalty—300 penalty units or 1 year’s imprisonment.

- (2) The trustee must keep the following records for the project trust or retention trust—
 - (a) an individual trust account ledger for the trust;
 - (b) another record prescribed by regulation.
- (3) The trust account ledger must be capable of providing separate information for each beneficiary of the project trust or retention trust.

- (4) Transactions must be recorded in Australian dollars.
- (5) Any words used to explain a transaction must be in the English language.
- (6) The trust records must—
 - (a) be kept in the way, and include the information, prescribed by regulation; and
 - (b) be accurate records of the transactions affecting the trust account; and
 - (c) enable convenient and proper audit of the transactions affecting the trust account.
- (7) All deposits to, and withdrawals from, the trust account must be recorded within 5 business days after the deposit or withdrawal is made.
- (8) Trust records must be retained for a period of not less than 7 years.
- (9) Any computer system used to store the trust records must comply with the requirements prescribed by regulation.

52A Monthly bank reconciliation

- (1) The trustee for a project trust or retention trust must complete a bank reconciliation for the trust account within 15 business days after the end of each month.

Maximum penalty—50 penalty units.

- (2) The bank reconciliation must be completed as required by regulation.

Division 4 Oversight powers

Subdivision 1 Powers exercised by the commissioner

53 Register of project trusts and retention trusts

- (1) The commissioner must maintain a register of the project trusts and retention trusts of which the commissioner has been notified.
- (2) The commissioner may publish information about the project trusts and retention trusts in the way decided by the commissioner.

53A Power to require particular information

- (1) The commissioner may, by written notice, require any of the following entities to give stated information, or copies of documents, to the commissioner within the period stated in the notice (the *compliance period*)—
 - (a) the trustee for a project trust or retention trust;
 - (b) a beneficiary for a project trust or retention trust;
 - (c) a person that was a trustee or beneficiary mentioned in paragraph (a) or (b);
 - (d) an entity that has taken control of the financial affairs of a trustee or beneficiary mentioned in paragraph (a) or (b);
 - (e) a financial institution;
 - (f) a registered company auditor;
 - (g) another person the commissioner believes has information about a project trust or retention trust.
- (2) However, the requirement may relate to only the following information or documents—

- (a) trust account records required to be kept under section 52;
 - (b) the contract to which the project trust or retention trust relates;
 - (c) information about amounts deposited into, or withdrawn from, a trust account;
 - (d) details of the financial institution at which a trust account is held;
 - (e) information that enables the commissioner to contact the beneficiaries of a project trust or retention trust;
 - (f) the details of an account at a financial institution into which a beneficiary of a project trust or retention trust is to be paid amounts from a trust account;
 - (g) other information the commissioner reasonably considers necessary to exercise the commissioner's powers under this division or to investigate an entity's compliance with this Act.
- (3) The compliance period must not be less than 5 business days after the day the notice is given to the entity.
- (4) The entity must comply with the requirement within the compliance period.
- Maximum penalty—100 penalty units.

53B Power to issue directions affecting trust accounts

- (1) This section applies if—
- (a) the contract for a project trust or retention trust (the *trust contract*) is terminated; or
 - (b) the contracted party for the trust contract becomes an insolvent under administration

- within the meaning of the Corporations Act, section 9; or
- (c) the commissioner reasonably suspects a trust account is not being used as required under this Act or is being used in a way that is inconsistent with this Act; or
 - (d) for a trustee that is a licensee under the *Queensland Building and Construction Commission Act 1991*—
 - (i) the trustee’s licence is suspended or cancelled; or
 - (ii) the trustee does not satisfy the minimum financial requirements under the *Queensland Building and Construction Commission Act 1991*.
- (2) The commissioner may, by written notice, give the trustee—
- (a) a direction that an amount not be withdrawn from a stated trust account without the commissioner’s written approval; or
 - (b) a direction that the trustee give the commissioner an account review report for 1 or more of the trust accounts for the trustee.
- (3) The direction must include the information prescribed by regulation.
- (4) If the commissioner gives a trustee a direction under subsection (2)—
- (a) the commissioner must give a copy of the direction to the relevant financial institution; and
 - (b) the commissioner may end or withdraw the direction by giving written notice of the matter to each entity given the direction or a copy of the direction.

- (5) The trustee must comply with the direction within the period stated in the notice unless the direction is withdrawn.

Maximum penalty—100 penalty units.

- (6) In this section—

trustee means—

- (a) if subsection (1)(a) or (b) applies—the trustee for the project trust or retention trust; or
- (b) if subsection (1)(c) applies—the trustee for the trust account; or
- (c) if subsection (1)(d) applies—the trustee mentioned in that subsection.

53C Right of commissioner to apply to Supreme Court for directions

- (1) The commissioner may apply to the Supreme Court for directions about an amount held in trust for a project trust or retention trust.
- (2) A copy of the application must be served on all beneficiaries for the project trust or retention trust unless otherwise directed by the Supreme Court.

Subdivision 2 Special investigators

53D Power to appoint special investigator

- (1) The commissioner may, by written instrument, appoint an appropriately qualified person as a special investigator for 1 or more trust accounts.
- (2) The function of a special investigator is to investigate a person's compliance with the requirements of this Act relating to trust accounts.

- (3) In carrying out the special investigator's functions, the investigator may do any of the following—
 - (a) inspect trust records or another record relating to a trust account;
 - (b) prepare or construct incomplete trust records for a trust account;
 - (c) perform accounting tasks to establish the state of a trust account;
 - (d) report to the commissioner about the state of a trust account or a trustee's compliance with this Act;
 - (e) require a financial institution or trustee to give copies of, or access to, documents relevant to trust accounts or money deposited into trust accounts;
 - (f) request a person to give copies of, or access to, documents relevant to any person's compliance with this chapter;
 - (g) carry out another function, or exercise another power, prescribed by regulation.
- (4) A special investigator holds office subject to any conditions stated in the investigator's instrument of appointment, including any limitations on the exercise of a power.
- (5) If a special investigator is appointed for a trust account, the commissioner must give the trustee for the account a notice stating the terms of the appointment and the investigator's functions and powers.
- (6) In exercising a power in relation to a person in the person's presence, a special investigator must produce the investigator's instrument of appointment for the person's inspection before exercising the power.

- (7) If an investigation by a special investigator establishes that a person has contravened a provision of this Act, the commissioner may recover the cost of the investigation, as a debt, from the person.
- (8) The office of a person appointed as a special investigator ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the investigator's resignation under subsection (9) takes effect.
- (9) A special investigator may resign by signed notice given to the commissioner.

53E Obstructing special investigator

- (1) A person must not obstruct a special investigator exercising a power under this Act, or someone helping a special investigator exercising a power under section 53D, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed a special investigator, or someone helping a special investigator, and the investigator decides to proceed with the exercise of the power, the investigator must warn the person that—
 - (a) it is an offence to cause an obstruction, unless the person has a reasonable excuse; and
 - (b) the investigator considers the person's conduct an obstruction.

- (3) Subsection (2) does not apply if the obstruction constitutes an assault.
- (4) In this section—
obstruct includes assault, hinder, resist and attempt or threaten to obstruct.

53F Impersonating special investigator

A person must not impersonate a special investigator.

Maximum penalty—40 penalty units.

Subdivision 3 Other matters

53G Protection from civil liability

- (1) Neither the commissioner, nor an employee or agent of the commission, incurs civil liability for performing a function or exercising a power under this division if the conduct is engaged in good faith and without negligence.
- (2) A civil liability that would, apart from subsection (1), attach to the commissioner, employee or agent attaches instead to the commission.
- (3) This section does not affect the liability of a person to disciplinary action under the conditions of the person's employment.
- (4) In this section—
agent, of the commission, includes a special investigator.

Division 5 Exclusion of auditors

54 Definitions for division

In this division—

accepted representations see section 54C(2).

show cause notice see section 54B(2).

show cause period see section 54B(2)(d).

54A Grounds for excluding persons from undertaking trust account reviews and preparing account review reports

Each of the following circumstances is grounds for excluding a person from undertaking reviews of trust accounts and preparing account review reports—

- (a) the person gave the commissioner incorrect information about the compliance of a trust account with this Act;
- (b) the person failed to comply with the requirements of this Act about providing a trust account review.

54B Show cause notice

- (1) This section applies if the commissioner believes grounds exist to exclude a person from undertaking reviews of trust accounts and preparing account review reports.
- (2) The commissioner must give the person a notice (*a show cause notice*) stating—
 - (a) the commissioner proposes to exclude the person from undertaking reviews of trust accounts and preparing account review reports; and
 - (b) the grounds for the proposed exclusion; and

- (c) an outline of the facts and circumstances forming the basis for the grounds; and
 - (d) an invitation to the person to show within a stated period (the *show cause period*) why the proposed exclusion should not be made.
- (3) The show cause period must not be less than 14 days after the show cause notice is given to the person.

54C Representations about show cause notice

- (1) A person given a show cause notice may, during the show cause period, make written representations to the commissioner as to why the exclusion proposed in the notice should not be made.
- (2) The commissioner must consider all representations made under subsection (1) (the *accepted representations*).

54D Ending show cause process without further action

- (1) This section applies if, after considering the accepted representations for a show cause notice, the commissioner no longer believes grounds exist for excluding a person from undertaking reviews of trust accounts and preparing account review reports.
- (2) The commissioner must not take any further action in relation to the show cause notice.
- (3) The commissioner must give the person written notice that no further action is to be taken in relation to the show cause notice.

54E Excluding persons from undertaking trust account reviews and preparing account review reports

- (1) If, at the end of the show cause period, the commissioner still believes grounds exist for excluding a person from undertaking trust account reviews and preparing account review reports, the commissioner may decide to exclude the person.
- (2) If the commissioner decides to exclude the person, the commissioner must give the person an information notice for the decision.

Note—

The decision is a reviewable decision under the *Queensland Building and Construction Commission Act 1991*, section 86.

- (3) The exclusion applies for 3 years and takes effect from the later of the following days—
 - (a) the day the person is given the information notice;
 - (b) the day stated in the information notice for that purpose.
- (4) In this section—

information notice, for a decision of the commissioner, means a written notice stating—

 - (a) the decision; and
 - (b) the reasons for the decision; and
 - (c) that the person to whom the notice is given may have the decision reviewed within 28 days; and
 - (d) how the person may have the decision reviewed.

54F Commissioner may publish information about exclusions

- (1) The commissioner may publish a list of persons the commissioner has decided to exclude from undertaking reviews of trust accounts and preparing account review reports.
- (2) However, the commissioner must not include a person on the list—
 - (a) until after—
 - (i) the period during which the person may apply for a review of the decision; and
 - (ii) if the person does apply for a review of the decision—a decision on the review is made; and
 - (b) if the decision to exclude the person is overturned on review or appeal.

Division 6 Financial institutions

55 Approval of financial institutions

- (1) The commissioner may approve the financial institutions at which trust accounts may be kept.
- (2) However, the commissioner may approve a financial institution under subsection (1) only if the financial institution has entered into an agreement with the commission about providing financial services for trust accounts.
- (3) The agreement may provide for the following matters—
 - (a) a requirement to inform the commissioner of amounts held in trust accounts;
 - (b) the auditing of trust accounts;

- (c) other matters prescribed by regulation.
- (4) The commissioner may, if the financial institution agrees, amend or revoke the agreement.
- (5) The commissioner must publish the names of all financial institutions approved under section (1) on the commission's website.

55A Financial institutions not subject to particular obligations and liabilities

- (1) A financial institution at which a trust account is kept—
 - (a) is not under an obligation to control or supervise transactions in relation to the account or to oversee the application of money disbursed from the account; and
 - (b) is not liable to any action for the loss or damage suffered by another person as a result of the institution complying with this Act; and
 - (c) does not have any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against money in the account for a liability of the trustee owing to the financial institution.
- (2) Subsection (1) does not relieve a financial institution, nor any officer or employee of the institution, from any liability to which the institution, officer or employee is subject apart from this section.

55B Reports, records and information

- (1) A financial institution at which a trust account is kept must, as soon as practicable after becoming aware that the account is overdrawn, report that matter to the commissioner in the way agreed

under section 55.

Maximum penalty—50 penalty units.

- (2) A financial institution at which a trust account is kept must, if asked by a special investigator who has provided the institution with evidence of the investigator's appointment in relation to the trustee—
- (a) provide, for inspection or copying by the investigator, requested records relating to the account or money deposited into the account; and
 - (b) provide the investigator with complete details of any transactions relating to the account.

Maximum penalty—50 penalty units.

- (3) A financial institution must provide the records and details under subsection (2) without charge.
- (4) Subsections (1) and (2) apply despite any duty of confidence to the contrary.
- (5) Neither the financial institution at which a trust account is kept, nor an officer or employee of the institution, is liable to any action for loss or damage suffered by a person as a result of—
 - (a) reporting a matter under subsection (1); or
 - (b) providing records or details under subsection (2).

55C Directions to financial institutions

- (1) The commissioner may, by written notice, require a financial institution to comply with a direction that an amount not be withdrawn from a stated trust account without the commissioner's written approval.
- (2) The direction must include the information

prescribed by regulation.

- (3) If the commissioner gives a financial institution a direction under subsection (1)—
 - (a) the commissioner must give a copy of the direction to the relevant trustee; and
 - (b) the commissioner may end or withdraw the direction by giving written notice of the matter to each entity given the direction or a copy of the direction.
- (4) The financial institution must comply with the direction within the period stated in the notice unless the direction is withdrawn.

