

# Plumbing and Drainage Bill 2017

## Explanatory Notes

### Short title

The short title of the Bill is the Plumbing and Drainage Bill 2017 (the Bill).

### Policy objectives and the reasons for them

The Bill provides for the repeal of the *Plumbing and Drainage Act 2002* and the introduction of a new Act, entitled the *Plumbing and Drainage Act 2017* ('the Act' or 'the new Act'), which establishes a new legislative framework for plumbing and drainage in Queensland.

The key objectives of the Bill are to:

- 1 Establish a contemporary, streamlined and flexible legislative framework for plumbing and drainage that is clear and simple for the end user; will ensure both public health and the environment are protected; and will meet industry and community expectations over the next decade.
- 2 Provide authority for the making of a contemporary plumbing regulation that will be clear and easy for practitioners to use; reduce the regulatory burden on consumers, industry and local government; and include improved regulatory requirements for obtaining approvals for plumbing and drainage work.
- 3 Provide authority for the making of a contemporary plumbing code that will include all plumbing standards required to vary and complement national plumbing standards.
- 4 Protect public health and safety through the regulation of mechanical services work, including medical gas work, under the *Queensland Building and Construction Commission Act 1991* (QBCC Act).

### ***Plumbing and drainage***

Triggered by the 10 year review of the plumbing regulations under the *Statutory Instruments Act 1992*, the plumbing law reforms were driven by the Queensland Government's commitment to further improve the high standards in Queensland's plumbing industry by creating a stronger, more streamlined and contemporary regulatory framework for the building and plumbing industry.

Over a decade has passed since the introduction of the *Plumbing and Drainage Act 2002*. To take account of changes that have occurred in the regulatory environment during that time, the review expanded beyond the regulations to cover the entire plumbing and drainage legislative scheme with the aim of improving and modernising it for the benefit of all Queenslanders.

During the course of the review it became clear that major stakeholders were supportive of the existing regulatory framework as they considered the plumbing laws to be strong and effective in protecting public health, safety and the environment. However, stakeholders identified the approval process for 'compliance assessable' plumbing work as a key area for reform, with significant potential to reduce timeframes and associated costs. Stakeholders also expressed concerns that the plumbing laws were difficult to interpret and not readily understood by users.

Provisions in the *Plumbing and Drainage Act 2002* dealing with the following subject matters were excluded from the review:

- the existing licensing regime for plumbers and drainers, which is currently subject to a separate review;
- the role, functions and powers of the commissioner of the Queensland Building and Construction Commission (QBCC); and
- the role, functions and powers of the Service Trades Council (the Council), which was recently established under the *Plumbing and Drainage and Other Legislation Amendment Bill 2015*.

The provisions in the Bill that deal with the above subject matter have not been materially changed, nor has the policy intent behind these provisions. The language and structure of these provisions has been updated to reflect contemporary drafting practices, which have developed since the introduction of the *Plumbing and Drainage Act 2002*.

### ***Mechanical services***

Mechanical services work involves the mechanical heating or cooling of buildings. In Queensland's diverse climate, it is important that this work is performed by an appropriately qualified individual. These systems contribute to the overall health and safety of our community and if incorrectly installed can have fatal consequences. For example, legionella is a type of bacterium that can grow and spread through air-conditioning units for large buildings, such as hospitals or shopping centres.

Medical gases are used in hospitals, medical facilities and dentists' rooms for patient care, therapeutic and diagnostic purposes and surgical tools and includes the supply of gases such as oxygen, helium, nitrous oxide, carbon dioxide and anaesthesia waste.

In 2016, two incidents occurred where babies at the Bankstown-Lidcombe hospital in New South Wales were administered the incorrect gas, because of the oxygen outlet was incorrectly emitting nitrous oxide. One child died and the other child suffered permanent brain damage. These incidents highlight the importance of this work and the need to regulate the work performed on medical gas systems.

The establishment of a new mechanical services licence will protect the general community who live and work in urbanised areas from the risk of exposure to harm that can arise from complex heating, cooling and air-conditioning systems found on large buildings, such as residential apartments blocks, commercial retail centres, modern office buildings, hospitals and other clinical centres and recreational establishments, such as an aquarium.

## **Achievement of policy objectives**

The Bill achieves the policy objectives by:

- repealing the *Plumbing and Drainage Act 2002* and replacing it with a new Act that establishes the framework for a contemporary, streamlined and flexible legislative scheme for plumbing and drainage; is drafted in accordance with contemporary, plain English drafting practices; is structured in a logical way;
- allowing for the prohibition of WaterMark products by regulation, which will be products that are considered to be unsuitable or unsafe despite their WaterMark certification;
- establishing a contemporary and consistent penalty framework for offences intended to ensure public health and the environment are protected as well as achieves greater consistency by aligning maximum penalties for offences under the new Act with those that will apply for similar offences under Queensland's building laws;
- providing for the making of a new regulation that will consolidate and streamline the existing regulatory framework;
- providing for the making of a new, contemporary plumbing code to be made. The code will include technical requirements that were previously set out in the Queensland Plumbing and Wastewater Code, the *Plumbing and Drainage Act 2002* and the *Standard Plumbing and Drainage Regulation 2003*. The new code will vary and complement national plumbing standards and ensure that all of Queensland's technical requirements are set out in a single document;
- establishing a new mechanical services occupation licence and expands the scope of work regulated through contractor licence classes and provides for a regulation to divide the mechanical services occupational licences into classes.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the objectives of the Bill.

## **Estimated cost for government implementation**

### ***State government***

Any administrative costs that may be incurred by the State Government in implementing the plumbing legislative reforms will be met through the existing budget and resources of the Department of Housing and Public Works (the Department).

The Queensland Building and Construction Commission (QBCC) will administer the new mechanical services licence using its existing administrative processes and procedures.

### ***Local government***

Local governments are currently responsible for administering plumbing laws within their local government areas. This role will not change under the Bill. As a result, it is not considered that there will be any change to the costs associated with the role of local governments.

## **Consistency with fundamental legislative principles**

While the provisions of the Bill are generally consistent with the standards required to be met under the *Legislative Standards Act 1992*, potential breaches of fundamental legislative principles (FLPs) are addressed below.

### ***Reversal of onus of proof***

Clause 95 of the Bill is an evidentiary provision that allows documents and certificates to be taken, upon their production in any proceeding, as evidence of the matters contained within them. This is a reverse onus provision as once the certificate is given the onus lies with the other party in the proceeding, usually a defendant, to disprove any assertion of fact that is made in the certificate.

It is normal for legislation to provide that a certificate is evidence of a fact stated in the certificate if the certificate is signed by a person administering a law. This recognises the impracticality of requiring the person administering the law having to attend court to prove purely administrative issues, for example whether a person held a licence at a given time or what the code requirements for plumbing or drainage work were at a particular time.

Often these issues will not be in dispute in a proceeding and allowing evidence to be obtained through a certificate serves to expedite proceedings.

To ensure that this process is not abused, the provision specifically provides that it operates only in the absence of contrary evidence. This allows a defendant to challenge any assertion made in a certificate and to introduce evidence in support of their challenge.

### ***Protection against self-incrimination***

The FLPs require that legislation provide appropriate protection against self-incrimination. Clauses 48, 180, 181 and 182 limit the protection that is available.

Clause 97 provides an individual with limited immunity against the use of information provided by the individual in a proceeding, reducing the protection against self-incrimination.

It is considered that this limited immunity is justified on two public policy grounds.

Firstly, the information in question relates to a statutory framework that is charged with maintaining the health and safety of the community. Failures to comply with this framework have the potential to cause significant health risks (for example, the spread of pathogens from untreated sewage, or the transmission of legionella bacteria from a poorly maintained hot water system).

Secondly, licensees are voluntary participants in a regulatory scheme that is intended to reduce the risk to public health posed by plumbing or drainage work. As suggested by the QLRC Report No. 59, the community is entitled to insist on the provision of information that will disclose whether a licensee is abiding by the requirements of the regulatory scheme.

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

Clause 208 of the Bill contains a transitional regulation-making power to allow provisions of a saving or transitional nature to be made where not sufficiently provided for by the Act. Transitional regulation-making powers of this kind may raise FLP issues about whether the Bill has sufficient regard for the institution of Parliament.

The inclusion of clause 208 is justified because it is intended to be a temporary measure to facilitate a smooth transition to the new legislative scheme by enabling a regulation to be made to address any emerging or unforeseen transitional issues. Importantly, the potential contravention of FLPs is mitigated in that the Bill provides for the expiry of the transitional regulation-making power one year after the day of commencement.

### ***Sufficient regard to the rights and liberties of individuals - Legislative Standards Act 1992, section 4(2)(a)***

#### Penalties

In considering whether legislation has sufficient regard to the rights and liberties of individuals, it is necessary to consider whether the penalties imposed for offences are proportionate and relevant to the act or omission constituting the offence.

The following clauses of the Bill introduce offences in relation to unlicensed work:

- Clause 56 - Carrying out work without appropriate licence;
- Clause 57 - Supervising or directing work without appropriate licence;

- Clause 220 - Insertion of new s 42CA - Unlawful carrying out of mechanical services work;
- Clause 221 - Insertion of new s 42DA - Licensed contractor must not engage or direct unauthorised person for mechanical services work.

Each of these provisions introduce a sliding scale of penalties that increase for second and third convictions. Under these provisions:

- First offence— maximum 250 penalty units;
- Second offence—maximum 300 penalty units;
- Third and subsequent offences—maximum 350 penalty units or 1 year's imprisonment.

The maximum penalty of 350 penalty units or 1 year's imprisonment will also apply to offences that involve:

- grossly defective work under schedule 1 of the Bill;
- tier 1 defective work under the QBCC Act.

During consultation on the draft Bill industry stakeholders expressed concern about defective plumbing and drainage work being performed by unlicensed persons. In particular, they noted that there was insufficient deterrent to prevent unlicensed persons to continue to perform defective work. As a result, it was suggested that consumers were being left with defective work resulting in significant financial and safety risks.

Similar issues relating to unlicensed building work were recently addressed in the *Building Industry Fairness (Security of Payment) Bill 2017* (SOP Bill).

In the SOP Bill the penalties for sections 42, 42B, 42C and 42D were increased to align Queensland more closely with other states and territories. For example, the maximum penalty in both Victoria and New South Wales is 500 penalty units, with the possibility of 12 months' imprisonment in New South Wales for second and subsequent offences.

The proposed penalties in the Bill mirror the approach taken for unlicensed building work under the SOP Bill. This will ensure consistency within the QBCC Act for similar offences involving unlicensed work.

The proposed penalties are considered proportionate and appropriate in order to provide a deterrent to unlicensed persons entering the market. This, in turn, is expected to ensure a high rate of compliance with standards and protect consumers and licensees from loss. The possibility of imprisonment is particularly targeted at repeat, high-level offenders.

## Mechanical services

The additional regulation imposed by the new mechanical services licence, particularly the inclusion of medical gas for which a licence is not currently required, may also raise FLP issues about whether the Bill has sufficient regard to the rights and liberties of individuals.

Individuals who are currently working unlicensed (for example, labourers who are employed by a contractor licensee) or unregulated will be required either to complete the necessary qualifications or demonstrate that they have the appropriate skills and experience. They will then need to obtain an occupational licence in order to continue this work. To minimise disruption to the industry, and any potential cost impacts or displacement of unlicensed individuals, the Bill provides for a transitional period. This will ensure that industry has sufficient time to satisfy either of these requirements. In addition, existing licensees will be able to transition into a new licence class with limited disruption.

Despite the potential impacts, the new mechanical services licence is considered necessary to improve the standard of work in the industry and address the significant health and safety impacts that can arise when work is undertaken by unlicensed or underqualified persons, as demonstrated by the tragic incidents at Bankstown-Lidcombe Hospital in New South Wales noted above.

The introduction of an occupational licensing framework will ensure mechanical services work is always undertaken by a licensed person who is suitably qualified, and will ensure that consumers have an avenue to resolve any concerns through the QBCC as regulator.

## **Consultation**

The following industry and community stakeholders were consulted during the preparation of the Bill:

- Association of Hydraulic Consultants Services Australia
- Australian Industry Group
- Australian Institute of Building Surveyors
- Australian Wastewater Treatment Association
- Backflow Prevention Association of Australia Inc.
- Brisbane City Council
- Cairns Regional Council
- Fraser Coast Regional Council
- Gold Coast City Council
- Gympie Regional Council
- Housing Industry Association
- Institute of Plumbing Inspectors Queensland
- Isaac Regional Council
- Livingstone Shire Council
- Local Government Association of Queensland

- Logan City Council
- Master Builders Association
- Master Plumbers' Association of Queensland
- Members of the Public
- Moreton Bay Regional Council
- National Fire Industry Association, Queensland and Victoria
- Noosa Shire Regional Council
- Plumbers Union Queensland
- Plumbing and Drainage licensees
- Queensland Building and Construction Commission
- Queensland Fire and Emergency Services
- Queensland Health
- Queensland Urban Utilities
- Queensland Water Directorate
- Royal Institution of Chartered Surveyors
- Scenic Rim Regional Council
- Services Trades Queensland
- Sunshine Coast Regional Council
- Toowoomba Regional Council
- Unity water

In addition to a wide range of government agencies, the Department consulted with the Office of Best Practice Regulation, which advised that a regulatory impact statement was not required because the legislative proposals were not likely to result in significant adverse impacts.

A comprehensive consultation program on the Bill has been conducted. That consultation included the following:

- preliminary consultation with key plumbing and building stakeholders was followed by the release of a discussion paper for a six weeks' public consultation and a series of state-wide information forums;
- in late 2016 the plumbing reforms were rolled into the Queensland Building Plan (the Building Plan), and a discussion paper containing potential or planned reforms was release;
- an exposure draft of the Bill was released for public consultation in November 2016, together with an exposure draft of the draft regulation, for a three-month consultation period for the Building Plan;
- key industry stakeholders reviewed and provided verbal feedback on an initial draft of the Bill and early versions of the proposed *Plumbing and Drainage Regulation 2017* (draft regulation) and Queensland Plumbing and Wastewater Code in workshops held by the Department in December 2016 and February 2017;

- state-wide industry and community consultation sessions on the Building Plan were held throughout 15 local government areas in February and March 2017, in which stakeholders were invited to provide verbal feedback;
- feedback was invited from stakeholders on a consultation draft of the Bill that was circulated to key industry stakeholders in August 2017.

The Department considered all feedback on the Bill received from stakeholders, and the Bill substantially reflects that feedback.

The establishment of a new mechanical services licence was the subject of consultation with key stakeholders. Consultation was also undertaken with the Office of Best Practice Regulation who advised that the proposal would benefit from further analysis in the form of a Regulatory Impact Statement (RIS). A RIS will be finalised prior to the commencement of the transition process.

## **Consistency with legislation of other jurisdictions**

The Bill supports part of a national scheme by implementing and complementing the Plumbing Code of Australia, which forms part of the National Construction Code. The Bill is broadly similar to legislation regulating plumbing and drainage in other jurisdictions. For example, the Bill, like the legislation of other states and territories:

- is intended to regulate the carrying out of plumbing and drainage work in a way that reduces risks to public health and safety, and the environment;
- adopts the Plumbing Code of Australia, subject to variations intended to ensure the requirements of the Code are suitable for the local conditions in the state;
- includes a licensing regime aimed at ensuring all but the most basic plumbing and drainage work is undertaken by individuals who have the qualifications and experience to do so competently and safely;
- provides for the inspection of plumbing and drainage work to ensure it is of an appropriate standard.

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# Notes on provisions

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Short title

*Clause 1* states that, when enacted, the Act will be cited as the *Plumbing and Drainage Act 2017*. The Act will replace the repealed *Plumbing and Drainage Act 2002*.

#### 2 Commencement

*Clause 2(1)* provides that the Act, other than part 10, division 3, commences on 2 July 2018. Consequently, the plumbing reforms included in the Bill will commence on 2 July 2018.

*Clause 2(2)* provides that part 10, division 3 commences on a day to be fixed by proclamation. Part 10, division 3 contains the mechanical services reforms.

*Clause 2(3)* provides that the *Acts Interpretation Act 1954*, section 15DA does not apply to part 10, division 3. Under s 15DA(2), if a law whose commencement is postponed until a day fixed by proclamation (such as part 10, division 3) has not commenced within 1 year of the assent day, the law automatically commences on the next day. *Clause 2(3)* ensures that part 10, division 3 can commence on a day to be fixed by proclamation that is more than a year after the day the new Act receives royal assent.

#### 3 Main purpose of Act

*Clause 3* states that the main purpose of the Act is to regulate the carrying out of plumbing and drainage work to reduce risks to public health and safety and the environment. The clause also states how the main purpose of the Act is to be primarily achieved.

*Clause 3(2)(a)* states that one of ways the main purpose of the Act is achieved is by ensuring that plumbing and drainage work, with the exception of 'unregulated work', is done by people with plumbing or drainage licences. 'Unregulated work', is plumbing or drainage work that is simple, minor in nature and does not require the expertise of a qualified plumber or drainer. An example of unregulated work is replacing the filter cartridge for a water filter.

*Clause 3(2)(b)* states that the purpose of the Act is also achieved by ensuring that plumbing and drainage work complies with the code requirements for the work. Code requirements are defined, and include the Plumbing Code of Australia, the Queensland Plumbing and Waste Water Code, relevant parts of the Queensland Development Code and any local government local laws relating to plumbing or drainage.