Maximum penalty—50 penalty units.

- (5) Subsection (4) applies despite any duty of confidence to the contrary.
- (6) Neither the financial institution, nor an officer or employee of the institution, is liable to any action for loss or damage suffered by a person as a result of complying with the direction.

Division 7 Application of particular Acts

56 Application of Personal Property Securities Act 2009 (Cwlth)

- (1) A project trust or retention trust—
 - (a) is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwlth) applies; and
 - (b) has priority over all security interests in relation to all funds held in trust for the project trust or retention trust.
- (2) In this section—

security interest has the meaning given by the *Personal Property Securities Act 2009* (Cwlth), section 12.

56A Application of Trust Accounts Act 1973 and Trusts Act 1973

The *Trust Accounts Act 1973* and the *Trusts Act 1973* do not apply to—

- (a) a project trust or retention trust; or
- (b) a trust account; or
- (c) a trustee or beneficiary of a project trust or retention trust.

56B Equity and court's jurisdiction preserved

- (1) A principle of equity relating to trusts applies for a project trust or retention trust except to the extent the principle is inconsistent with this Act.
- (2) Nothing in this chapter affects a court's inherent jurisdiction to supervise a project trust or retention trust as a trust.

Division 8 Auditing and reporting

57 Engaging auditor for review of trust account

- (1) The trustee for a project trust or retention trust must engage an auditor to carry out a review of the trust account as required by this section.

Maximum penalty—200 penalty units or 1 year's imprisonment.

- (2) The review must be carried out at the times prescribed by regulation.
- (3) The period of the review (the *review period*) is the

period prescribed by regulation.

- (4) The review must be complete within 40 business days after starting the review.
- (5) The review must be carried out by a registered company auditor that is independent of the trustee and has not been excluded by the commissioner under section 54E.
- (6) A registered company auditor is independent of the trustee if the auditor is not any of the following—
 - (a) an employee of the trustee;
 - (b) if the trustee is a company—an executive officer, investor or shareholder for the company;
 - (c) if the trustee is a partnership—a partner in the partnership;
 - (d) a related entity for the trustee.
- (7) The trustee need not engage a registered company auditor to carry out a review of the trust account—
 - (a) if—
 - (i) a retention amount was not held in the account during the review period; and
 - (ii) within 10 business days after the end of the review period the trustee gave the commissioner a written statement, using an approved way, as to why the trustee did not engage an auditor to carry out the review; or
 - (b) in the circumstances prescribed by regulation.

57A Account review report

- (1) The auditor engaged by a trustee to carry out a

review of a trust account under section 57 must prepare, and give to the trustee, an account review report for the account as required under this section.

Maximum penalty—200 penalty units.

- (2) An **account review report** for a trust account is a report certifying that, based on a review of the administration of the account, it is the auditor's opinion that the trustee has complied with all the requirements of this Act for the account during the period to which the report relates.
- (3) The account review report must include the following information—
 - (a) the name of the auditor who carried out the review for the report;
 - (b) details of the auditor's membership of a professional association and the auditor's qualifications;
 - (c) details of the trust account reviewed, including—
 - (i) the name of the account; and
 - (ii) the identifying number of the financial institution for the account;

Note—

The identifying number is commonly referred to as the bank state branch number (BSB).

- (iii) the account number;
 - (d) a statement as to whether or not—
 - (i) the review has been completed by an auditor who is independent of the trustee; and
 - (ii) the trust records relating to the trust account have been examined; and

- (iii) the trust records relating to the trust account have been kept in compliance with this Act;
 - (iv) the trustee has complied with all requirements for the relevant trust under this Act;
 - (e) details of any irregularities identified during the review of the trust records relating to the trust account;
 - (f) if an account was closed during the review period, a statement of whether or not the account was closed in compliance with this Act;
 - (g) other information prescribed by regulation.
- (4) The account review report may include any other information the auditor considers relevant.
- (5) The auditor must give the commissioner a copy of the account review report, in the approved way, within 20 business days after completing the relevant review.
- Maximum penalty—50 penalty units.
- (6) When complying with subsection (5), the auditor must also give the trustee a copy of the account review report.
- Maximum penalty—50 penalty units.

57B Trust records to be given to auditor

- (1) This section applies if the trustee for a project trust or retention trust engages an auditor to carry out a review of the trust account.
 - (2) The trustee must provide the auditor with all trust records requested by the auditor as soon as practicable after the records are requested.
- Maximum penalty—200 penalty units.

57C Reporting serious breaches

- (1) This section applies if the trustee for a project trust or retention trust engages an auditor to carry out a review of the trust account.
- (2) If the auditor reasonably believes any of the following circumstances apply, the auditor must, using an approved way, notify the commissioner of the belief within 5 business days after forming the belief—
 - (a) the auditor can not report that a trust account has been kept in compliance with this Act;
 - (b) the auditor finds an irregularity relating to a trust account;
 - (c) the auditor suspects the trustee has not met the trustee's obligations under this Act;
 - (d) the auditor suspects a contravention of this Act, prescribed by regulation, has occurred.

Maximum penalty—200 penalty units or 1 year's imprisonment.

Division 9 Other matters

58 Commissioner may give redacted information to professional bodies

- (1) This section applies if the commissioner reasonably suspects the conduct of an auditor engaged under section 57 breaches a professional standard or condition applying to the auditor.
- (2) The commissioner may inform the relevant professional body of the conduct and give the body any information necessary to investigate the conduct.
- (3) The commissioner must redact from any

information given to the professional body all information identifying the trustee of a project trust or retention trust.

(4) In this section—

condition means a condition imposed as part of registration as an auditor or accountant.

professional standard means a standard about auditing or accounting made, or adopted, by a professional body.

professional body means—

- (a) an entity of which an auditor is a member as an auditor or accountant; or
- (b) an entity that registers or licenses a person as an auditor.

58A Liability of executive officer for offence committed by corporation against executive liability provision

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation commits an offence against an executive liability provision; and
 - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
 - (a) whether the officer knew, or ought reasonably to have known, of the

- corporation's conduct constituting the offence against the executive liability provision; and
- (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
- (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.
- (4) This section does not affect—
- (a) the liability of the corporation for the offence against the executive liability provision; or
- (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.
- (5) In this section—
- executive liability provision*** means any of the following provisions—
- section 18(1)
 - section 19(2)
 - section 20A(1)
 - section 20A(2)
 - section 20B
 - section 34(2)
 - section 36(1)

- section 36(3).

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

58B Failures and defects do not affect validity

- (1) The failure of a trustee to comply with an obligation relating to a project trust or retention trust does not affect the validity of the trust.
- (2) If a trustee's failure to comply with an obligation relating to a project trust or retention trust would prevent another person (the *affected person*) from taking action under this chapter, the trustee is taken to have complied with the obligation to the extent it enables the affected person to take the action.
- (3) A defect in a document relating to a project trust or retention trust does not affect the validity of the trust or the ability of a beneficiary to rely on the document, as it would be without the defect, for the purpose of exercising a right under this chapter.
- (4) If an amount must be deposited into a trust account under section 19 or 35, the failure of a person to deposit the amount does not release the amount from the relevant project trust or retention trust.
- (5) Nothing in this section prevents action being taken against a trustee for the trustee's failure to comply with an obligation relating to a project trust or retention trust, nor relieves the trustee of the obligation.
- (6) In this section—

obligation means an obligation under this chapter.

trustee means—

- (a) the trustee of a project trust or retention trust; or
- (b) a person who would, if not for a failure to comply with an obligation to establish a project trust or retention trust, be the trustee of that trust.

64 Amendment of s 64 (Definitions for chapter)

Section 64, definition *complex payment claim*, '(exclusive of GST)'—

omit.

65 Amendment of s 75 (Making payment claim)

(1) Section 75—

insert—

(5A) Subsection (7) applies if—

- (a) there is a subcontract under the construction contract for the progress payment; and
- (b) the construction contract is not also a subcontract for another construction contract.

(5B) The claimant must ensure the payment claim is accompanied with a supporting statement.

Maximum penalty—100 penalty units.

(5C) A failure of the claimant to comply with subsection (7) does not affect the validity of a payment claim.

(2) Section 75(6)—

insert—

supporting statement, for a payment claim, means a written document—

- (a) declaring that all subcontractors have been paid all amounts owed to them by the claimant at the date of the payment claim; or
- (b) stating—
 - (i) the following for each subcontractor who has not been paid the full amount owed to them by the claimant at the date of the payment claim—
 - (A) the subcontractor’s name;
 - (B) the amount still unpaid;
 - (C) the details of the unpaid payment claim for the subcontractor;
 - (D) the date the subcontractor carried out the construction work or supplied the related goods and services;
 - (E) the reasons the amount was not paid in full; and
 - (ii) that all other subcontractors have been paid the full amount owed to them by the claimant.

- (3) Section 75(5A) to (6)—

renumber as section 75(6) to (9).

66 Amendment of s 76 (Responding to payment claim)

Section 76—

insert—

- (3) If the respondent gives the claimant a payment schedule, the respondent must pay the claimant

the amount proposed in the payment schedule no later than the due date for the progress payment to which the payment schedule relates.

Maximum penalty—100 penalty units.

- (4) Subsection (3) does not apply to an amount to the extent the respondent is required to retain the amount under chapter 3, part 4A.

67 Amendment of s 85 (Time for deciding adjudication application)

Section 85(2)(b)—

omit, insert—

- (b) if the respondent is prevented from giving the adjudicator an adjudication response under section 82(2)—the last day on which the respondent could have given the adjudicator an adjudication response under section 83 had it not been prevented from doing so under section 82(2); or
- (c) otherwise—the last day on which the respondent could give the adjudicator an adjudication response under section 83.

68 Amendment of s 86 (Extending time for deciding adjudication application)

Section 86—

insert—

- (4) If the adjudicator has additional time to decide an adjudication application under this section, the adjudicator must notify the registrar of the additional time to decide the application within 4 business days after—

- (a) if subsection (2)(a) applies—the day the claimant and respondent agreed under subsection (1); or
- (b) if subsection (2)(b) applies—the day the adjudicator decided he or she had additional time under subsection (2)(b).

69 Amendment of s 88 (Adjudicator’s decision)

Section 88(6)—

omit, insert—

- (6) The adjudicator must give the registrar—
 - (a) a copy of the decision; and
 - (b) notice of all fees and expenses paid, and to be paid, to the adjudicator for the decision.

Maximum penalty—40 penalty units.

- (7) The adjudicator must give the registrar the information mentioned in subsection (6) at the same time the adjudicator gives a copy of the decision to the claimant and the respondent.

70 Replacement of s 90 (Respondent required to pay adjudicated amount)

Section 90—

omit, insert—

90 Respondent required to pay adjudicated amount

- (1) This section applies if an adjudicator decides that a respondent is required to pay an adjudicated amount.
- (2) The respondent must pay the amount to the claimant on or before—

- (a) the day that is 5 business days after the day on which the adjudicator gives a copy of the adjudicator's decision to the respondent; or
- (b) if the adjudicator decides a later date for payment under section 88(1)(b)—the later date.

Maximum penalty—200 penalty units.

- (3) If the respondent pays the amount to the claimant, the respondent must—
 - (a) notify the registrar, using an approved way, within 5 business days after making the payment; and
 - (b) provide the registrar with evidence the payment was made.

Maximum penalty—20 penalty units.

71 Amendment of s 95 (Adjudicator's fees)

Section 95(3)—

omit, insert—

- (3) Despite subsection (1), an adjudicator is not entitled to be paid any amount that is more than the lower of the following amounts—
 - (a) a reasonable amount having regard to the work done and expenses incurred by the adjudicator;
 - (b) the prescribed maximum.

72 Amendment of s 97 (Withdrawing from adjudication)

- (1) Section 97(2), after 'the adjudicator'—

insert—

and the respondent

(2) Section 97—

insert—

- (3) As soon as practicable after an adjudication application is withdrawn, the claimant must inform the registrar that the application has been withdrawn and whether it was withdrawn as mentioned in subsection (1)(a) or (b).

Maximum penalty—20 penalty units.

73 Insertion of new ch 3, pt 4A

After section 97—

insert—

Part 4A Requiring higher party to withhold payment

97A Definitions for part

In this part—

financier means—

- (a) a financial institution; or
- (b) a person who, in the ordinary course of the person's business, supplies finance for construction contracts.

head contractor means the contracted party for a contract that is not also a subcontract of another contract.

higher party, for an adjudicated amount, means—

- (a) if the claimant for the amount is a subcontractor—the person from whom an amount is or becomes payable to the respondent under an arrangement with the respondent for related work or services; or

- (b) if the claimant for the amount is a head contractor—the person who is the financier for the related work or services.

payment withholding request see section 97B(2).

related work or services, for an adjudicated amount, means—

- (a) the construction work to which the adjudicated amount relates; or
- (b) the supply of related goods and services to which the adjudicated amount relates.

97B Higher party may be required to retain amount owed to respondent

- (1) This section applies if—
 - (a) an adjudicator decides that a respondent is required to pay an adjudicated amount to a claimant under section 88; and
 - (b) the respondent has not paid the adjudicated amount to the claimant as required under section 90.
- (2) The claimant may, using an approved form, require a higher party for the adjudicated amount to retain a sufficient amount to cover payment of the adjudicated amount out of a related amount payable to the respondent (a ***payment withholding request***).
- (2A) However, the claimant may not give a payment withholding request to a higher party, for the adjudicated amount, that is a resident owner.
- (3) The ***related amount payable to the respondent*** is the amount that is or becomes payable by the higher party to the respondent under an arrangement for—

- (a) the construction work to which the adjudicated amount relates; or
 - (b) the supply of related goods and services to which the adjudicated amount relates.
- (4) The claimant must give a copy of the payment withholding request to the respondent at the same time it gives the request to the higher party.

Maximum penalty—50 penalty units.

- (5) A person who is given a payment withholding request must, if the person is not the higher party for the adjudicated amount, give notice to the claimant about not being a higher party within 5 business days after receiving the request.

Note—

A person may no longer be a higher party as a result of paying all amounts owed by the party to the respondent before being given the payment withholding request.

Maximum penalty—50 penalty units.

- (6) In this section—

resident owner see section 61(5).

97C Obligation of higher party to retain amount payable to respondent

- (1) This section applies if a claimant gives a payment withholding request to a higher party for an adjudicated amount.
- (2) The higher party must retain, out of the related amount payable to the respondent, either the adjudicated amount or the related amount payable to the respondent, whichever is less.

Example—

If the adjudicated amount is \$55,000 but the amount payable to the respondent is only \$40,000, the higher party's obligation is to retain \$40,000.

If the adjudicated amount is \$55,000 and the amount payable to the respondent is \$120,000, the higher party's obligation is to retain \$55,000.

Maximum penalty—50 penalty units.

- (3) The obligation under subsection (2) remains in force only until the claimant is paid the adjudicated amount.
- (4) A part payment of the adjudicated amount removes the obligation under subsection (2) to the extent of the part payment.
- (5) If the claimant is paid the adjudicated amount, the claimant must inform the higher party of the payment within 5 business days after the amount is paid.

Maximum penalty—50 penalty units.

- (6) In this section—
related amount payable to the respondent see section 97B(3).

97D Contravention of requirement by higher party

- (1) This section applies if—
 - (a) a claimant gives a payment withholding request to a higher party for an adjudicated amount; and
 - (b) the higher party fails to retain an amount as required under section 97C.
- (2) The higher party becomes jointly and severally liable with the respondent for paying the adjudicated amount to the claimant but only to the extent of the failure.

Note—

The higher party may not be required to retain the same amount as the respondent's debt, see section 97B(2).

- (3) The higher party may recover as a debt from the

respondent any amount that the claimant recovers from the higher party under a right of action conferred by subsection (2).

97E Protections for higher party

- (1) An obligation of a higher party to retain an amount in compliance with a payment withholding request operates, while the obligation continues, as a defence against recovery of the amount by the respondent from the higher party.
- (2) Any period during which the higher party retains an amount in compliance with a payment withholding request is not to be taken into account for the purposes of working out any period for which that amount has gone unpaid to the respondent.

97F Respondent to provide information about higher party

- (1) The claimant for an adjudicated amount may require the respondent to give the claimant the following information—
 - (a) the name of the higher party for the adjudicated amount;
 - (b) the address of the higher party's place of business or, if the higher party does not have a place of business, the higher party's place of residence;
 - (c) whether any amount is, or will become payable, by the higher party to the respondent under an arrangement for—
 - (i) the construction work to which the adjudicated amount relates; or

(ii) the supply of related goods and services to which the adjudicated amount relates.

- (2) The respondent must comply with the requirement within 5 business days after receiving it.

Maximum penalty—20 penalty units.

- (3) The respondent must not, in purported compliance with the requirement, give the claimant information that the respondent knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

97G Charge over amount retained

- (1) This section applies if a claimant gives a payment withholding request to a higher party.
- (2) In addition to the obligation of the higher party to retain an amount in compliance with the payment withholding request, the amount is also subject to a charge in favour of the claimant for securing payment of the amount to the claimant if the claimant becomes entitled to that amount.
- (3) The charge over the amount expires if any of the following happens—
- (a) the respondent pays the amount to the claimant;
 - (b) the adjudication decision relating to the amount is set aside and the respondent pays into court, as security, the unpaid portion of the amount pending a final decision;
 - (c) the adjudication certificate relating to the amount is filed in court as a judgment for debt, but the court dismisses the proceedings for enforcement.

- (4) The claimant may enforce the charge as if the charge had been given to it under a written agreement between it and the higher party.
- (5) An act done to defeat, or purporting to operate so as to defeat, the charge is of no effect against the claimant.
- (6) The charge is declared to be a statutory interest to which the *Personal Property Securities Act 2009* (Cwlth), section 73(2) applies.

97H Other rights of claimant not affected

This part, or any action taken by a claimant under this part, does not limit or otherwise affect the taking of any other action by the claimant to enforce an adjudication decision or recover an adjudicated amount.

74 Amendment of s 99 (Notice required before starting particular proceedings)

Section 99(3), ‘20 business days’—

omit, insert—

30 business days

75 Insertion of new ch 3, pt 6A

After section 100—

insert—

Part 6A Charge over property

100A Definitions for part

In this part—

appropriate form means the form required by the registrar of titles.

head contractor means the contracted party for a contract that is not also a subcontract of another contract.

registered owner see the *Land Title Act 1994*, schedule 2.

relevant property, for an adjudicated amount, means the lot—

- (a) on which the construction work, related to the adjudicated amount, was carried out; or
- (b) to which the related goods and services, related to the adjudicated amount, were supplied.

100B Registering charge over property for unpaid adjudicated amount

- (1) This section applies if—
 - (a) the claimant for an adjudication application is a head contractor; and
 - (b) an adjudicator decides the respondent for the adjudication application is required to pay an adjudicated amount; and
 - (c) the respondent does not pay the adjudicated amount as required under section 90; and
 - (d) the claimant files the adjudication certificate as a judgment for a debt under section 93; and
 - (e) the respondent, or a related entity for the respondent, is the registered owner of the relevant property.
- (2) The claimant may request a charge over the relevant property, by way of a security interest providing security to the claimant for payment of the adjudicated amount, be registered by lodging all of the following documents with the registrar

of titles—

- (a) a request to register the charge over the lot made in the appropriate form;
- (b) the adjudication certificate;
- (c) a statutory declaration, made by or on behalf of the claimant, stating—
 - (i) the lot on plan description of the relevant property; and
 - (ii) that the adjudicated amount has not been paid to the claimant; and
 - (iii) if the registered owner is a related entity for the respondent—that the registered owner is a related entity for the respondent.
- (3) The registrar of titles may rely on the information provided by the claimant under subsection (3) to register the charge.

- (4) In this section—

lot see the *Land Title Act 1994*, schedule 2.

100C Expiry of charge

- (1) If a charge has been registered over relevant property under section 100B, the charge expires the day that is 24 months after the day the charge is registered.
- (2) However, before the expiry of the charge under subsection (1), the claimant may apply to a court of competent jurisdiction to extend the charge for an additional period of not more than 24 months.
- (3) The court may grant the application for extension if satisfied the charge was registered under section 100B and it would be appropriate to make the order.

- (4) If the court grants the application for extension—
 - (a) the claimant must notify the registrar of titles of the extension in the appropriate form; and
 - (b) the charge expires at the end of the extension.
- (5) The charge also expires if—
 - (a) the adjudication decision for the adjudicated amount, the subject of the charge, is set aside; or
 - (b) the respondent pays into court, as security, the unpaid portion of the adjudicated amount, the subject of the charge, pending the final decision in the relevant proceedings; or
 - (c) after filing the adjudication certificate as a judgment for a debt under section 93, a court dismisses the proceedings for the enforcement of the debt.

100D Release of charge

- (1) Subsection (2) applies if a charge has been registered over relevant property under section 100B and either of the following events happen—
 - (a) the charge expires under section 100C;
 - (b) the adjudicated amount, the subject of the charge, is paid to the claimant.
- (2) As soon as practicable after the event happens, the claimant must, in the appropriate form, lodge a request to release the charge over the relevant property with the registrar of titles.
Maximum penalty—100 penalty units.
- (3) On receipt of the request, the registrar of titles must register the release of the charge over the

relevant property.

- (4) If satisfied an event mentioned in subsection (1) has happened and the claimant has failed to act under subsection (2), the registered owner of the relevant property may, in the appropriate form, lodge a request to release the charge over the property with the registrar of titles.
- (5) The request of the respondent must include a statutory declaration stating that—
 - (a) the charge has expired under section 100C; or
 - (b) the adjudicated amount, the subject of the charge, has been paid to the claimant.
- (6) Also, if the charge expired under section 100C(1), the statutory declaration must also state that a search of court records indicates that the claimant has not applied for an extension under section 100C(2).
- (7) On receipt of the request, the registrar of titles must register the release of the charge over the relevant property.

100E Application to set aside charge

- (1) If a charge has been registered over relevant property under section 100B, the registered owner of the property may apply to a court of competent jurisdiction to have the charge set aside.
- (2) However, the registered owner may make the application only if the owner has given the claimant written notice of the owner's intention to make the application.
- (3) On hearing the application, the court may order that the charge be set aside if the court is satisfied—

- (a) the adjudicated amount, the subject of the charge, has been paid; or
 - (b) the registered owner is not the respondent or a related entity for the respondent.
- (4) If the court orders that the charge be set aside, the registered owner of the relevant property may, in the appropriate form, request the registrar of titles remove the charge for the register.
- (5) The request must be accompanied by a copy of the court order.

100F Enforcing a charge

- (1) If a charge is registered over relevant property under section 100B, the claimant may apply to a court of competent jurisdiction for an order that the property be sold.
- (2) However, the claimant may make the application only if the claimant has given the registered owner of the relevant property written notice of the claimant's intention to make the application.
- (3) Any person who appears to the court to have a sufficient interest in the application is entitled—
 - (a) to be joined as a party to the proceeding; and
 - (b) to be heard on the application.

100G Orders court may make

- (1) On hearing an application made under section 100F, the court may order that the relevant property be sold if satisfied the adjudicated amount, the subject of the charge, remains unpaid and it would be appropriate to make the order.
- (2) Without limiting the orders it may make, the court may—

- (a) set aside the charge; or
- (b) appoint a person to act as the claimant's agent for the sale.

100H Effect of court order

- (1) An order for the sale of relevant property made under section 100G—
 - (a) authorises the sale of the property free of all encumbrances affecting the property, other than the encumbrances the court preserves in its order; and
 - (b) has effect despite—
 - (i) any encumbrances affecting the property; or
 - (ii) any Act, other than this Act.
- (2) A person appointed by the court as the claimant's agent has the power to convey the relevant property to a purchaser and to do all things necessary to effect the conveyance.
- (3) Subsections (4) and (5) apply if the claimant sells the relevant property under a court order made under section 100G.
- (4) On lodgement of the appropriate form under the *Land Title Act 1994*, the registrar of titles must register the transfer of the interest of the registered owner to the purchaser free of all encumbrances other than those preserved in the relevant court order.
- (5) On settlement, the claimant is to apply the sale proceeds in the following order—
 - (a) paying the sale costs and the claimant's costs in seeking the order for sale;
 - (b) paying amounts to satisfy any registered encumbrances, including the charge

registered under section 100B, in order of their priority under the *Land Title Act 1994*;

- (c) paying the balance to the registered owner of the relevant property or to someone else at the owner's direction.

(6) In this section—

encumbrance, affecting relevant property, means—

- (a) a mortgage, lien or charge over the property; or
- (b) a caveat claiming an interest over the property by way of security; or
- (c) a writ affecting the property.

76 Amendment of s 117 (No subcontractor's charge over money held in trust under a project bank account)

Section 117, 'project bank account'—

omit, insert—

project trust or retention trust

77 Amendment of s 149 (Registry)

Section 149(4)—

omit, insert—

- (4) Other than accepting adjudication applications and the associated fees, only registry staff may assist the registrar to perform his or her functions or exercise a power.

78 Insertion of new ch 5, pt 3

After section 188—

insert—

Part 3 Audits

189 Approved audit program

- (1) The commissioner may approve a program (an *approved audit program*) under which the commission may audit a person to establish whether the person has been complying with this Act.
- (2) An approved audit program must state—
 - (a) the purpose of the program; and
 - (b) when the program starts; and
 - (c) the period over which the program is to be carried out; and
 - (d) objective criteria for selecting trustees and persons who are to be the subject of audit.
- (3) If the commissioner approves an approved audit program, the commissioner must publish the program on the commission's website.
- (4) In this section—

trustee means a person who is or was the trustee of a project trust or retention trust.

189A Supply of financial records and other documents under approved audit program or for other reason

- (1) This section applies to a person if—
 - (a) the person is selected to be audited under an approved audit program; or
 - (b) the commissioner is satisfied, because of information received by the commission, there are reasonable grounds for concern that the person has not complied, or is not complying, with this Act; or

- (c) the person is a beneficiary of a project trust or retention trust and the commissioner reasonably believes the person has information that may assist the commissioner with an audit or investigation.
- (2) The commissioner may give a written notice to the person requiring the person to give the commissioner copies of, or access to, documents in the person's control that the commissioner reasonably requires to decide whether a person is, or has been, complying with this Act.
- (3) The person must comply with the requirement within the period stated in the notice, unless the person has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (4) It is not a reasonable excuse for the person to fail to comply with the requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.
- (5) In this section—
approved audit program see section 189(1).