Finally, clause 3(2)(c) states that the purpose of the Act is achieved by establishing a framework for approving plumbing and drainage work and particular treatment plants. This framework involves requirements under the Act:

- to obtain permits for permit work; and
- have permit work inspected to ensure that it is compliant; and
- to lodge notices about notifiable work; and
- to have treatment plants assessed to ensure that they are capable of treating waste water to an appropriate standard.

#### **4 Act binds all persons**

*Clause 4* provides that the Act binds all persons, including the State (i.e., it binds public sector entities unless otherwise excluded), as well as the Commonwealth and other States to the extent that the legislative power of the State of Queensland allows. Under the provisions of the *Acts Interpretation Act 1954*, this includes the Territories as well as States.

## **Division 2 Interpretation**

### **5 Definitions**

*Clause 5* provides that the dictionary in schedule 1 defines particular words used in the Act.

If a word defined in the dictionary is used in a regulation made under the Act, the definition of the word applies to each reference to the word in the regulation.

### **6 Categories of plumbing or drainage work**

*Clause 6* provides that plumbing and drainage work is divided into the following 4 categories:

- **Permit work**, which is plumbing work or drainage work to be prescribed by regulation as permit work. It is proposed that the kind of work that will be prescribed as permit work will be work that is not notifiable work, minor work or unregulated work. (It is proposed that the types of work that will be notifiable work, minor work or unregulated work will be prescribed in a regulation.)

Permit work is the most complex type of plumbing or drainage work, and is the type of work that carries the highest risk. Examples of permit work include plumbing or drainage work for a new office building or home, and the installation of an on-site sewage treatment facility or a greywater use facility.

Permit work may only be undertaken by a person if the person has a licence to carry out the work and a permit for the work has been obtained. Under clause 56, it is an offence to carry out plumbing or drainage work, including permit work, without a licence for the work. There are limited exceptions for this offence, which are set out in clause 58.

Permit work was referred to under the repealed *Plumbing and Drainage Act 2002* as 'compliance assessable work'. The name 'permit work' better reflects the fact that a permit is required before the work can commence.

Under a proposed regulation, all permit work must be inspected to ensure it complies with the code requirements and the permit for the work, and the work substantially complies with the plans accompanying the application for the permit.

Permit work must also be undertaken in a way that ensures it complies with the offence provisions in the Act, including clause 65, which limits the types of things that may be installed as part of plumbing or drainage work.

In addition, a person carrying out permit work must comply with relevant administrative requirements prescribed in a regulation, including requirements to give notices to particular entities about the work.

- **Notifiable work**, which is plumbing or drainage work to be prescribed by regulation as notifiable work. This work includes, for example, plumbing or drainage work for the renovation of a kitchen or bathroom of an established home.

Notifiable work may only be undertaken by a person if the person has a licence to carry out the work. Under clause 56, it is an offence to carry out plumbing or drainage work, including notifiable work, without a licence for the work. There are limited exceptions for this offence, which are set out in clause 58.

Although a permit need not be obtained for carrying out notifiable work, a permit may be obtained for the notifiable work, or for a combination of the notifiable work and permit work.

Under clause 83 of the Act, when notifiable work has been finished, the person who is responsible for the work must give the commissioner a notice informing the commissioner of details about the work. However, this requirement does not apply if a permit has been obtained for the notifiable work.

Under a proposed regulation, notifiable work that is the subject of a permit will be dealt with in the same way as permit work. For example, it will be inspected to ensure it complies with relevant requirements.

All notifiable work must comply with the code requirements. Also, notifiable work must be undertaken in a way that ensures it complies with the offence provisions in the Act, including clause 65, which limits the types of things that may be installed as part of plumbing or drainage work.

Audit programs may be conducted by the QBCC under clause 47 of the Act to monitor and enforce compliance with the requirements for giving notices about notifiable work to the commissioner.

Under a proposed regulation, local governments will be allowed to conduct inspections of notifiable work under audit programs, or at the request of the person undertaking the work, to ensure the work is of the required standard.

- **Minor work**, which is plumbing work or drainage work prescribed by regulation as minor work. Minor work includes, for example, unblocking sanitary plumbing or drainage, repairing broken or damaged pipes, or removing a fitting or fixture.

Minor work may only be undertaken by a person who holds a licence to carry out the work. Under clause 56, it is an offence to carry out plumbing or drainage work, including minor work, without a licence for the work. There are limited exceptions for this offence, which are set out in clause 58.

A person who is licensed to carry out minor work may do so without first obtaining a permit for the work. Completed minor work need not be inspected.

Although minor work need not be inspected, it must comply with the code requirements. Also, the work must also be undertaken in a way that ensures it complies with the offence provisions in the Act, including clause 65, which limits the types of things that may be installed as part of plumbing or drainage work.

- **Unregulated work**, which is plumbing work or drainage work prescribed by regulation as unregulated work. Unregulated work is basic plumbing work that a person without formal qualifications for plumbing or drainage work can undertake safely. An example of unregulated work is changing the filter cartridge for a water filter.

An unlicensed person may undertake unregulated work without first obtaining a permit for the work, and the work need not be inspected. Regardless of this, all unregulated work must comply with the code requirements. Also, the work must be undertaken in a way that ensures it complies with the offence provisions in the Act, including clause 65, which limits the types of things that may be installed as part of plumbing or drainage work.

For example, a tap washer may be replaced by a person who does not have a plumbing licence, but the person must ensure that the tap washer is a WaterMark product that is not a prohibited WaterMark product under clause 65.

## 7 The Queensland Plumbing and Wastewater Code

Clause 7 provides that the Queensland Plumbing and Wastewater Code (QPW Code) is a document of that name made by the chief executive published on the Department's website, as amended from time to time. Clause 7(2) provides that each version of the code does not take effect until it is approved by a regulation. It is intended that the first version of the QPW Code will be replaced by new versions from time to time.

A version of the Queensland Plumbing and Wastewater Code was in force under the repealed *Plumbing and Drainage Act 2002*. It is proposed that a new, contemporary version of the code will be prescribed under clause 7 of the Act.

The Queensland Plumbing and Wastewater Code is a performance-based code in that sets standards for work that must be met. It is proposed that the new code will include all plumbing standards required to vary and complement national plumbing standards included in the Plumbing Code of Australia, including standards that were formerly in the *Standard Plumbing and Drainage Regulation 2003*.

*Clause 9(2)* provides that if a provision of the Queensland Plumbing and Wastewater Code is inconsistent with the Plumbing Code of Australia, the Queensland Plumbing and Wastewater Code prevails to the extent of the inconsistency. This provision allows the state-based Queensland Plumbing and Wastewater Code to vary the national standards in the Plumbing Code of Australia so they are appropriate for Queensland.

## **8 The Plumbing Code of Australia**

*Clause 8* defines the term 'Plumbing Code of Australia'. The Plumbing Code of Australia contains national plumbing and drainage standards that apply to most plumbing and drainage work, and is subject to any variations of those standards made by the Queensland Plumbing and Wastewater Code under clause 9(2).

Like the Queensland Plumbing and Wastewater Code, the Plumbing Code of Australia is a performance-based code in that it sets standards for work that must be met.

The Plumbing Code of Australia is given legal effect by the relevant legislation within each State and Territory. In conjunction with the legislation it sets minimum requirements for plumbing and drainage work.

## **9 Code requirements**

*Clause 9* defines the meaning of 'code requirements' for plumbing and drainage work. The code requirements are the technical plumbing and drainage requirements contained in:

- the Plumbing Code of Australia, which is a national code; and
- prescribed aspects of the Queensland Plumbing and Wastewater Code and the Queensland Development Code, which are state codes; and
- any local laws of a local government relating to plumbing or drainage that are not inconsistent with the codes above and any other aspect of the Act.

Under *clause 9(2)*, if there is an inconsistency between the Queensland Plumbing and Wastewater Code and the prescribed parts of the Plumbing Code of Australia or the Queensland Development Code, the Queensland Plumbing and Wastewater Code prevails to the extent of the inconsistency.

Similarly, under clause 9(3), if there is an inconsistency between the Queensland Development Code and the Plumbing Code of Australia, the Queensland Development Code prevails.

*Clause 9(2) and (3)* allow the Queensland Government to introduce provisions into the Queensland Plumbing and Wastewater Code, or the Queensland Development Code, that vary or are additional to those in the Plumbing Code of Australia. Although state-specific variations may be included in the Plumbing Code of Australia, that code is only updated every 3 years. Having to wait to have a variation included in the national code may be undesirable, particularly where the need for regulatory change is urgent. The Queensland Plumbing and Wastewater Code is an important vehicle for implementing urgent changes in technical standards for Queensland.