189BEvidential immunity for individuals complying with commissioner's requirement

- (1) This section applies if an individual gives the commissioner copies of, or access to, a document as required under section 189A.
- (2) Evidence of the document, and other evidence directly or indirectly derived from the document, is not admissible against the individual in any proceeding to the extent it tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to a proceeding

about the false or misleading nature of any information in the document or in which the false or misleading nature of the information or document is relevant evidence.

79 Insertion of new s 198A

After section 198—

insert—

198A Approved ways to give particular documents to commissioner or registrar

- (1) This section applies if, under a provision of this Act—
 - (a) a person may or must give a document to the commissioner or registrar using an approved way; or
 - (b) a person may apply to the commissioner using an approved way.
- (2) The person may give the document to the commissioner or registrar, or make the application, in 1 of the ways approved by the commissioner for that purpose.
- (3) If the commissioner approves a way for giving a document or making an application under this Act, the commissioner must publish the details of the approved way on the commission's website.

80 Insertion of new ss 200C–200E

After section 200B—

insert—

200C Giving official false or misleading information

- (1) A person must not, in relation to the administration of this Act, give an official

information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) applies to information whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
 - (a) tells the official, to the best of the person's ability, how the document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.
- (4) In this section—

official means the commissioner, the registrar of titles or a special investigator.

200D False or misleading information in particular documents

- (1) This section applies to the following documents—
 - (a) a notice of a deposit or withdrawal given under section 23A or 40A;
 - (b) a supporting statement accompanying a payment claim under section 75.
- (2) A person must not give a document to another person that includes information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

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

200E Confidentiality of information

- (1) This section applies if a person obtains information, or gains access to a document, in exercising a power or performing a function under this Act.
- (2) A person must not do any of the following—
 - (a) disclose to anyone else—
 - (i) the information; or
 - (ii) information contained in the document;
 - (b) give access to the document to anyone else;
 - (c) use the information or document for any purpose.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—
 - (a) about a person, with the person's consent; or
 - (b) that is necessary for the exercise of a power or performance of a function under this Act; or
 - (c) that is made or given by the commission or a person authorised by the commission if the commission reasonably believes the disclosure, access or use—
 - (i) is necessary for administering, or monitoring or enforcing compliance with this Act or the *Queensland*

*Building and Construction
Commission Act 1991; or*

- (ii) is necessary for the administration or enforcement of another Act prescribed by regulation; or
- (iii) is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public safety; or
- (d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
- (e) to a Minister.

81 Amendment of s 201 (Regulation-making power)

Section 201(2)(a)—

omit.

82 Insertion of new ch 8A

After chapter 8—

insert—

Chapter 8A Transitional provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

211A Definitions for chapter

In this chapter—

amendment Act means the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

former, for a provision of this Act, means the provision as in force immediately before amendment by the amendment Act.

211B Continued application of former chapter 2 for particular building contracts

- (1) This section applies in relation to a building contract—
 - (a) if the contract was entered into because of a tender process—for which the tender process was started before the replacement of chapter 2 by the amendment Act; or
 - (b) otherwise—entered into before the replacement of chapter 2 by the amendment Act.
- (2) Chapter 2, as in force on the commencement, does not apply in relation to the building contract.

- (3) Former chapter 2 continues to apply in relation to the building contract despite its repeal.

Note—

While former chapter 2 continues to apply to the building contract, the requirement to establish a project bank account under former section 13 might not apply to the building contract until an amendment of the contract. See former section 15.

- (4) However, former chapter 2, part 5 applies in relation to the building contract, after the replacement of chapter 2, only if a principal was appointed as trustee for the relevant project bank account under former section 54 before the replacement of chapter 2.

211C Transitioning to new scheme

- (1) This section applies in relation to a building contract—
- (a) if the contract was entered into because of a tender process—for which the tender process was started before the replacement of chapter 2 by the amendment Act; or
 - (b) otherwise—entered into before the replacement of chapter 2 by the amendment Act.
- (2) If a project bank account is required for the building contract under former section 13 as applied under section 211B and the head contractor has not yet opened accounts at a financial institution for the project bank account, the head contractor may transition to the new scheme by opening a project trust account and, if necessary, a retention trust account for the contract as required under chapter 2.

Note—

The requirement to establish a project bank account under former section 13 might not apply to the building

contract until an amendment of the contract. See section 211B and former section 15.

- (3) If a project bank account is required for the building contract under former section 13 as applied under section 211B and the head contractor opened accounts at a financial institution for the project bank account before the commencement, the trustee for the project bank account may transition to the new scheme by complying with the following requirements within 6 months after the commencement—
- (a) for the general trust account—
 - (i) the trustee must close the general trust account and transfer all funds held in the account to a project trust account at an approved financial institution; and
 - (ii) when opening the project trust account, the trustee must comply with section 18A; and
 - (iii) the transfer of the general trust account to the project trust account must comply with section 18B and, if necessary, section 18C; and
 - (iv) the transfer of the general trust account to the project trust account must be recorded in the trust records for the project trust account; and
 - (b) for the retention trust account—
 - (i) the trustee must close the retention trust account (the *old retention trust account*) and transfer all funds held in the account to a new retention trust account at an approved financial institution; and

- (ii) when opening the new retention trust account, the trustee must comply with section 34A; and
 - (iii) the transfer of the old retention trust account to the new retention trust account must comply with section 34B and, if necessary, section 34C; and
 - (iv) the transfer of the old retention trust account to the new retention trust account must be recorded in the trust records for the project trust account; and
- (c) for the disputed funds trust account—the trustee must close the disputed funds trust account.
- (4) However, the trustee must not close the disputed funds trust account if—
 - (a) there are funds held in trust in the account; or
 - (b) there is a payment dispute relating to the building contract.

Note—

If a trustee can not close a disputed funds trust account, the trustee will not be able to transition to the new scheme.

- (5) If the trustee transitions to the new scheme, the trustee must give notice of the transition, including the information prescribed by regulation, to each beneficiary affected by the transition.

Maximum penalty—200 penalty units.

- (6) If a trustee transitions to the new scheme—
 - (a) section 211B ceases to apply in relation to the building contract from transition; and

- (b) the trustee is not liable for any failure to comply with former chapter 2 to the extent the failure relates to the trustee complying with subsection (3) or (5).
- (7) Despite former section 37(1) the trustee (as head contractor) may dissolve the project bank account to transition to the new scheme.
- (8) Nothing in this section enables a trustee to deposit an amount into a retention trust account or project trust account that may not be deposited into the account under section 19A or 35A.
- (9) In this section—
new scheme means project trusts and retention trusts under chapter 2 as replaced by the amendment Act.

211D Project trusts and contracts entered into before the commencement of new phases

- (1) This section applies in relation to a contract entered into before the commencement of a new phase.
- (2) Unless a project trust was required for the contract before the commencement of the new phase, the contract continues to not require a project trust despite the amendment of this Act for the new phase.
- (3) However, section 14A still applies for any amendment of the contract.
- (3A) If section 14A applies to an amendment of the contract, a reference in that section to section 14 is taken to be a reference to section 14 as in force when a project trust would have, apart from subsection (2), first been required for the contract.

Note—

For a contract entered into before the replacement of chapter 2 by the amendment Act, see section 211B.

(4) In this section—

new phase means an amendment of chapter 2, part 2—

- (a) made by chapter 9, part 1; and
- (b) that has the effect of expanding the requirement to establish a project trust for a contract.

211E Transitional regulation-making power

- (1) A regulation (a ***transitional regulation***) may make provision about a matter for which—
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act, as in force before its amendment by the amendment Act, to the operation of this Act, as in force after its amendment by the amendment Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day of the commencement.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) A transitional regulation expires 1 year after the day of the commencement.

83 Replacement of ch 9, pt 1, divs 2 and 3

Chapter 9, part 1, divisions 2 and 3—

omit, insert—

**Division 1 Extended application of
project trusts and
retention trusts**

**213 Amendment of s 14 (Particular contracts for
project trust work)**

(1) Section 14(1)(a)—

omit, insert—

(a) the contracting party is the State or a
hospital and health service; and

(2) Section 14(1)(c), ‘but not more than \$10
million’—

omit.

**Division 2 Extended application of
project trusts and
retention trusts to local
government and private
sector**

**214 Amendment of s 12 (When project trust
required for a contract)**

Section 12(6) and (7)—

omit.

**215 Amendment of s 14 (Particular contracts for
project trust work)**

(1) Section 14(1)—

omit, insert—

- (1) A contract is eligible for a project trust if—
- (a) the contracting party is the State, a state authority, a local government, an individual, a private entity or a hospital and health service; and
 - (b) more than 50% of the contract price is for project trust work; and
 - (c) the contract price is—
 - (i) if the contracting party is the State or a hospital and health service—\$1 million or more; or
 - (ii) otherwise—\$10 million or more.
- (2) Section 14(3)—
- insert—*
- private entity—***
- (a) means a company or other entity that is owned by any entity other than the State; but
 - (b) does not include a State authority.

**Division 3 Extended application of
project trusts and
retention trusts to
particular contracts for \$3
million or more**

**216 Amendment of s 14 (Particular contracts for
project trust work)**

Section 14(1)(c)(ii), ‘\$10 million’—

omit, insert—

\$3 million

Division 4 Extended application of project trusts and retention trusts to most contracts

217 Amendment of s 14 (Particular contracts for project trust work)

Section 14(1) to (3)—

omit, insert—

A contract is eligible for a project trust if—

- (a) more than 50% of the contract price is for project trust work; and
- (b) the contract price is \$1 million or more.

218 Amendment of s 32 (When retention trust required)

(1) Section 32(1)—

omit, insert—

(1) A retention trust is required for a retention amount withheld from payment under a contract (the ***withholding contract***) if—

- (a) the contracting party withholds the retention amount in the form of cash; and
- (b) a project trust is required for—
 - (i) if the withholding contract is a subcontract—the head contract for the subcontract; or
 - (ii) otherwise—the withholding contract.

(2) Section 32(5)—

omit, insert—

(5) In this section—

head contract means a contract that is not also a subcontract for another contract.

84 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions *administrator, appeal, building contract, building work, construction work, contracted building work, controller, disputed funds trust account, dispute resolution process, fire protection work, general trust account, head contractor, insolvency official, liquidator, maintenance work, payment dispute, principal, project bank account, provisional liquidator, related entity, retention trust account, supplier* and *trustee in bankruptcy—*

omit.

(2) Schedule 2—

insert—

account review report, for chapter 2, part 4, see section 57A(2).

approved way, for giving particular documents or making particular applications, means giving the documents, or making the applications, in a way approved by the commissioner under section 198A.

approved financial institution, for chapter 2, see section 8.

building contract, for chapter 2, part 3, see section 30.

construction work see section 65.

contract administration, for chapter 2, see section 8.

contracted party, for chapter 2, see section 8.

contracted work, for chapter 2, see section 8.

contracting party, for chapter 2, see section 8.

financial institution means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cwlth).

head contract, for chapter 2, part 2, see section 10.

head contractor—

(a) for chapter 3, part 4A, see section 97A; or

(b) for chapter 3, part 6A, see section 100A.

hospital and health service, for chapter 2, see section 8.

mechanical services work see section 8.

minimum contract price—

(a) for chapter 2, part 2, see section 10; or

(b) for chapter 2, part 3, see section 30.

payment withholding request see section 97B(2).

project trust see section 11.

project trust account see section 10.

project trust work, for chapter 2, see section 8A.

protected work, for chapter 2, see section 8B.

related entity see section 10A.

registered company auditor, for chapter 2, part 4, see section 50.

registrar of titles means the registrar of titles under the *Land Title Act 1994*.

retention trust see section 31.

retention trust account see section 30.

special investigator means a person appointed as a special investigator under section 53D.

trust account, for chapter 2, part 4, see section 50.

trust records, for chapter 2, see section 52(1).

- (3) Schedule 2, definition *contract price*, paragraph (a), ‘section 10’—

omit, insert—

section 9

- (4) Schedule 2, definition *subcontractor beneficiary*, ‘see section 8’—

omit, insert—

part 2, see section 10

- (5) Schedule 2, definition *variation*, paragraph (a), ‘building’—

omit.

Part 5 **Amendment of Professional Engineers Act 2002**

85 Act amended

This part amends the *Professional Engineers Act 2002*.

Note—

See also the amendments in schedule 1.

86 Amendment of s 11 (Fitness to practise as a registered professional engineer)

- (1) Section 11—

insert—

- (ba) if the applicant has been a member of an association of professional engineers, whether in Australia or a foreign country, and the membership was suspended or cancelled—the reason for its suspension or cancellation;

(2) Section 11(c)—

omit, insert—

- (c) an order about the applicant made under section 131 or 132 of this Act or section 60 of the repealed Act;
- (ca) a proceeding taken against the applicant for a matter mentioned in section 36 under a law applying, or that applied, in the Commonwealth, another State or a foreign country;

(3) Section 11(e)—

omit, insert—

- (e) if the applicant was required to undergo a health assessment—
 - (i) whether the applicant complied with the requirement; and
 - (ii) whether the applicant cooperated with the medical practitioner appointed to perform the assessment;
- (ea) whether a health assessment report for the applicant states that the applicant is unable to competently and safely practise as a professional engineer;
- (eb) whether the board reasonably believes a materially false or misleading representation or document is included in the application;

(4) Section 11(ba) to (f)—

renumber as section 11(c) to (j).

87 Amendment of s 27A (Imposition of certain conditions on registration)

(1) Section 27A(1)(b)—

omit, insert—

- (b) a condition the board decides to impose under section 73(2)(d).
- (2) Section 27A(2)(b), ‘for a condition mentioned in subsection (1)(a)—’—
omit.

88 Amendment of s 28 (Grounds for cancellation)

- (1) Section 28(b) and (c)—
omit, insert—
- (b) the registered professional engineer is—
 - (i) affected by bankruptcy action; or
 - (ii) an executive officer of a corporation affected by control action; or
- (2) Section 28—
insert—
- (ea) an order about the registered professional engineer is made under section 131 or 132; or
 - (eb) a proceeding is taken against the registered professional engineer for a matter mentioned in section 36 under a law applying in the Commonwealth, another State or a foreign country; or
 - (ec) the registered professional engineer is convicted of—
 - (i) an indictable offence; or
 - (ii) an offence against this Act; or
 - (iii) another offence, relating to the practice of engineering, against a law applying in the State, the Commonwealth, another State or a foreign country; or
- (3) Section 28(g)—
-

omit, insert—

- (i) the registered professional engineer is required to undergo a health assessment and—
 - (i) the engineer does not comply with the requirement; or
 - (ii) the engineer does not cooperate with the medical practitioner appointed to perform the assessment; or
 - (j) a health assessment report for the registered professional engineer states that the engineer is unable to competently and safely practise as an engineer.
- (4) Section 28(d) to (f)—
renumber as section 28(c) to (h).

89 Amendment of s 29 (Procedure for cancellation)

- (1) Section 29—

insert—

- (2A) The board may also ask for more information by giving the registered professional engineer a notice stating—
 - (a) the information sought; and
 - (b) the time, at least 21 days after the notice is given, by which the information is required.
- (2) Section 29(3), ‘period,’—

omit, insert—

period and any requested information received by the stated time,

- (3) Section 29(2A) to (5)—
renumber as section 29(3) to (6).

90 Amendment of s 29A (Immediate suspension of registration)

Section 29A(1)—

omit, insert—

- (1) This section applies if the board reasonably believes—
 - (a) a ground exists to cancel a registered professional engineer's registration under section 28; and
 - (b) it is in the public interest to immediately suspend the engineer's registration.

91 Insertion of new s 31A

After section 31—

insert—

31A Proof of giving false and misleading statements and documents

- (1) This section applies to a proceeding for an offence against section 30 or 31.
- (2) It is sufficient proof the statement was made, or the document was given, to the board to prove it was made or given to a person authorised to receive it.
- (3) It does not matter whether the authorisation was a delegation, agency or any other form of authorisation by which someone acts through another.

92 Insertion of s 32AA

After section 32—

insert—

32AA Notification of prescribed changes

- (1) A registered professional engineer must give notice to the board of a prescribed change for the engineer within 21 days after the change, unless the engineer has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) In this section—

prescribed change, for a registered professional engineer, means a change relating to a matter that the board may consider under section 11 when deciding whether a person is fit to practise as an engineer.

93 Replacement of s 32A (Notification of disciplinary action by other bodies)

Section 32A—

omit, insert—

32A Notification of disciplinary event by other bodies

- (1) A registered professional engineer must, within 21 days after a disciplinary event for the engineer, give notice to the board of the disciplinary event, unless the engineer has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) In this section—

disciplinary event, for a registered professional engineer, means a proceeding taken against the engineer in relation to—

- (a) the engineer's membership of an association of professional engineers; or
(b) the engineer's registration to practise as an professional engineer under a law applying

in the Commonwealth, another State or a foreign country.

94 Insertion of new pt 2B

After section 35I—

insert—

Part 2B Audits of registered professional engineers

35J Approved audit programs

- (1) The board may approve a program (an *approved audit program*) to audit 1 or more registered professional engineers.
- (2) The purpose of the approved audit program is to find out if a registered professional engineer to whom the program applies (an *audited engineer*) has complied with—
 - (a) a code of practice approved under section 108; or
 - (b) part 7.
- (3) The approved audit program must state all of the following—
 - (a) the purpose of the program;
 - (b) when the program starts and ends;
 - (c) the criteria used to select a registered professional engineer for the program;
 - (d) who will carry out the program;
 - (e) any other matter relevant to carrying out the program.

35K Power to require production of documents

- (1) The board may, by notice given to an audited engineer, require the audited engineer to give the board a copy of, or access to, a document about a stated matter in the audited engineer's possession or control.
- (2) The notice must require the copy of, or access to, the document to be given within a stated reasonable period and in a stated reasonable way.
- (3) The audited engineer must comply with the requirement, unless the audited engineer has a reasonable excuse.

Maximum penalty—100 penalty units.

- (4) For subsection (3), it is a reasonable excuse for the audited engineer not to comply with the requirement if complying with the requirement might tend to incriminate the audited engineer or expose the audited engineer to a penalty.

95 Amendment of s 50 (Issue of identity card)

Section 50(1), 'appointed by it'—
omit.

96 Amendment of s 51 (Production or display of identity card)

Section 51—
insert—

- (3) For subsection (1), an investigator does not exercise a power in relation to a person only because the inspector has entered a public place under section 62A(1)(b).

97 Replacement of s 55 (Power to require information or attendance)

Section 55—

omit, insert—

55 Power to require information or attendance

- (1) For an investigation, the board or an investigator may, by notice given to a person, require the person to—
 - (a) give the board or investigator information related to the investigation by a stated reasonable time; or
 - (b) attend before the board or investigator at a stated reasonable time and place to answer questions, or produce documents, related to the investigation.
- (2) For information that is an electronic document, compliance with the requirement requires the giving of a clear image or written version of the electronic document.
- (3) In this section—
information includes a document.

Example of information—

engineering plans or drawings, or a document containing engineering calculations

98 Amendment of s 56 (Offences)

- (1) Section 56, heading—

omit, insert—

56 Offence to contravene information or attendance requirement

- (2) Section 56(1), from ‘required’ to ‘section 55’—

omit, insert—

of whom a requirement is made under section
55(1)(a)

- (3) Section 56(2), from ‘given’ to ‘section 55’—

omit, insert—

of whom a requirement is made under section
55(1)(b)

- (4) Section 56(3), after ‘the person’—

insert—

or expose the person to a penalty

99 Insertion of new pt 3, divs 7A to 7C

Part 3—

insert—

Division 7A Entry of places by investigators

Subdivision 1 Power to enter

62A General power to enter places

- (1) An investigator may enter a place if—
- (a) an occupier at the place consents under subdivision 2 to the entry and section 62D has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 62I has been complied with for the occupier.
- (2) If the power to enter arose only because an occupier of the place consented to the entry, the

power is subject to any conditions of the consent and ceases if the consent is withdrawn.

- (3) If the power to enter is under a warrant, the power is subject to the terms of the warrant.

Subdivision 2 Entry by consent

62B Application of subdivision

This subdivision applies if an investigator intends to ask an occupier of a place to consent to the investigator or another investigator entering the place under section 62A(1)(a).

62C Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an investigator may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the investigator reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

62D Matters investigator must tell occupier

Before asking for the consent, the investigator must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—

- (i) the occupier is not required to consent; and
- (ii) the consent may be given subject to conditions and may be withdrawn at any time.

62E Consent acknowledgement

- (1) If the consent is given, the investigator may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and
 - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
 - (c) that the occupier has been told—
 - (i) that the occupier is not required to consent; and
 - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (d) that the occupier gives the investigator or another investigator consent to enter the place and exercise the powers; and
 - (e) the day and time the consent was given; and
 - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the investigator must immediately give a copy to the occupier.
- (4) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Subdivision 3 Entry under warrant

62F Application for warrant

- (1) An investigator may apply to a magistrate for a warrant for a place.
- (2) The investigator must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the written application to be given by statutory declaration.

62G Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place, or will be at the place within the next 7

days, a particular thing or activity that may provide evidence of an offence against this Act.

- (2) The warrant must state—
- (a) the place to which the warrant applies; and
 - (b) that a stated investigator or any investigator may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the powers of the investigator; and
 - (c) particulars of the offence that the magistrate considers appropriate; and
 - (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
 - (e) the evidence that may be seized under the warrant; and
 - (f) the hours of the day or night when the place may be entered; and
 - (g) the magistrate's name; and
 - (h) the day and time of the warrant's issue; and
 - (i) the day, within 14 days after the warrant's issue, the warrant ends.

62H Defect in relation to a warrant

A warrant is not invalidated by a defect in—

- (a) the warrant; or
- (b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

62I Entry procedure

- (1) This section applies if an investigator named in a warrant issued under this subdivision for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the investigator must do or make a reasonable attempt to do the following things—
 - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing the investigator's identity card or another document evidencing the investigator's appointment;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the investigator is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the investigator immediate entry to the place without using force.
- (3) However, the investigator need not comply with subsection (2) if the investigator believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Division 7B General powers of investigators after entering places

62J Application of division

- (1) The powers under this division may be exercised if an investigator enters a place under section 62A.
- (2) However, if the investigator enters a place to get

the occupier's consent to enter a place, this division applies to the investigator only if the consent is given or the entry is otherwise authorised.

62K General powers

- (1) The investigator may do any of the following (each a *general power*)—
 - (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) take for examination a thing, or a sample of or from a thing, at the place;
 - (d) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (e) take into or onto the place any person, equipment and materials the investigator reasonably requires for exercising a power under this division;
 - (f) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The investigator may take a necessary step to allow the exercise of a general power.
- (3) If the investigator takes a document from the place to copy it, the investigator must copy the document and return it to the place as soon as practicable.
- (4) If the investigator takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the investigator must produce the document and return the article or device to the place as soon as practicable.

(5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in an other way.

inspect, a thing, includes open the thing and examine its contents.

62L Power to require reasonable help

- (1) The investigator may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the investigator reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the investigator must give the person an offence warning for the requirement.

62M Offence to contravene help requirement

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.
Maximum penalty—50 penalty units.
- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

Division 7C Power to seize evidence

62N Seizing evidence at a public place that may be entered without consent or warrant

- (1) This section applies if an investigator enters a public place.
- (2) The investigator may seize a thing at the public place if the investigator reasonably believes the thing is evidence of an offence against this Act.

62O Seizing evidence at a place that may only be entered with consent or warrant

- (1) This section applies if—
 - (a) an investigator is authorised to enter a place under this part only with the consent of the occupier of the place or a warrant; and
 - (b) the investigator enters the place after obtaining the necessary consent or warrant.
- (2) If the investigator enters the place with the occupier's consent, the investigator may seize a thing at the place if—
 - (a) the investigator reasonably believes the thing is evidence of an offence under this Act; and
 - (b) seizure of the thing is consistent with the purpose of entry as explained to the occupier when asking for the occupier's consent.
- (3) If the investigator enters the place under a warrant, the investigator may seize the evidence for which the warrant was issued.
- (4) The investigator may also seize anything else at the place if the investigator reasonably believes—
 - (a) the thing is evidence of an offence against this Act; and

- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed.

62P Power to secure seized thing

- (1) Having seized a thing under this division, an investigator may—
 - (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (b) move the thing from the place of seizure.
- (2) For subsection (1)(a), the investigator may, for example—
 - (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or
 - (c) require a person the investigator reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an investigator could do under subsection (1)(a).

62Q Offence to contravene seizure requirement

A person must comply with a requirement made of the person under section 62P(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

62R Offence to interfere

- (1) If access to a seized thing is restricted under section 62P, a person must not tamper with the thing or with anything used to restrict access to the thing without—

- (a) an investigator's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If access to a place is restricted under section 62P, a person must not enter the place in contravention of the restriction or tamper with anything used to restrict access to the place without—

- (a) an investigator's approval; or
- (b) a reasonable excuse.

Maximum penalty—50 penalty units.

62S Receipt and information notice for seized thing

- (1) This section applies if an investigator seizes anything under this division unless—

- (a) the investigator reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
- (b) because of the condition, nature and value of the thing it would be unreasonable to require the investigator to comply with this section.

- (2) The investigator must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—

- (a) a receipt for the thing that generally describes the thing and its condition; and
- (b) an information notice about the decision to seize it.

- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the

thing is seized.

- (4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.
- (5) The investigator may delay giving the receipt and information notice if the investigator reasonably suspects giving them may frustrate or otherwise hinder an investigation by the investigator under this part.
- (6) However, the delay may be only for so long as the investigator continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

62T Access to seized thing

- (1) Until a seized thing is forfeited or returned, the investigator who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

62U Return of seized things

- (1) If a seized thing is not forfeited, the investigator must return it to its owner—
 - (a) at the end of 1 year; or

- (b) if proceedings involving the thing are started within 1 year, at the end of the proceedings and any appeal from the proceedings.
- (2) Despite subsection (1), unless a thing that has been seized as evidence is forfeited, the investigator must immediately return it to its owner if the investigator stops being satisfied its continued retention as evidence is necessary.

62V Forfeiture of seized things

- (1) The board may decide a thing that has been seized under this division is forfeited to the board if the board or an investigator—
 - (a) after making reasonable inquiries, can not find an owner; or
 - (b) after making reasonable efforts, can not return it to an owner; or
 - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, for subsection (1)(a) and (b), the board or investigator is not required to—
 - (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.

Example for paragraph (b)—

The owner of the thing has migrated to another country.
- (3) Regard must be had to the thing's condition, nature and value in deciding—
 - (a) whether it is reasonable to make inquiries or efforts; and

- (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

62W Information notice about forfeiture decision

- (1) If the board decides under section 62V(1) to forfeit a seized thing, the board must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 62V(1)(a) or (b), the information notice may be given by leaving it at the place where the seized thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if he or she applies to the tribunal for a review of the decision.
- (4) However, subsections (1) to (3) do not apply if—
 - (a) the decision was made under section 62V(1)(a) or (b); and
 - (b) the place where the seized thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by the former owner.