Under clause 64(1) of the Act, a person who carries out plumbing or drainage work must ensure the work complies with the code requirements for the work. Under clause 64(2) of the Act, a person who prepares a plan for plumbing or drainage work must ensure the work under the plan complies with the code requirements. Clause 9(4) allows a regulation to prescribe how plumbing and drainage work, or a plan for plumbing or drainage work, can comply with the code requirements.

## **10 References to plumbing or drainage work**

*Clause 10* deals with the interpretation of references to 'plumbing or drainage work'.

The terms 'plumbing' and 'drainage' are defined in the dictionary in schedule 1 of the Act. Those definitions refer to physical things that carry water or sewage. The term 'plumbing or drainage work' is defined in the dictionary as plumbing work or drainage work. 'Plumbing work' and 'drainage work' are also defined in the dictionary. These terms capture work done in relation plumbing or drainage. In many cases, plumbing or drainage work results in plumbing or drainage. For example, the installation of a pipe for carrying water may result in plumbing.

In some circumstances, it may be impractical to maintain a clear distinction between plumbing and plumbing work. Therefore, this provision provides that any reference to plumbing or drainage work should be read to include plumbing or drainage that results from the work, or is affected by the work, to the extent the context permits.

Plumbing or drainage work includes work that is undertaken off-site, such as prefabricating components of an installation away from premises before installing them on premises. This does not extend to the production of WaterMark products, as these are regulated as products, not as plumbing or drainage work. The process of installing these products is plumbing and drainage work, and the resulting product is plumbing or drainage.

## **11 References to local governments**

*Clause 11* is an interpretative provision that deals with how the Act applies to an entity that is responsible for administering the Act (an administering entity) within a special administration area under clause 134, but is not a local government. If the entity has not asked the local government responsible for the area to administer the Act in the area, a reference in the Act to a local government must be read as a reference to the administering entity.

The intent of this provision is to ensure that an administering entity is required to comply with the provisions of the Act in relation to the special administration area as if it were the local government responsible for the area.

## **Part 2 Licensing**

### **Division 1 Classes of licences**

#### **12 Classes of licences**

*Clause 12* is based on section 34(1) of the repealed *Plumbing and Drainage Act 2002*.

The clause provides that the commissioner may grant a plumber's licence, a drainer's licence or a restricted licence. The commissioner may also grant a provisional licence for each of the three classes of licence mentioned. A licence in each of the classes authorises a licensee to undertake particular types of plumbing or drainage work.

*Clause 19(2)* sets out the circumstances in which the commissioner may grant a provisional licence rather than another licence. Under clause 61, a provisional licensee must not carry out plumbing or drainage work under the licensee's provisional licence unless supervised by a person who holds a licence to carry out the work.

#### **13 Work that may be carried out under licences**

*Clause 13* is based on section 35 of the repealed *Plumbing and Drainage Act 2002*. It provides that the holder of a licence may only perform the plumbing or drainage work for which the licence is granted. For example, a plumber's licence entitles the licensee to perform plumbing work, and a drainer's licence entitles the licensee to perform drainage work, as defined by the Act.

Similarly, a person who holds a restricted licence may only perform plumbing or drainage work for which the licence is granted. A restricted plumber's licence could, for example, only allow the licensee to undertake water plumbing work that is restricted to irrigation and no other plumbing work.

Restricted licenses are primarily needed by tradespersons other than plumber and drainers who need to complete minor plumbing installations as part of their work. For example, an electrician who installs hot water systems would need to obtain a restricted water plumbers licence to complete the plumbing components of the installation.

In addition, a person who holds a restricted licence may only perform plumbing or drainage work for which the licence is granted. Under clause 61, a provisional licensee must not carry out plumbing or drainage work under the licensee's provisional licence unless supervised by a person who holds a licence to carry out the work.

*Clause 13(5)* provides the scope of work that may be undertaken under each type of licence is prescribed by regulation.

If a licensee undertakes work that is not work for which the licensee's licence was granted, they will contravene clause 56 (Carrying out work without appropriate licence).

*Clause 13* is subject to the clause 25, which empowers the commissioner to make an endorsement on a licence, expanding the scope of work the licensee may carry out under the licence.

## **Division 2            Granting licences**

### **14    Qualifications and practical experience required for licence**

*Clause 14* requires the commissioner to decide the qualifications and experience that an individual must have to be granted a licence.

Under the clause, the commissioner must publish the relevant qualifications and experience on the QBCC website. This requirement is intended to ensure that all applicants have access to the information required to complete their licence applications.

### **15    Entitlement to licence**

*Clause 15* is based on section 37 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 15* provides that an individual (a natural person, not a corporation) is entitled to be licensed in the circumstances stated in the clause.

This clause is intended to ensure that every person who undertakes plumbing or drainage work under a licence is sufficiently qualified, experienced, and competent.

### **16    Application for licence**

*Clause 16* is based on section 36 of the repealed *Plumbing and Drainage Act 2002*. The policy intention for clause 16 is the same as the one for section 36.

This clause states the procedural requirements for a licence application. The application must be in the approved form, be submitted to the commissioner, and be accompanied by the application fee and evidence of the applicant's practical experience.

If the applicant is licensed by an interstate or New Zealand licensing authority, the application must include written details of any conditions of their licence. New Zealand licences are recognised under the Australia and New Zealand Reciprocity Agreement.

## **17 Inquiry about applicant**

*Clause 17* is based on section 38 of the repealed *Plumbing and Drainage Act 2002*. The policy intention for clause 17 is the same as the one for section 38.

This clause allows the commissioner to investigate an applicant to determine whether the individual is entitled to hold a licence. The investigation may investigate whether the applicant has been convicted of an offence against the Act or the repealed *Plumbing and Drainage Act 2002*. The clause allows the commissioner to require the applicant to give the commissioner additional information or undergo an examination to assess the applicant's ability to competently practice the trade.

If the commissioner requires the applicant to provide additional information or undergo an examination, notice of the requirement must be given to the applicant within 40 business days of the commissioner receiving the original application. The notice must allow the applicant at least 20 business days to meet the requirement. If the applicant does not provide the information or undergo the examination within the time stated in the notice, the application is taken to be withdrawn.

## **18 Extending decision period for application**

*Clause 18* is based on aspects of section 39 of the repealed *Plumbing and Drainage Act 2002*.

Under this clause, the usual decision period for deciding a licence application is 40 business days after the commissioner receives the application, further information is requested under *clause 18(2)(a)* or the results of an examination requested under *clause 18(2)(b)*.

The intention of the provision is to allow the commissioner to extend the period in which a decision must be made on a complex licence application to ensure the commissioner has adequate time in which to deal with the complexities of the application.

The provision allows the commissioner to extend the period in which the application must be decided so it ends 40 business days after the end of the decision period. However, *clause 18(3)* provides that during the extended consideration period the applicant and the commissioner may agree in writing on another day by which the decision must be made. This provision allows an agreement to be made to extend the period for making a decision further.

This section ensures that an application is not prematurely granted or refused.

## **19 Deciding application**

*Clause 19* is based on aspects of sections 39, 40 and 43 of the repealed *Plumbing and Drainage Act 2002*.

The clause requires the commissioner to consider an application and decide to either grant or refuse to grant a licence, or a provisional licence, to the applicant.

*Clause 19(2)* sets out the circumstances in which the commissioner may grant a provisional licence.

If the commissioner has not decided the application by the end of the decision period, the commissioner is taken to have decided to refuse the application.

The decision period may be a period of 40 business days after the commissioner receives the application. However, if further information is requested under clause 17(2)(a) the decision period is 40 days from the day the commissioner receives the additional information, and if the commissioner required the applicant to undergo an examination under clause 17(2)(b), the decision period is 40 business days from the day the commissioner receives the results of that examination. Further, if the commissioner has extended the decision period under clause 18(2) to a stated day, or there is an agreed day for deciding the application under clause 18(3), the decision period extends to the stated day or the agreed day.

## **20 Imposing conditions on licence**

*Clause 20* is based on section 41(1) of the repealed *Plumbing and Drainage Act 2002*.

It allows the commissioner to grant a licence on conditions the commissioner considers necessary or desirable to ensure that the licensee will practice the plumbing and drainage trade competently.

Examples of conditions that may be imposed on a licence include a condition that limits a plumber with only water plumbing qualifications to carry out only water plumbing work and no other types of plumbing work. Another example would be a condition requiring a licensee to undertake further training on a particular aspect of plumbing, because their training is inadequate as far as that aspect is concerned.

## **21 Steps to be taken after application decided**

*Clause 21* is based on section 42 of the repealed *Plumbing and Drainage Act 2002*.