62X When thing becomes property of the board

A thing becomes the property of the board if the thing is forfeited to the board under section 62V.

62Y How property may be dealt with

- (1) This section applies if, under section 62X, a thing becomes the property of the board.
- (2) The board may deal with the thing as the board considers appropriate, including, for example, by destroying it or giving it away.
- (3) The board must not deal with the thing in a way that could prejudice the outcome of an appeal against the forfeiture under this part.
- (4) If the board sells the thing, the board must, after deducting the costs of the sale, make reasonable efforts to return the proceeds of the sale to the former owner of the thing.

100 Amendment of s 73 (Board's decision on investigation about registered professional engineer)

Section 73(2)(d), from 'condition,' to 'engineer,'—

omit, insert—

condition

101 Amendment of s 80 (Functions of board)

(1) Section 80(1)—

insert—

(ca) to approve a program to audit registered professional engineers under part 2B;

(2) Section 80(1)(f), '(e)(i)'—

omit, insert—

(f)(i)

(3) Section 80(1)(h), '(g)'—

omit, insert—

(h)

- (4) Section 80(1)(ca) to (h)—
renumber as section 80(1)(d) to (i).
- (5) Section 80(2), '(1)(e)(i)'—
omit, insert—
(1)(f)(i)

102 Replacement of s 90 (Report about person's criminal history)

Section 90—
omit, insert—

90 Criminal history reports

- (1) The chief executive may make inquiries about a person to help decide whether the person—
 - (a) is suitable for appointment as a member of the board under section 82(2); or
 - (b) is suitable to act in the office of a member under section 88(2); or
 - (c) has a conviction for an offence mentioned in section 86(1)(b)(v).
- (2) Without limiting subsection (1), the chief executive may ask the police commissioner for—
 - (a) a report about the person's criminal history; and
 - (b) a brief description of the nature of the offence giving rise to a conviction mentioned in the person's criminal history.
- (3) However, the chief executive may make a request under subsection (2) about a person only if the person has given the chief executive written consent for the request.
- (4) The police commissioner must comply with the request.

- (5) The duty imposed on the police commissioner applies only to information in the commissioner's possession or to which the commissioner has access.

103 Amendment of s 102 (Keeping register)

- (1) Section 102(3)(g), 'section 29(3)'—
omit, insert—
section 29(4)
- (2) Section 102(3)—
insert—
(ia) whether the person is registered as a practising professional engineer or non-practising professional engineer;
- (3) Section 102(3)(ia) and (j)—
renumber as section 102(3)(j) and (k).

104 Amendment of s 122 (Review of particular decisions)

- (1) Section 122(2)(c), '27A(1)(a)'—
omit, insert—
27A(1)
- (2) Section 122(2)(d), 'section 29(3)'—
omit, insert—
section 29(4)
- (3) Section 122(2)—
insert—
(fa) a person who has been given, or is entitled to be given, an information notice about a decision to forfeit a seized thing under section 62W;

(ga) a person whose registration is subject to a condition imposed under section 73(2)(d);

(4) Section 122(2)(fa) to (h)—

renumber as section 122(2)(g) to (j).

105 Replacement of s 139 (Summary proceedings for offences)

Section 139—

omit, insert—

139 Proceedings for offences

- (1) A proceeding for an offence against this Act is to be heard and decided summarily.
- (2) The proceeding must start—
 - (a) within 1 year after the commission of the offence; or
 - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

106 Insertion of new s 142B

After section 142A—

insert—

142B Statutory declarations to verify information required under the Act

- (1) This section applies if a person is required under this Act to give information to the board.
- (2) The board may ask the person to verify the information by statutory declaration.
- (3) If the person gives the information to the board but does not comply with a request under subsection (2), the person is taken to have not given the information to the board.

107 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *criminal history*, *health assessment report* and *investigator*—

omit.

- (2) Schedule 2—

insert—

approved audit program, for part 2B, see section 35J(1).

audited engineer, for part 2B, see section 35J(2).

criminal history, of a person, means the person's criminal history within the meaning of the *Criminal Law (Rehabilitation of Offenders Act 1986*, other than spent convictions.

electronic document means a document of a type under the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

former owner see section 62W(1).

general power see section 62K(1).

health assessment report see section 35G(1).

help requirement see section 62L(1).

identity card means an identity card issued under section 50.

investigator means—

- (a) a person appointed as an investigator under section 48(1); or
- (b) a member nominated by the board to conduct an investigation mentioned in section 80(1)(c).

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

owner, of a thing that has been seized under part 3, division 7C, includes a person who would be entitled to possession of the thing had it not been seized.

place includes the following—

- (a) premises;
- (b) vacant land;
- (c) a place in Queensland waters;
- (d) a place held under more than 1 title or by more than 1 owner;
- (e) the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

- (a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

- (b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

police commissioner means the commissioner of the police service.

vehicle—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

Part 6 Amendment of Queensland Building and Construction Commission Act 1991

Division 1 Preliminary

108 Act amended

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

Note—

See also the amendments in schedule 1.

Division 2 Miscellaneous licensing amendments

109 Insertion of new s 28C

After section 28B—

insert—

28C Notice of particular events to interstate or New Zealand licensing authorities

- (1) This section applies if—
 - (a) the commission is aware a licensee holds an interstate or New Zealand licence; and
 - (b) any of the following events happen for the licensee—
 - (i) a licence is cancelled;
 - (ii) a licence is suspended;
 - (iii) a licence is restored;
 - (iv) the suspension of a licence ends;
 - (v) a relevant event.
- (2) The commission may give written notice of the event to the interstate or New Zealand licensing authority that granted the interstate or New Zealand licence.
- (3) The commission must give a copy of the notice to the licensee.

110 Amendment of s 30 (Classes of contractors' licences)

Section 30(4)—

omit.

110A Insertion of new s 30CA

After section 30C—

insert—

30CA Meaning of *fire protection work*

- (1) Work is *fire protection work* if it is any of the following work for a building or part of a building—

- (a) the installation, restoration, repair or maintenance of fire protection equipment;
 - (b) the preparation of a certificate, statement or record relating to the installation, restoration, repair or maintenance of fire protection equipment;
 - (c) the preparation of a certificate, statement or record stating whether fire protection equipment meets a standard, requirement or specification;
 - (d) the design of fire protection equipment;
 - (e) the inspection or investigation of, and the provision of advice or a report about, compliance with the *Building Act 1975* or the Building Code of Australia relating to fire safety.
- (2) However, the following work is not ***fire protection work***—
- (a) the installation, repair or maintenance of a battery-operated smoke alarm in a building that is a class 1a or 2 building under the Building Code of Australia;
 - (b) work of a type prescribed by regulation not to be fire protection work.
- (3) A regulation under subsection (2)(b) may prescribe work that is the installation, restoration, repair or maintenance of fire protection equipment mentioned in definition *fire protection equipment*, paragraph (b), (c), (d) or (e) only if the work is any of the following—
- (a) work of a value of no more than \$1,100 performed personally by the owner of the land on which the work is performed;
 - (b) work on a class 1a building of a value of no more than \$11,000 performed personally by

- the owner of the land on which the work is performed, if the work is authorised under a fire protection occupational licence held by the owner;
- (c) certification work performed by a building certifier under the *Building Act 1975* in the certifier's professional practice;
 - (d) work performed by a registered professional engineer under the *Professional Engineers Act 2002* in performing a professional engineering service under that Act;
 - (e) electrical work under the *Electrical Safety Act 2002* relating to a fire or smoke detection system, heat or smoke alarm or another alarm system or emergency warning and communication system;
 - (f) work performed by a local government or the State.

111 Insertion of new s 30E

After section 30D—

insert—

30E Regulation may prescribe continuation and renewal of particular class of licence

A regulation may provide that a licence of a particular class may continue to be held and renewed by a person who held the licence immediately before the regulation was made or amended, even though the class of licence is no longer prescribed under this division.

112 Amendment of s 31 (Entitlement to contractor's licence)

(1) Section 31(3)—

insert—

(cb) if the person holds or has held an interstate or New Zealand licence—whether the licence has been suspended or cancelled; and

(2) Section 31(3)(ca) to (d)—

renumber as section 31(3)(d) to (f).

(3) Section 31(4), ‘subsection (3)(ca)’—

omit, insert—

subsection (3)(d)

113 Amendment of s 32 (Entitlement to a nominee supervisor’s licence)

(1) Section 32(2)—

insert—

(da) if the person holds or has held an interstate or New Zealand licence—whether the licence has been suspended or cancelled; and

(2) Section 32(2)(da) and (e)—

renumber as section 32(2)(e) and (f).

114 Amendment of s 32AA (Entitlement to a site supervisor’s licence)

Section 32AA(2)—

insert—

(c) if the person holds or has held an interstate or New Zealand licence—whether the licence has been suspended or cancelled.

115 Omission of s 32A (Exception for s 30(4) licences)

Section 32A—

omit.

115A Amendment of s 35 (Imposition of conditions etc. on grant of licence)

(1) Section 35(2) and (3)—

renumber as section 35(4) and (5)

(2) Section 35—

insert—

(2) However, the commission may grant a licence subject to a condition that restricts the scope of work for the licence (a ***restrictive condition***) only if—

(a) the licence is a new class of licence under section 42A(1)(a); and

(b) the commission is satisfied the applicant for the licence does not have adequate experience in all of the scope of work for the licence.

(3) The restrictive condition must not restrict the scope of work for the licence to the extent the applicant for the licence has demonstrated experience in the scope of work to the satisfaction of the commission.

115B Amendment of s 36 (Subsequent imposition of conditions etc.)

(1) Section 36(4)—

omit.

(2) Section 36(5), ‘or varying’—

omit.

(3) Section 36(5), ‘or vary’—

omit.

115C Insertion of new s 36A

After section 36—

insert—

36A Vary or revoke conditions

- (1) The commission may, by notice given to a licensee, vary or revoke a condition imposed on the licensee's licence under section 35(1) or 36.
- (2) A notice varying a condition of a licence must inform the licensee of the licensee's right to apply for a review of the commission's decision to vary the condition.

115D Amendment of s 42A (Exemption from s 42 for up to 6 months)

- (1) Section 42A, heading—

omit, insert—

42A Temporary exemption from s 42 for up to 12 months for new classes of licence

- (2) Section 42A(2)—

omit, insert—

- (2) Section 42 does not apply to the relevant person for carrying out, or undertaking to carry out, relevant work for the first 6 months after the new class of licence is established.
- (3) Also, if the relevant person applies for the new class of licence within the 6-month period mentioned in subsection (2), section 42 does not apply in relation to the person for carrying out, or undertaking to carry out, relevant work until the application is decided or withdrawn.
- (4) To remove any doubt, it is declared that while section 42 does not apply to the relevant person under subsection (2) or (3)—

- (a) the person is not prohibited from carrying out, or undertaking to carry out, relevant work under section 42(1); and
 - (b) the person is not stopped from being entitled to monetary or other consideration for carrying out relevant work under section 42(3).
- (5) If the application mentioned in subsection (3) is not decided or withdrawn within 12 months after the new class of licence is established, the application is taken to be refused at the end of the 12 months.

115E Amendment of s 42C (Unlawful carrying out of fire protection work)

Section 42C—

insert—

- (3A) Further, subsection (1) does not apply to a person who, immediately before the establishment of a new class of licence, registration or authorisation mentioned in subsection (1), was carrying out work within the scope of work for the new class of licence, registration or authorisation in a circumstance prescribed by regulation.

115F Amendment of s 42CA (Unlawful carrying out of mechanical services work)

Section 42CA—

insert—

- (3A) Further, subsection (1) does not apply to a person who, immediately before the establishment of a new class of licence, registration or authorisation mentioned in subsection (1), was carrying out work within the scope of work for the new class of licence, registration or authorisation in a

circumstance prescribed by regulation.

116 Amendment of s 48 (Cancellation or suspension of licence)

(1) Section 48—

insert—

(1A) Also, the commission may suspend or cancel a licence if the licensee holds or has held an interstate or New Zealand licence and the commission is satisfied the interstate or New Zealand licence has been suspended or cancelled.

(2) Section 48(1A) and (2)—

renumber as section 48(2) and (3).

117 Insertion of new pt 3, div 9B

Part 3—

insert—

Division 9B Qualified accountants

50CA Who is a *qualified accountant*

(1) A person is a *qualified accountant* in relation to another person if—

(a) the person is an accountant who is independent of the other person; and

(b) an exclusion notice is not in effect in relation to the person.

(2) Without limiting subsection (1)(a), an accountant is not independent of the other person if the accountant is any of the following in relation to the other person, or a related entity of the other person—

- (a) an employee;
 - (b) if the other person is a corporation—an executive officer of, or investor or shareholder in, the corporation;
 - (c) if the other person carries on business in partnership—a partner in the partnership.
- (3) In this section—
related entity see the *Building Industry Fairness (Security of Payment) Act 2017*, section 19.

50CB Commission may give exclusion notice

- (1) The commission may give a person who is an accountant an *exclusion notice*.
- (2) The exclusion notice—
 - (a) must state the grounds for giving the notice; and
 - (b) may state requirements, aimed at providing the person with the skills and knowledge necessary to comply with the minimum financial requirements, that, if not met, may be grounds for giving the person another exclusion notice.
- (3) The exclusion notice has effect for a period of 3 years starting on the day the notice is given to the person or a later day stated in the notice.