The clause sets out the steps the commissioner must take in relation to a licence application after deciding the application. It requires the commissioner to give the applicant an information notice if the commissioner decides to grant a licence to the applicant on conditions, or refuse to grant a licence to the applicant.

The information notice is required to state the commissioner's decision and the reasons for it, and must include information about the applicant's right to apply to the QBCC or QCAT for a review of the decision (see the definition *information notice* in schedule 1).

If the licence is granted on conditions, the clause requires the commissioner to specify the relevant non-review period in the information notice. A non-review period is not related to an applicant's right to apply to the QBCC or QCAT for a review of the commissioner's decision. A 'non-review period' is defined in schedule 1 as being a period of not more than 2 years after the decision to impose the conditions takes effect, within which the licensee may not apply for a review of conditions under part 2, division 7, which deals with the review of licence conditions.

## **22 Form of licence**

*Clause 22* is based on section 44 of the repealed *Plumbing and Drainage Act 2002*.

The clause states the information that must be stated on a licence.

## **23 Duration of licence**

*Clause 23* is based on section 45 of the repealed *Plumbing and Drainage Act 2002*.

This clause provides for the duration of a licence or a provisional licence. It ensures that a licence remains in effect for no more than 5 years, and a provisional licensee remains in effect for no more than 1 year.

## **Division 3 Upgrading provisional licences**

### **24 Commissioner may upgrade provisional licence**

*Clause 24* is based on section 46 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 24* applies in relation to the holder of a provisional licence who originally applied for a licence but was issued with a provisional licence. Under the clause, the commissioner may grant to the provisional licensee the licence the person originally applied for if the licensee satisfies the commissioner they have become eligible for that licence, for example, by giving the commissioner evidence of the licensee's qualifications and experience that was not included in the application for the licence.

Under clause 24(3), if the provisional licensee is issued with an upgraded licence, the provisional licence is cancelled.

## **Division 4 Endorsements**

Division 4 deals with the process for making endorsements on licences. Although endorsements could be placed on licences under the repealed *Plumbing and Drainage Act 2002*, the application process and qualification requirements were not stated in that Act. This new division has been introduced to provide for these processes and requirements.

## **25 Endorsements on licences**

*Clause 25(1)* allows the commissioner to make an endorsement on a licence. Clause 26 deals with the entitlement to an endorsement.

*Clause 25(2)* provides that the scope of work for a particular endorsement on a licence is the scope of work prescribed by regulation for the endorsement.

*Clause 25(3)* provides that an endorsement allows the licensee to carry out particular plumbing or drainage work in addition to the plumbing or drainage work for which the licence was granted.

It is proposed that a regulation will provide that the scope of work allowed by a plumber's licence will be plumbing work (as defined in schedule 1), other than plumbing work for which an endorsement is required. It is proposed that a regulation will prescribe the scope of work for a backflow prevention endorsement to be commissioning, maintaining and testing backflow prevention devices. Therefore, if the holder of a plumber's licence wishes to commission, maintain and test backflow prevention devices, the holder must apply for a backflow prevention endorsement.

A person may apply for an endorsement to be made on a licence when they apply for the licence or at another time.

## **26 Qualifications and practical experience required for endorsement**

*Clause 26* requires the commissioner to decide the qualifications and practical experience required for an endorsement, and to publish them on the QBCC's website.

## **27 Entitlement to endorsement**

*Clause 27* specifies the eligibility requirements for an endorsement, and when an individual may apply for an endorsement.

An individual is entitled to an endorsement if they make an application to the commissioner under clause 27, and the commissioner is satisfied that the individual has the qualifications and practical experience required for the endorsement. These requirements are to be stated on the QBCC website under clause 26(b).

Under clause 27(3), if an individual is already a licensee, the licensee may apply for an endorsement to be made on their licence at any time. Also, if an individual is in the process of applying for a licence, they may make an application for an endorsement to be made on the licence they have applied for when they apply for the licence, or afterwards.

## **28 Application for an endorsement**

*Clause 28* states the procedural requirements for making an application for an endorsement.

## **29 Deciding application**

*Clause 29* requires the commissioner to consider an application for an endorsement and decide to grant or refuse to grant the application.

If the commissioner decides to refuse to grant the endorsement they must give the applicant an information notice about the decision as soon as practicable. The information notice is required to state the commissioner's decision and the reasons for it, and must include information about the applicant's right to apply to the QBCC or QCAT for a review of the decision (see the definition *information notice* in schedule 1).

## **Division 5 Renewing licences**

### **30 Notice of expiry of licence**

*Clause 30* is based on section 47 of the repealed *Plumbing and Drainage Act 2002*.

The clause requires the commissioner to give each licensee notice of the expiry of their licence at least 40 business days before the date when their licence expires.

The clause is intended to ensure a licensee will have adequate time to apply for renewal of their licence.

Under clause 30, a licensee may only apply for a renewal of their licence after receiving a notice of expiry under clause 30 and before their licence expires.

### **31 Application to renew licence**

*Clause 31* is based on sections 48 and 49 of the repealed *Plumbing and Drainage Act 2002*.

The clause allows a licensee, other than a provisional licensee, to apply to the commissioner to renew their licence. The renewal application must be in the approved form, be accompanied by the application fee, and be made before the licence expires.

*Clause 31(3)* provides for a reduced application fee for retired licensees who do not intend to carry out plumbing or drainage work for payment after their licence is renewed. A licensee claiming this fee reduction must give the commissioner a statutory declaration stating they meet the criteria for the reduction. This provision enables retirees to continue to undertake unpaid odd jobs within the scope of their licence.

It is intended that clause 31(4) and (5) will ensure that if the application for renewal complies with clause 31(2), the licence will be taken to continue in force from the day it would have expired, to the day that a new licence is issued under clause 32, unless the licence is a suspended licence. This allows licensees who have submitted their renewal application to continue working under their licence during this interim period, and ensures that applicants will not be adversely affected by processing delays.

Under clause 31(8), if the application does not comply with the procedural requirements for the renewal in the clause, the commissioner must inform the applicant as soon as practicable how the application does not comply, so the applicant has an opportunity to rectify their application before their licence expires.

### **32 Deciding application**

*Clause 32 is based on section 50 of the repealed Plumbing and Drainage Act 2002.*

The clause requires the commissioner to issue a new licence to a licensee if the licensee's application for renewal of the licence complies with the requirements for such an application stated in *clause 31(2)*. The new licence must have the same conditions as the expired licence.

## **Division 6 Restoring expired licences**

### **33 Application to restore licence**

*Clause 33 is based on sections 51 and 52 of the repealed Plumbing and Drainage Act 2002.*

Under *clause 31*, a licensee may apply to the commissioner to renew their licence before their licence expires. If the licensee does not do so, and their licence expires, they may apply to the commissioner under clause 33 to restore their licence after their licence has expired.

However, an application for restoration of a licence may only be made within a year after the day the licence expired.

An application to restore a licence must be made in the approved form, and be accompanied by the prescribed fee and any additional information reasonably required by the commissioner to decide the application.

Retired applicants who do not intend to carry out licensed work for payment are eligible for a reduced application fee.

### **34 Deciding application**

*Clause 34* requires the commissioner to restore an expired licence as soon as practicable if an application for the restoration complies with clause 33(2).

*Clause 34 is based on section 53 of the repealed Plumbing and Drainage Act 2002.*

The clause is intended to ensure that if a licence is restored, the licence remains subject to the same conditions that applied to the licence before it expired.

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## **Division 7      Reviewing licence conditions**

### **35    Review of licence conditions started by licensee**

*Clause 35* is based on section 55 of the repealed *Plumbing and Drainage Act 2002*.

The clause allows a licensee to apply to the commissioner for a review of the conditions on their licence, in the hope that the commissioner might remove some or all of the conditions, or might reduce the restrictive nature of some of the conditions.

*Clause 35(2)* imposes limitations on the timing for making an application for a review of the conditions.

An application must not be made during the non-review period for the conditions. The term 'non-review period', for conditions for a licence, is defined in schedule 1 to mean a period of not more than 2 years after the decision to impose the conditions takes effect, within which the licensee may not apply for a review of conditions under clause 35.

The non-review period for conditions for a licence is required to be stated in the information notice the commissioner is required to give the applicant for the licence when the licence is issued with conditions under clause 21(4).

In addition, if the licensee has applied to QCAT for a review of the decision to impose conditions, the applicant must not apply to the commissioner for review of the licence conditions while the QCAT review is ongoing.

An application for a review of conditions must be in the approved form and be accompanied by an application fee prescribed by regulation.

### **36    Review of licence conditions started by commissioner**

*Clause 36* is based on section 56 of the repealed *Plumbing and Drainage Act 2002*.

Although a licensee may not apply for a review of conditions of their licence within the non-review period under *clause 35*, *clause 36* allows the commissioner to review the conditions of the licence during the non-review period, if the commissioner reasonably believes the conditions may no longer be appropriate and the licensee agrees to the review in writing.

The intent of this clause is to ensure that the commissioner may remove or alter conditions that are no longer appropriate in a timely way.

### **37    Requiring further information to decide application**

*Clause 37* is based on sections 57 and 58 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 37* deals with a review of licence conditions that is started by a licensee or by the commissioner with the licensee's agreement.

The clause allows the commissioner to require the licensee to give the commissioner information that is additional to the information the commissioner already has about the conditions on the licence, if the commissioner reasonably requires it for making a decision on the review of the conditions on the licence. Such information might include information about the details of the licensee's work history, or references from supervisors or other licensees.

If the review of conditions is started by application of the licensee, a notice requesting further information must be given within 40 business days after receiving the application

If the review is started by the commissioner with the licensee's agreement, a notice requesting further information must be given to the licensee within 20 days after the commissioner agrees to review the conditions.

In either case, the licensee must be given 20 business days in which to provide the information requested.

The commissioner may require the requested information to be verified by a statutory declaration.

*Clause 37* allows the commissioner to require the licensee to provide the commissioner with information about the licensee's professional conduct, or the quality of the work the person performs, before deciding the licensee's application for licence renewal.

If the review was started by an application by the licensee and the licensee fails to provide the required information in the time stated in the notice, their application is taken to be withdrawn. If the review was started by the commissioner with the agreement of the licensee, the licensee's failure to comply with the notice will result in the commissioner being taken to have decided to confirm the conditions of the licence.

### **38 Decision on review of licence conditions**

*Clause 38* is based on section 59 of the repealed *Plumbing and Drainage Act 2002*.

The clause governs the making of a decision on review of licence conditions after the commissioner has reviewed the conditions of a licence.

The clause requires the commissioner to consider whether the conditions remain necessary or desirable for the licensee to competently practice the trade. The commissioner must then decide to confirm, change or remove the conditions. However, the commissioner may only confirm or change the conditions for the reasons for which the conditions were initially imposed on the licence.

If a decision is made to confirm or change the conditions, the commissioner must decide the non-review period applying to the confirmed or changed conditions, and issue an information notice to the licensee about the decision. A definition of 'information notice' is in schedule 1. The information notice must, in addition to stating the information mentioned in the definition of the term, also direct the licensee to return the licence within 10 business days.

If the commissioner decides to remove the conditions, the commissioner must give the licensee notice of the decision as soon as practicable.

If the commissioner fails to decide the review of licence conditions within 40 business days of receiving a review application, or making an agreement to begin the review, the commissioner is taken to have confirmed the conditions of the licence. However, if the commissioner has required the licensee to provide further information for the review, this period is extended to the end of 40 business days after the commissioner received the requested information.

### **39 When decision takes effect**

*Clause 39 is based on section 60 of the repealed *Plumbing and Drainage Act 2002*.*

The clause provides that if the commissioner decides to confirm conditions on a licence, the decision takes effect from when the decision is made. If the commissioner decides to change the conditions, the commissioner's decision takes effect when an information notice about the decision is given to the licensee. If the commissioner decides to remove the conditions, the decision takes effect when a notice advising of the decision has been given to the licensee.

If the commissioner decides to change or remove conditions on a licence under *clause 38*, *clause 39(2)* allows a licensee to immediately begin performing work under the new licence conditions as soon as they receive notice of the decision, and need not wait for a new licence that is subject to the new conditions to be issued.

### **40 Returning licence for amendment or replacement**

*Clause 40 is based on section 63 of the repealed *Plumbing and Drainage Act 2002*.*

The clause requires a licensee to return a licence for amendment or replacement if they receive an information notice about a decision to change a condition, or a notice about a decision to remove a condition, under *clause 38*. The licence must be returned within 10 business days from receiving the relevant notice, unless the licensee has a reasonable excuse. The maximum penalty for failure to comply with this requirement is 10 penalty units.

The commissioner must amend the returned licence and return it to the licensee, or if this is not practical, issue a replacement licence to the licensee.

*Clause 39(2)* allows a licensee to begin performing work under new licence conditions as soon as the licensee is notified of them. *Clause 40* is intended to ensure that if a licensee's licence conditions are changed or removed under clause 38, the licensee will be required to have their licence updated or replaced so they have a licence that accurately states the conditions of their licence soon after the decision about the conditions is made by the commissioner under *clause 39*.

## **Division 8            Other Provisions about licences**

### **41    Register of licensees**

*Clause 41* is based on section 77 of the repealed *Plumbing and Drainage Act 2002*.

The clause requires the commissioner to keep a register of licensees, and to keep on the register details about each licensee of the kind prescribed by regulation. The commissioner must keep the register in the way the commissioner considers appropriate.

It is proposed that a regulation will require the register of licensees to include, for each licensee, a range of details, including details of disciplinary action taken against a licensee and the licensee's convictions for any offences against the Act (if any).

The purpose of the register of licensees is to ensure that there is an accurate and current record relating to all licensees. It is intended that the regulation will require the commissioner to allow the public to inspect the register. This access will enable individuals who are considering engaging a licensee, to inspect the details about that licensee on the register and take that information into account when deciding whether to engage the licensee.

### **42    Replacing licence**

*Clause 42* is based on section 73 of the repealed *Plumbing and Drainage Act 2002*.

The clause allows licensees to apply to the commissioner to replace a licence in the circumstances mentioned in the clause. The commissioner must issue a replacement licence if the commissioner is satisfied that the licence has been lost, stolen, destroyed or damaged.

The licensee's application for a replacement licence must be in the approved form and be accompanied by the fee for the application set by a regulation.

### **43    Obtaining certified copy of licence**

*Clause 43* is based on section 74 of the repealed *Plumbing and Drainage Act 2002*.

This clause allows a licensee to obtain a certified copy of their licence if they pay the commissioner the fee for the certified copy that is set by a regulation.

#### **44 Notice of change in circumstances**

*Clause 44* is based on section 75 of the repealed *Plumbing and Drainage Act 2002*.

This clause provides that licensees are obliged to advise the commissioner of particular changes in their circumstances within 20 business days of the changes occurring. This clause is intended to ensure the commissioner can maintain up to date records, particularly of postal addresses, to enable notices to be effectively given. The changes in circumstances, for a licensee, that must be notified are:

- a change in the licensee's name, residential or email address or phone number;
- the suspension or cancellation of a licence, or the imposition of conditions on an interstate or New Zealand licence, held by the licensee; or
- the licensee being convicted of an offence against the Act, or the repealed *Plumbing and Drainage Act 2002*.

The definition *notice* in the dictionary for the Act provides that term means 'written notice'. Therefore, the requirement to give notice is a requirement to give written notice. Under *clause 44(3)*, the notice must be given to the commissioner in the way approved by the commissioner.

The maximum penalty for failing to advise of a change of address is 1 penalty unit. Failure to notify the commissioner of any other change listed in the clause attracts a maximum penalty of 10 penalty units.

#### **45 Notice of particular events to licensing authorities and other entities**

*Clause 45* is based on section 76 of the repealed *Plumbing and Drainage Act 2002*.

This clause applies if the commissioner decides to suspend, cancel, condition or remove conditions from a licensee's licence, and the commissioner is aware that the licensee is licensed by an interstate or New Zealand licensing authority. The commissioner is required to provide such an authority with notice of the decision. A definition of 'interstate or New Zealand licensing authority' is in schedule 1 (Dictionary).

The clause also allows the commissioner to give notice of the change made for the licence to relevant professional or industry associations and other entities connected with the plumbing trade, if the commissioner reasonably believes these entities need to know of the decision.

*Clause 45(4)* ensures that if the commissioner gives notice to an authority or entity under the clause, the commissioner must give a copy of the notice to the licensee to whom the notice relates. This requirement is intended to ensure the licensee is made aware of any notice given under the clause. The requirement is procedurally fair and promotes transparency.

The purpose of the clause is to facilitate mutual sharing of information about licensees' eligibility to hold licences between relevant entities, which can be used to inform future decisions about the licensees.

#### **46 Licensee to have regard to particular guidelines**

*Clause 46* is intended to ensure that, when carrying out plumbing or drainage work, or supervising another licensee who is carrying out such work, a licensee is required to following any guidelines that are relevant carrying out the work or supervising another licensee who is carrying out such work. Failure to comply with relevant guidelines constitutes a ground for disciplinary action under *clause 49*.

The clause is also intended to ensure that a licensee who is responsible for directly supervising a trainee carrying out plumbing or drainage work, or an unlicensed person carrying out drainage work, must have regard to guidelines about directly supervising a trainee or unlicensed person.

A licensee who is responsible for directly supervising a trainee or unlicensed person under *clause 59* must comply with that clause. If the licensee fails to comply with a guideline that is relevant to that supervision, the licensee is taken to commit an offence against *clause 59*.