50CC Grounds for giving exclusion notice

Each of the following is a ground for the giving of an exclusion notice to a person—

- (a) the person has, within 3 years before the exclusion notice is given to the person, given information that the person knew to be false or misleading to a licensed contractor,

- or to the commission, in relation to a licensed contractor's satisfaction of the minimum financial requirements;
- (b) the person has, within 3 years before the exclusion notice is given to the person, failed to comply with the minimum financial requirements in relation to information required to be given to the commission under those requirements;
 - (c) if the person has previously been given an exclusion notice—the person has not complied with a requirement stated in the notice under section 50CB(2)(b).

50CD Steps before giving exclusion notice

- (1) Before giving a person an exclusion notice, the commission must give the person a written notice (a *show cause notice*) stating—
 - (a) that the commission proposes to give the person an exclusion notice; and
 - (b) the grounds for giving the exclusion notice; and
 - (c) an outline of the facts and circumstances forming the basis for the grounds; and
 - (d) that the person may, within a stated reasonable period of at least 14 days after the show cause notice is given, make written representations about why the exclusion notice should not be given.
- (2) The commission must consider all written representations made by the person within the period stated in the show cause notice under subsection (1)(d).
- (3) If, after considering any written representations, the commission no longer believes the grounds

for giving an exclusion notice exist, the commission—

- (a) must not take further action about the show cause notice; and
 - (b) must, as soon as practicable, give written notice to the person that no further action is to be taken in relation to the show cause notice.
- (4) If, after considering any written representations, the commission believes a ground exists for giving the exclusion notice, the commission may give the notice under section 50CB.

50CE Commission may give particular information to professional bodies

- (1) This section applies if the commission reasonably suspects conduct forming a ground on which an exclusion notice is given to a person is a breach of a professional standard or condition applying to the person.
- (2) The commission may inform a professional body for accountants of the conduct, and give the body any documents necessary to investigate the conduct.

50CF Publication of relevant details

- (1) The commission may publish on the commission's website the following details for an individual to whom an exclusion notice has been given—
 - (a) the individual's full name and business address;
 - (b) if the individual is or has been known by another name—all other names the individual is or has been known by;

- (c) that an exclusion notice has been given to the person;
 - (d) the period the exclusion notice has effect.
- (2) However—
- (a) if the individual's business address is the same as the individual's residential address, the business address must not be published; and
 - (b) the commission must remove the individual's details from the website as soon as practicable after the exclusion notice stops having effect.

118 Amendment of s 53A (Satisfying minimum financial requirements at renewal)

- (1) Section 53A(1), from 'information,' to 'regulation,'—

omit, insert—

the information required under the minimum financial requirements, within the time allowed under those requirements,

- (2) Section 53A(2) to (5)—

omit.

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

Section 56AG(2)(d), 'subsections (3), (4) and (5)'—

omit, insert—

subsection (3)

120A Amendment of s 67AB (Meaning of tier 1 defective work and carry out tier 1 defective work)

Section 67AB(1)(b), examples for paragraph (b)(ii), from ‘a fire protection’ to ‘the system’—

omit, insert—

fire protection equipment that does not meet the requirements of the Building Code of Australia for the equipment

121 Amendment and renumbering of s 72AA (Delaying or obstructing compliance with direction to rectify or remedy)

(1) Section 72AA(1)—

insert—

Maximum penalty—250 penalty units.

(2) Section 72AA(2), before the note—

insert—

Maximum penalty—250 penalty units.

(3) Section 72AA—

renumber as section 72C.

122 Amendment of s 86 (Reviewable decisions)

Section 86(1)—

insert—

(ja) a decision under section 50CB to give a person an exclusion notice;

123 Insertion of new s 109B

After section 109A—

insert—

109B Licensees must give commission notice of particular matters about interstate or New Zealand licences

A licensee must, unless the licensee has a reasonable excuse, give the commission notice in the approved form of the following events within 14 days after the day the event happens—

- (a) the licensee is given an interstate or New Zealand licence;
- (b) the licensee's interstate or New Zealand licence is suspended or cancelled.

Maximum penalty—20 penalty units.

123A Insertion of new s 115D

After section 115C—

insert—

115D Review of role of developers

- (1) The Minister must ensure a review is conducted of the role of developers in the building and construction industry.
- (2) The Minister must appoint a panel of not more than 4 appropriately qualified persons to conduct the review.
- (3) The Minister must give the panel directions or a terms of reference to guide the review.
- (4) The Minister must table in the Legislative Assembly a report on the outcome of the review as soon as practicable after the review is completed.

124 Amendment of s 116 (Regulations)

Section 116(2)(ab), after 'Act'—

insert—

, including requirements about information that must be prepared or signed by a qualified accountant;

125 Amendment of sch 1 (Transitional and validating provisions)

Schedule 1—

insert—

Part 17 Transitional and validation provisions for Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020

79 Validation of relevant landscaping work

- (1) This section applies in relation to relevant landscaping work carried out before the commencement of the *Queensland Building and Construction Commission (Structural Landscaping Licences) Amendment Regulation 2019* by the holder of a licence of either of the following classes—
 - (a) a builder restricted to structural landscaping licence;
 - (b) a structural landscaping (trade) licence.
- (2) The holder is taken to have held a licence of the appropriate class for carrying out the relevant landscaping work.
- (3) In this section—

relevant landscaping work means work

mentioned in the following provisions of the *Queensland Building and Construction Commission Regulation 2018*—

- (a) schedule 2, part 10, section 2(7);
- (b) schedule 2, part 54, section 2(5).

79A Validation of work—installation of fire collars

- (1) This section applies in relation to work that is the installation of a fire collar—
 - (a) that was carried out by the holder of a relevant licence before the relevant commencement; and
 - (b) to the extent the work would, if it were carried out by the holder on the relevant commencement, have been authorised for the holder's licence under an amended provision.
- (2) The holder is taken to have held a licence of the appropriate class for carrying out the work.
- (3) In this section—

amended provisions means the following provisions of the *Queensland Building and Construction Commission Regulation 2018*, schedule 2, as in force on the relevant commencement—

- (a) part 18, section 2(2);
- (b) part 25, section 2(3)(b);
- (c) part 26, section 2(7);
- (d) part 30, section 2(2)(b);
- (e) part 36, section 2(2);
- (f) part 47, section 2(2);
- (g) part 48, section 2(2).

relevant commencement means the commencement of the *Queensland Building and Construction Commission and Other Legislation Amendment Regulation 2019*, section 12.

Note—

The date of the relevant commencement is 13 December 2019.

relevant licence means a licence of any of the following classes—

- (a) plumbing and drainage;
- (b) the licence class of install and maintain for a special hazard suppression systems licence;
- (c) the following licence classes for a sprinkler and suppression systems (reticulated water-based) licence—
 - (i) install and maintain;
 - (ii) install and maintain—restricted to commercial or industrial type;
 - (iii) install and maintain—restricted to domestic or residential type;
- (d) the licence class of install and maintain—extra low voltage for a fire detection, alarm and warning systems licence;
- (e) gasfitting;
- (f) refrigeration, air conditioning and mechanical services including unlimited design;
- (g) refrigeration, air conditioning and mechanical services including limited design.

80 Matters relating to interstate or New Zealand licences

- (1) For deciding whether a person is a fit and proper person or whether to suspend or cancel a licence, sections 31, 32, 32AA(2) and 48(2) apply in relation to the suspension or cancellation of an interstate or New Zealand licence only if the suspension or cancellation happens after the commencement.
- (2) The commission may give a notice under section 28C for an event mentioned in section 28C(1) only if the event happens after the commencement.

81 Accountants excluded under minimum financial requirements before commencement

- (1) This section applies if, before the commencement, the commission decided not to approve a person as a qualified accountant for the *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018*, section 11D.
- (2) As soon as practicable after the commencement, the commission must give the person an exclusion notice for the decision.
- (3) The exclusion notice is taken to have been given to the person on the day the person was given notice of the decision mentioned in subsection (1) that the person was not approved as a qualified accountant.

82 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—

- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as in force immediately before the commencement to the operation of the amended Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day of commencement.
 - (3) A transitional regulation must declare it is a transitional regulation.
 - (4) This section and any transitional regulation expire 2 years after the day of commencement.
 - (5) In this section—
amended Act means this Act as amended by the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*.

125A Amendment of sch 1A (Exemptions from requirement to hold contractor’s licence)

Schedule 1A, section 8—

omit.

126 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *fire protection system*, *fire protection work* and *occupational licence*—

omit.

- (2) Schedule 2—

insert—

exclusion notice see section 50CB(1).

fire protection equipment, for a building, means equipment for protecting all or part of the building from fire that consists of, or is a system comprised of, 1 or more of the following—

- (a) a portable firefighting appliance, including, for example, a wheeled fire-extinguisher, fire hose or portable fire-extinguisher;
- (b) a fire hydrant system, with or without a pump;
- (c) a fire hose reel system, with or without a pump;
- (d) a fire or smoke detection system, heat or smoke alarm or another alarm system or emergency warning and communication system;
- (e) a fire suppression system or fire sprinkler system, whether solid-based, liquid-based or gas-based;
- (f) a fire door, fire shutter or fire damper assembly;
- (g) a fire or smoke wall;
- (h) a fire collar;
- (i) a fire penetration joint or seal;
- (j) emergency lighting.

fire protection work see section 30CA.

interstate or New Zealand licence means a licence granted by an interstate or New Zealand licensing authority that authorises the carrying out of building work that is equivalent, or substantially equivalent, to building work authorised under a licence under this Act.

interstate or New Zealand licensing authority means an entity established under a law of another State or New Zealand having functions similar to

the commission's functions for granting licences under this Act.

occupational licence means a licence or registration for an occupation relating to building work that is—

- (a) given to a person under an Act prescribed by regulation; and
- (b) required by the person to carry out the occupation.

qualified accountant see section 50CA(1).

Division 3 Auditing amendments

127 Amendment of s 50A (Approved audit program)

Section 50A(1)(d)—

omit.

128 Amendment of s 50CA (Who is a *qualified accountant*)

Section 50CA(3), definition *related entity*, 'section 19'—

omit, insert—

section 10A

129 Amendment of s 67AZB (Limit on demerit points from single audit)

Section 67AZB—

insert—

- (5) In this section—

approved audit program includes an approved audit program under the *Building Industry Fairness (Security of Payment) Act 2017*.

130 Amendment of s 67NB (Failure to pay retention amount)

Section 67NB, after ‘retention amount’—

insert—

or other security

131 Amendment of s 67U (Void payment provision in construction management trade contract or subcontract)

Section 67U—

insert—

(2) In this section—

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
- (c) a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive.

132 Amendment of s 67W (Void payment provision in commercial building contract)

Section 67W—

insert—

(2) In this section—

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or

- (c) a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive.

133 Amendment of s 86 (Reviewable decisions)

Section 86(2)—

insert—

- (aa) the *Building Industry Fairness (Security of Payment) Act 2017*, section 54E;

Division 4 Amendments about excluded individuals

134 Amendment of s 32AA (Entitlement to a site supervisor's licence)

Section 32AA(1)(d)—

omit, insert—

- (d) the applicant is not an excluded individual or permanently excluded individual; and
- (e) the applicant is a fit and proper person to hold the licence.

135 Amendment of s 42E (Avoidance of contractual obligations causing significant financial loss)

- (1) Section 42E(2), from 'the person deliberately' to 'comply with,'—

omit, insert—

of the person's deliberate non-compliance with

- (2) Section 42E(2)—

insert—

Note—

See also the *Justices Act 1886*, section 76.

136 Amendment of s 48 (Cancellation or suspension of licence)

(1) Section 48(1)(j), ‘32AA(1)(d)’—

omit, insert—

32AA(1)(e)

(2) Section 48(1)(e) to (ia)—

renumber as section 48(1)(d) to (i).

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

Section 50C(5), ‘section 48(1)(h)’—

omit, insert—

section 48(1)(f)

138 Amendment of s 53B (False or misleading documents about minimum financial requirements)

(1) Section 53B, heading, ‘documents’—

omit, insert—

information

(2) Section 53B(1), ‘a document or’—

omit.

(3) Section 53B(1)(a)—

omit, insert—

(a) the person knows the information is false or misleading; or

- (4) Section 53B(1)(b), ‘the document contains information that is false or misleading or’—

omit.

- (5) Section 53B(2) and (3)—

omit, insert—

- (2) A licensee commits an offence if—

- (a) the licensee gives another person, other than the commission, MFR information in relation to the licensee for the purpose of the other person giving information to the commission; and
- (b) when the MFR information is given, the licensee knows the information is false or misleading; and
- (c) the MFR information is given to the commission by the other person in compliance or purported compliance with a requirement under this Act.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (3) Subsections (1)(a) and (2) do not apply to a person if, when giving the information to the commission or other person (each a **recipient**), the person—

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

- (4) In this section—

MFR information, in relation to a licensee, means information relating to the licensee’s satisfaction of minimum financial requirements.

139 Amendment of s 56AB (Operation of pt 3A)

(1) Section 56AB(a)—

omit.

(2) Section 56AB(b) and (c)—

renumber as section 56AB(a) and (b).

140 Insertion of new pt 3A, div 4

Part 3A—

insert—

**Division 4 Publication of details of
particular excluded
individuals**

**56AI Publication of relevant details about excluded
individuals who are not licensees**

(1) The commission may publish the relevant details for an individual if—

- (a) the individual is not a licensee; and
- (b) the commission has decided under section 56AK to publish the details; and
- (c) all periods for applying for a review of the decision, or appealing against a decision made on review, have ended; and
- (d) any review or appeal mentioned in paragraph (c) is finally decided or is not proceeded with.

(2) The *relevant details* for the individual are—

- (a) the individual's full name and business address; and

- (b) if the individual is or has been known by another name—all other names the individual is or has been known by; and
 - (c) that the individual is an excluded individual for a stated relevant event; and
 - (d) the date the 3-year period mentioned in section 56AC(1)(b) or (2)(b) ends; and
 - (e) any other particulars prescribed by regulation.
- (3) The individual's relevant details may be published under subsection (1) on the commission's website.
- (4) Despite subsection (1)—
- (a) if the individual's business address is the same as the individual's residential address, the only part of the address that may be published is the suburb or locality in which the individual's business is located; and
 - (b) no details may be published about the individual after the day that is 10 years from the day the details were first published under this section.

56AJ Show cause notice

- (1) This section applies if the commission considers an individual who is not a licensee is an excluded individual for a relevant event.
- (2) The commission may give the individual a written notice (a *show cause notice*) identifying the relevant event and stating the following—
 - (a) why the commission considers the individual is an excluded individual for the relevant event;

- (b) that, within 28 days after the commission gives the show cause notice, the individual may give the commission a written submission to show why the individual is not an excluded individual for the relevant event;
 - (c) that the commission may publish the individual's relevant details if—
 - (i) the individual does not make a written submission mentioned in paragraph (b); or
 - (ii) after considering a written submission made by the individual, the commission is satisfied the individual is an excluded individual for the relevant event.
- (3) The individual may, within 28 days after the show cause notice is given to the individual, give the commission a written submission to show why the individual is not an excluded individual for the relevant event.

56AK Decision by commission about whether to publish the individual's relevant details

- (1) This section applies if—
 - (a) after considering a written submission made by an individual under section 56AJ(3), the commission is satisfied the individual is an excluded individual for the relevant event; or
 - (b) the individual does not make a written submission under section 56AJ(3).
- (2) The commission may decide to publish the individual's relevant details.
- (3) The commission must give the individual written

notice of its decision.

- (4) If the decision is to publish the individual's relevant details, the notice must inform the individual of the individual's right to apply to the tribunal for a review of the decision.

141 Amendment of s 57 (Operation of pt 3B)

- (1) Section 57(a)—

omit.

- (2) Section 57(b) and (c)—

renumber as section 57(a) and (b).

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

- (1) Section 58(2)(b)(i), after 'excluded individual'—

insert—

including, if the individual is not a licensee, the effect of section 61A

- (2) Section 58(2)—

insert—

- (c) if the individual is not a licensee—must be a show cause notice under section 56AJ.

143 Insertion of new pt 3B, div 3

Part 3B—

insert—

Division 3

Publication of details of particular permanently excluded individuals

61A Publication of relevant details of permanently excluded individuals who are not licensees

- (1) The commission may publish the relevant details for an individual if the individual—
 - (a) is not a licensee; and
 - (b) is a permanently excluded individual; and
 - (c) all periods for applying for a review of a decision about a relevant event related to the exclusion, or making an appeal against a decision made on the review, have ended; and
 - (d) any review or appeal mentioned in paragraph (c) is finally decided or is not proceeded with.
- (2) The *relevant details* for the individual are—
 - (a) the individual's full name and business address; and
 - (b) if the individual is or has been known by another name—all other names the individual is or has been known by; and
 - (c) that the individual is a permanently excluded individual for a stated relevant event; and
 - (d) the day on which the individual became a permanently excluded individual; and
 - (e) any other particulars prescribed by regulation.
- (3) The individual's relevant details may be published under subsection (1) on the commission's website.
- (4) Despite subsection (1)—
 - (a) if the individual's business address is the same as the individual's residential address,

the only part of the address that may be published is the suburb or locality in which the individual's business is located; and

- (b) no details may be published about the individual after the day that is 10 years from the day the details were first published under this section.

144 Amendment of s 62 (Operation of pt 3C)

- (1) Section 62(a)—

omit.

- (2) Section 62(b) and (c)—

renumber as section 62(a) and (b).

145 Amendment of s 67AV (Operation of pt 3E)

- (1) Section 67AV(a)—

omit.

- (2) Section 67AV(b) and (c)—

renumber as section 67AV(a) and (b).

146 Amendment of s 86 (Reviewable decisions)

- (1) Section 86(1)—

insert—

- (ka) if the commission gives an individual a notice under section 56AK(3)—

(i) the commission's decision that the individual is an excluded individual for a relevant event; or

(ii) the commission's decision under section 56AK(2) to publish the individual's relevant details;

- (2) Section 86(2), after ‘decision of the’—

insert—

commission or

- (3) Section 86(2)(a), after ‘204,’—

insert—

214K,

147 Amendment of s 111 (Prosecutions for offences)

- (1) Section 111(1), ‘2 years’—

omit, insert—

3 years

- (2) Section 111(1), ‘1 year’—

omit, insert—

2 years

148 Insertion of new sch 1, pt 17, ss 83 and 84

After schedule 1, part 17, section 82, as inserted by this Act—

insert—

83 Application of pts 3A, 3B, 3C and 3E

- (1) Parts 3A, 3B, 3C and 3E apply to a site supervisor only in relation to a relevant event that happens after the commencement.
- (2) Part 3A, division 4 applies in relation to an individual, other than a site supervisor, who is an excluded individual for a relevant event, whether the event happened before or after the commencement.
- (3) Part 3B, division 3 applies in relation to an individual, other than a site supervisor, who is a permanently excluded individual, even if the

individual became a permanently excluded individual before the commencement.

84 Continued application of pre-amended limitation period

Section 111, as in force from time to time before the commencement, continues to apply in relation to an offence committed before the commencement.

149 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

relevant details, for part 3A, division 4, see section 56AI(2).

Part 7 Amendment of Retirement Villages Act 1999

150 Act amended

This part amends the *Retirement Villages Act 1999*.

151 Insertion of new s 41K

After section 41J—

insert—

41K Application to tribunal for review

A person who has been given a QCAT information notice under this division may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.

Part 8 Repeal

152 Repeal

The Retirement Villages (Transitional) Regulation 2019, SL No. 256 is repealed.

Part 9 Minor and consequential amendments

153 Acts amended

Schedule 1 amends the Acts mentioned in it.

Schedule 1 Acts amended

section 153

Part 1 Miscellaneous amendments

Architects Act 2002

1 Section 8(4), note, '(Lapsing of application)'—
omit.

2 Section 10(a)(iii), editor's note—
omit.

3 Section 10(b)(ii), editor's note—
omit.

4 Section 16(4)(a), 'on the internet'—
omit.

5 Section 16(4), editor's note—
omit.

6 Section 27(3), 'reasonable and, in any case,'—
omit.

7 Section 35B, ‘commissioner of the police service’—

omit, insert—

police commissioner

8 Section 35D(2), ‘doctor’—

omit, insert—

medical practitioner

9 Section 35E, ‘doctor’—

omit, insert—

medical practitioner

10 Section 48(3), from ‘has the’—

omit, insert—

is appropriately qualified.

11 Section 74A(2), ‘on the internet’—

omit.

Professional Engineers Act 2002

1 Section 7A(2) and editor’s note—

omit, insert—

(2) The board must publish the areas of engineering on its website.

2 Section 16(4)(a) and (5)(a), ‘on the internet’—

omit.

3 Section 16(5), editor's note—

omit.

4 Section 27(3), 'reasonable and, in any case,'—

omit.

5 Section 35B, 'commissioner of the police service'—

omit, insert—

police commissioner

6 Section 35E(2), 'doctor'—

omit, insert—

medical practitioner

7 Section 35F, 'doctor'—

omit, insert—

medical practitioner

7A Section 35H, heading, 'heath'—

omit, insert—

health

8 Section 48(3), from 'has the'—

omit, insert—

is appropriately qualified.

9 Section 74A(2), 'on the internet'—

omit.

10 Section 75B(2), ‘on the internet’—

omit.

11 Section 112V(2)(a), ‘on the internet’—

omit.

12 Section 112V(2), editor’s note—

omit.

**Part 2 Amendments about certificates
of classification and alternative
solutions**

Building Act 1975

1 References to certificate of classification—

Each of the following provisions is amended by omitting ‘of classification’ and inserting ‘of occupancy’—

- section 3
- section 10
- section 48
- section 50
- section 61
- section 71
- chapter 5, part 2, heading
- section 102
- section 103

- section 104
- section 105
- chapter 5, part 2, division 3, heading
- section 106
- section 107
- section 108
- section 108A
- section 109
- section 113
- section 114
- section 114A
- section 117
- section 118
- section 123
- section 124
- section 146
- section 147
- section 148
- section 149
- section 231AJ
- section 231AK
- section 231AL
- section 231AM
- section 231AP
- section 231AQ
- section 246AN
- section 246AP

- schedule 2, definition *inspection documentation*, paragraph (e)

2 Section 14(4)(b), ‘an alternative’—

omit, insert—

a performance

3 Section 26, heading, ‘alternative’—

omit, insert—

performance

4 Section 26, ‘an alternative’—

omit, insert—

a performance

5 Section 26(b)(i), ‘alternative’—

omit, insert—

performance

6 Section 63(b), ‘an alternative’—

omit, insert—

a performance

7 Section 68A, heading, ‘alternative’—

omit, insert—

performance

8 Section 68A(1)(a), ‘an alternative’—

omit, insert—

a performance

9 Section 68A(1)(b) and (3)(a), ‘alternative’—

omit, insert—

performance

10 Section 103(f) including examples, ‘alternative’—

omit, insert—

performance

11 Section 103(f), examples, last dot point ‘note 3’—

omit, insert—

note 4

12 Section 120, ‘part A3,’—

omit.

13 Section 121(2)(a), ‘, part A3’—

omit.

14 Section 185(3), definition *national accreditation framework*, ‘body’—

omit, insert—

entity

15 Section 216(5), definition *class 1a building*, ‘part A3.2,’—

omit.

- 16 Section 216(5), definition *class 1a building*, editor’s note—**
omit.
- 17 Section 216(5), definition *class 2 building*, ‘part A3.2,’—**
omit.
- 18 Section 216(5), definition *class 2 building*, editor’s note—**
omit.
- 19 Section 216(5), definition *class 9a building*, ‘part A3.2,’—**
omit.
- 20 Section 216(5), definition *class 9a building*, editor’s note—**
omit.
- 21 Section 228(1)(b), ‘an alternative’—**
omit, insert—
a performance
- 22 Section 231(2)(a), from ‘an alternative’ to ‘the alternative’—**
omit, insert—
a performance solution for performance requirements under the BCA—the records required under the performance
- 23 Section 231(2)(a), editor’s note—**
omit.

24 Section 231AB, definition *type A construction*, ‘, part C1’—

omit.

25 Section 231AB, definition *type B construction*, ‘, part C1’—

omit.

26 Schedule 2, definition *approval documents*, paragraph (f), from ‘an alternative’ to ‘the alternative’—

omit, insert—

a performance solution and the assessment manager approved the application on the basis of the performance

27 Schedule 2, definition *BCA classification*, note—

omit.

28 Schedule 2, definition *fire safety installation*, item 3—

omit, insert—

- 3 Also, if a performance solution to a performance requirement under the BCA relating to the fire safety system has been used for a building or structure, a *fire safety installation*, for the building or structure, includes any thing required to comply with the performance solution.

Fire and Emergency Services Act 1990

1 Section 104RBA(1)(c), ‘certificate of classification’—

omit, insert—

certificate of occupancy

2 Section 104RBA(9), definition *certificate of classification*—

omit.

3 Section 104RBA(9)—

insert—

certificate of occupancy see the *Building Act 1975*, schedule 2.

Planning Act 2016

1 Section 122(1)(b), ‘certificate of classification’—

omit, insert—

certificate of occupancy

2 Section 131(2)(b)(ii), ‘certificate of classification’—

omit, insert—

certificate of occupancy

3 Section 274(4), definition *affected person*, paragraph (c)(ii), ‘certificate of classification’—

omit, insert—

certificate of occupancy

4 Schedule 2, definitions *Building Code* and *certificate of classification*—

omit.

5 Schedule 2—

insert—

Building Code has the same meaning as *Building Code of Australia* under the Building Act, section 12.

certificate of occupancy see the Building Act, schedule 2.

Private Health Facilities Act 1999

1 Section 44(2)(d), ‘certificate of classification’—

omit, insert—

certificate of occupancy

2 Schedule 3, definitions *building code* and *certificate of classification*—

omit.

3 Schedule 3—

insert—

building code has the same meaning as *Building Code of Australia* under the *Building Act 1975*, section 12.

certificate of occupancy see the *Building Act 1975*, schedule 2.

Public Health (Infection Control for Personal Appearance Services) Act 2003

1 Section 36(a), ‘certificate of classification’—

omit, insert—

certificate of occupancy

Queensland Building and Construction Commission Act 1991

1 Schedule 2, definition *alternative solution*—

omit.

2 Schedule 2—

insert—

performance solution see the *Building Act 1975*,
schedule 2.

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