### **Division 9            Audit programs and auditing licensees**

#### **47 Approved audit program**

*Clause 47* is based on sections 33TB and 33TC of the repealed *Plumbing and Drainage Act 2002*.

This provision allows the commissioner to prepare and approve an audit program for auditing licensees to investigate whether they have been complying with the requirements for notifiable work under *clause 83*. The most important of those requirements is the requirement to give the commissioner notice of notifiable work that has been carried out.

The approved audit program must state the purpose of the program, its start date and the period over which it is to be carried out, the criteria for selecting licensees who are to be audited, and how those licensees will be advised of their selection. If the auditees are to be selected from licensees holding licences of a particular class, a description of the class must also be stated.

Auditing under an audit program is required to be undertaken because, without the auditing, the QBCC would be unaware of the level of compliance with the requirements in *clause 83* that has been achieved.

Under *clause 83*, the commissioner must make a copy of each notice of notifiable work available to the local government. The local government may then decide to inspect the work under an auditing program of its own aimed at ensuring notifiable work is completed to an appropriate standard.

The commissioner must ensure a copy of an approved audit program is available for inspection at QBCC's head office, and publish the approved audit program on QBCC's website before the program starts. These requirements ensure there is a degree of transparency to the commissioner's auditing process.

#### **48 Supplying documents or information**

*Clause 48* is based on section 33TD of the repealed *Plumbing and Drainage Act 2002*.

The clause applies in relation to a licensee who has been selected to be audited under an approved program, or whom the commissioner reasonably suspects has not been complying with the requirements in clause 83 that apply in relation to notifiable work.

It allows the commissioner to give a written notice to the licensee, or their employer, requiring copies of, or access to, information about documents the commissioner reasonably requires, to decide whether the licensee has, or has not, been complying with the requirements.

The written notice must state that the notice must be complied with even though complying with it might tend to incriminate the person, and that, under clause 97, there is a limited immunity against use of the information given in a proceeding.

Unless the person who receives such a notice has a reasonable excuse, the person must comply with the notice within 10 business days of receiving it. A maximum penalty of 100 penalty units applies for a failure to comply.

### **Division 10                      Disciplinary action**

#### **49 Grounds for disciplinary action**

*Clause 49* is based on section 64 of the repealed *Plumbing and Drainage Act 2002*.

The clause provides for the grounds on which the commissioner may take disciplinary action against a licensee. The grounds include the commissioner being satisfied the licensee has contravened a provision of the Act, or that the licensee has been convicted of an offence against the Act, the repealed *Plumbing and Drainage Act 2002* or the *Queensland Building and Construction Commission Act 1991*. The grounds also include a failure to have regard to a relevant guideline in carrying out work or supervising another licensee who is carrying out work. In addition, the grounds include a failure to have regard to a relevant guideline about directly supervising trainees, or unlicensed persons carrying out drainage work.

Disciplinary action may also be taken against a licensee who holds an interstate or New Zealand licence if that licence has been suspended, cancelled, or a condition has been imposed on the licence.

The types of disciplinary action that the commissioner may take are set out in *clause 52*.

Under *clause 51*, before deciding whether to take disciplinary action, the commissioner must comply with *clause 49*.

## **50 Show cause notice**

*Clause 50* is based on section 66 of the repealed *Plumbing and Drainage Act 2002*.

It provides that, before the commissioner may take disciplinary action against a licensee, he or she must first give the licensee an opportunity to put forward reasons why disciplinary action should not be taken against the licensee. This requirement is based on the requirement to provide natural justice, in the form of a fair hearing, in circumstances where a person's rights may be affected by an administrative decision.

In satisfying this requirement, the commissioner must send the licensee a show cause notice that outlines the facts and circumstances forming the grounds for taking the disciplinary action, the types of disciplinary action that may be taken, and invites the licensee to make a submission giving reasons why the proposed action should not be taken. Importantly, a submission may be made verbally at the QBCC's offices or by phone, or in writing.

The licensee must be given at least 20 business days after notice is given to make a submission. This period is considered to be sufficient to give the licensee an opportunity to prepare their reasons why the proposed action should not be taken. The licensee's submission might include mitigating circumstances that the commissioner should be made aware of before deciding whether to take disciplinary action.

## **51 Deciding action to be taken**

*Clause 51* is based on section 68 of the repealed *Plumbing and Drainage Act 2002*.

The clause requires the commissioner to consider all submissions made during the period stated in the show cause notice and to decide to either take, or not take, disciplinary action against the licensee.

However, if the commissioner is reasonably satisfied that grounds exist to take disciplinary action and it would be reasonable in the circumstances to cancel or suspend the licence for more than a year, the commissioner must refer the matter to QCAT.

## **52 Disciplinary action that may be taken by commissioner**

*Clause 52* is based on section 65 of the repealed *Plumbing and Drainage Act 2002*.

This clause specifies the kinds of disciplinary action the commissioner may take against a licensee. Any disciplinary action taken might include a single action or a combination of the actions listed in the clause.

The range of options available to the commissioner allows the commissioner to impose sanctions that are appropriate to the severity of the licensee's behaviour.

Clause 41 requires the commissioner to keep a register of licensees, which must contain details set out in a regulation. The clause allows a regulation to require the commissioner to publish the register on QBCC's website a register of licensees.

It is proposed that a regulation will require the commissioner to keep on the register up to date information about each licensee, including disciplinary action taken against the licensee. Members of the public proposing to engage a particular licensee will be able to consider information about the licensee on the register before deciding whether to engage the licensee.

However, the clause restricts the information that may be made publicly available so it does not include particular personal details, such a licensee's residential or email address, phone number or signature.

The purpose of taking disciplinary action is to help ensure licensees comply with requirements under the Act, which are intended to reduce risks to public health and safety and the environment. The ability to impose disciplinary action against licensees works hand in hand with the offence provisions under the Act.

### **53 Advising licensee of decision**

*Clause 53* is based on section 69 of the repealed *Plumbing and Drainage Act 2002*.

This clause outlines the commissioner's obligations to give notice to the licensee after making a decision under *clause 53*.

If the commissioner decides to refer the matter to QCAT, or to take no disciplinary action, the commissioner must give the licensee notice of that decision.

If the commissioner decides to take disciplinary action, an information notice about the decision must be given to the licensee. An information notice is defined in schedule 1 as being a notice stating the decision and the reasons for the decision. The information notice must also state that the person to whom the notice was given may apply to the QBCC for an internal review of the decision, or to QCAT for an external review, within 28 days of the notice being given. The giving of the information notice triggers the right to an internal or external review of the decision under the *Queensland Building and Construction Commission Act 1991*.

### **54 When suspension takes effect**

*Clause 54* is based on section 70 of the repealed *Plumbing and Drainage Act 2002*.

It provides that if the commissioner decides to suspend the licensee's licence, the suspension takes effect from the day the information notice, advising of the suspension, is given to the licensee.

## **55 Referral of particular disciplinary action to QCAT**

*Clause 55* is based on sections 70B and 70C of the repealed *Plumbing and Drainage Act 2002*.

This section prescribes how a disciplinary matter referred by the commissioner to QCAT under clause 51(3) should be dealt with, and the types of disciplinary action that may be taken by QCAT.

When heard by QCAT, a disciplinary matter must be heard by 3 members, including 1 legally qualified member. The clause requires 1 of the 3 members to be a person with at least 10 years' experience in the plumbing and drainage trade. This requirement recognises that the matters presented before QCAT under this Act will often involve complex plumbing and drainage matters that require expert knowledge.

The section also specifies the disciplinary action that QCAT may take after hearing the matter and deciding that grounds exist for taking disciplinary action against the licensee. QCAT may decide on one or any combination of the disciplinary actions mentioned in the clause.

QCAT has the same disciplinary options available to it as the commissioner has, with a number of exceptions. The commissioner can suspend a licensee's licence only for up to a year, whereas QCAT may suspend a licence for a longer period. QCAT may cancel a licence, which is something the commissioner has no power to do. Finally, although the commissioner and QCAT may each impose a fine on a licensee, the commissioner may impose a fine that is not more than 100 penalty units, whereas QCAT may impose a fine in the amount of 200 penalty units.

## **Part 3 General Offences**

### **Division 1 Offences about licences**

This division is based on division 1 of part 6A of the repealed *Plumbing and Drainage Act 2002*.

#### **56 Carrying out work without appropriate licence**

*Clause 56* is based on aspects of section 119 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 56(1)* makes it an offence for a person to perform plumbing or drainage work unless the person has a licence that authorises them to do the work.

Different licences are issued for different types of work. In order to lawfully carry out a particular type of plumbing and drainage work, a person must hold a licence that authorises the person to do that work in particular.

The intent of this clause is to ensure that only individuals with the appropriate qualifications and practical experience may lawfully perform plumbing or drainage work. The clause is critical to ensuring the objects of the Act are achieved.

This offence is subject to clause 58, which contains a number of important exemptions.

The maximum penalty for the first contravention of clause 56(1) is 250 MPU. The maximum penalty for the second contravention of the subclause is 300 MPU. The maximum penalty for the third contravention of the subclause is 350 MPU or 1 year's imprisonment. Also, if the work done without a licence is grossly defective work, as defined in schedule 1 of the Bill (Dictionary), the maximum penalty is 350 MPU or 1 year's imprisonment.

*Clause 56(2)* provides that an individual who contravenes subsection (1) and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment commits a crime. A crime is an indictable offence.

## **57 Supervising or directing work without appropriate licence**

*Clause 57* is based on section 119 and section 120 of the repealed *Plumbing and Drainage Act 2002*.

This clause creates several offences that prohibit individuals from supervising or directing another person to carry out plumbing or drainage work if particular licensing requirements are not met. The offences are subject to the exemptions contained in *clause 58*.

*Clause 57(1)* makes it an offence for a person to supervise another person doing plumbing or drainage work unless the supervising person has a licence that entitles them to carry out that work.

The maximum penalty for the first contravention of *clause 57(1)* is 250 MPU. The maximum penalty for the second contravention of the subclause is 300 MPU. The maximum penalty for the third contravention of the subclause is 350 MPU or 1 year's imprisonment. Also, if the work done under the person's supervision is grossly defective work, as defined in schedule 1 of the Bill (Dictionary), the maximum penalty is 350 MPU or 1 year's imprisonment.

*Clause 57(2)* makes it an offence for a person to direct another person to do plumbing or drainage work if the other person is not licensed for the work.

The maximum penalty for the first contravention of *clause 57(2)* is 250 MPU. The maximum penalty for the second contravention of the subclause is 300 MPU. The maximum penalty for the third contravention of the subclause is 350 MPU or 1 year's imprisonment. Also, if the work done under the person's direction is grossly defective work, as defined in schedule 1 of the Bill (Dictionary), the maximum penalty is 350 MPU or 1 year's imprisonment.

*Clause 57(3)* makes it an offence for a licensee to supervise another person who is doing plumbing or drainage work unless the other person holds a licence for the work.

The maximum penalty for the first contravention of *clause 57(3)* is 250 MPU. The maximum penalty for the second contravention of the subclause is 300 MPU. The maximum penalty for the third contravention of the subclause is 350 MPU or 1 year's imprisonment. Also, if the work done under the licensee's supervision is grossly defective work, as defined in schedule 1 of the Bill (Dictionary), the maximum penalty is 350 MPU or 1 year's imprisonment.

Under *clause 57(4)*, a consumer who hires a plumber or drainer to carry out work is not taken to supervise the person carrying out the work merely because they have entered into a contract. This is because this clause is not intended to impose obligations upon lay persons who have simply hired a purported plumber or drainer to carry out work on their properties, and do not have a comprehensive knowledge of licensing requirements.

*Clause 57(5)* provides that an individual who contravenes an offence provision in the clause and is liable to a maximum penalty of 350 penalty units or 1 year's imprisonment commits a crime. A crime is an indictable offence.

The effect of *clause 57* is that where individuals are found to be working unlicensed, action may also be taken against their supervisor (i.e. foreman) and the nominee of the company who employs them. This ensures that employers do not engage unlicensed people to undertake notifiable, permit and minor work. An exemption for trainees and apprentices is contained in *clause 58*.

## **58 Exemptions for ss 56 and 57**

*Clause 58* is based on section 121 of the repealed *Plumbing and Drainage Act 2002*.

The purpose of this provision is to provide exemptions for the offences contained in *clauses 56 and 57*, which deal with carrying out plumbing or drainage work without an appropriate licence, and supervising or directing work where the supervisor or the supervisee are unlicensed for the work.

*Clause 58(1)(a)* provides an exemption for the offences contained in *clauses 56 and 57* that applies where the work in question is unregulated work. This exemption is necessary to reflect the intent that an unlicensed person should be able to undertake simple work, such as replacing a tap washer, without having to hold a licence.

*Clause 58(1)(b)* provides an exemption for the offences contained in *clauses 56 and 57* that applies where the work in question is being carried out by a trainee, who is unlicensed, while a person who holds a licence for the work is responsible for directly supervising the trainee.

This exemption is necessary to ensure that trainees, including apprentices, do not commit an offence against *clause 56* while working for their employer. It also ensures that the employer does not commit offences against *clause 57* by directing or supervising an unlicensed person to carry out work.

*Clause 58(2)* clarifies the circumstances where a licensee is taken to be responsible for directly supervising a trainee. Those circumstances are where a licensee is the trainee's employer, or is directed by the trainee's employer, to directly supervise the trainee. *Clause 59* provides for the responsibilities that a licensee who is responsible for directly supervising a trainee must satisfy.

*Clause 58(1)(c)* provides an exemption for the offences contained in clauses 56 and 57 that applies where drainage work is being carried out by an unlicensed person while a person who holds a licence for the work is responsible for directly supervising the unlicensed person.

This exemption is necessary to ensure that unlicensed individuals who carry out drainage work, such as digging trenches so pipework can be installed by a licensee, work do not commit an offence against clause 56 while working for their employer. It also ensures that the employer does not commit offences against clause 57 by directing or supervising the unlicensed person to carry out work.

*Clause 58(2)* clarifies the circumstances where an unlicensed person carrying out drainage work is taken to be responsible for directly supervising a trainee. Those circumstances are where a licensee is the unlicensed person's employer, or is directed by the unlicensed person's employer, to directly supervise the trainee. *Clause 59* provides for the responsibilities that a licensee who is responsible for directly supervising a trainee must satisfy.

*Clause 46* requires licensees who are responsible for directly supervising trainees carrying out plumbing work, or unlicensed persons carrying out drainage work, under *clause 58(1)(b) or (c)* to have regard to guidelines that are relevant to those responsibilities.

*Clause 58(1)(d)* provides an exemption for the offences contained in *clauses 56 and 57* that applies where the person carrying out the work is an authorised person and the work being done is removing, repairing or replacing a prescribed water meter, and any related work.

Amendments of the *Plumbing and Drainage Act 2002* (PDA) passed in 2015 clarified that from 21 August 2015, only an appropriately licensed plumber may install a water meter. This amendment also clarified that the subsequent repair, maintenance or replacement of a water meter may only be performed by a licensed plumber or a person appointed as an authorised person by a water service provider under the *Water Supply (Safety and Reliability) Act 2008*. The policy intention reflected in the PDA now underpins the new provisions of the Act, including *clause 58(1)(d)*.

*Clause 58(1)(e)* provides an exemption for the offences contained in *clauses 56 and 57* that applies where the work being done is manufacturing a WaterMark product, other than a prohibited WaterMark product, or a treatment plant.

WaterMark products are manufactured to a particular standard (or model) under a nationally recognised scheme and certified by a Conformity Assessment Body. Only certified materials and products are identified by the WaterMark trademark.

The certification for WaterMark Level 1 products (higher-risk products) involves an assessment and ongoing surveillance of the production processes, including the inspection or testing of samples of products. The certification for WaterMark Level 2 products (lower-risk products), does not involve an assessment and ongoing surveillance of the production processes or the quality system in place, but does involve the testing of product samples before a certificate of conformity is issued.

A person carrying out the manufacturing work mentioned does so under a controlled nationally recognised scheme that sets standards for the work. Products produced by the person are subject to a certification process that is designed to provide quality assurance. Given the controls for quality assurance that are in place, it is not considered necessary for a person performing the work to hold a licence for the work.

Like WaterMark products, treatment plants are manufactured to an approved standard (or model). In the case of treatment plants, the approval required is provided by the chief executive of the Department. In order to obtain an approval for a treatment plant model, the manufacturer of the model must arrange for the model to be tested by an accredited testing agency and present results to the department. If the results demonstrate that the treatment plant model produces treated water that satisfies the minimum water quality criteria specified under the Queensland Plumbing and Wastewater Code, approval will be granted for the treatment plant, and identical treatment plants may lawfully be manufactured. Given the controls for quality assurance that are in place, it is not considered necessary for a person carrying out manufacturing work for a treatment plant to hold a licence for the work.

## **59 Directly supervising trainees or unlicensed persons**

*Clause 59(2)* clarifies the circumstances where a licensee is taken to be responsible for directly supervising a trainee carrying out plumbing or drainage work, or an unlicensed person carrying out drainage work. Those circumstances are where a licensee is the trainee's employer, or is directed by the trainee's employer, to directly supervise the trainee or unlicensed person.

If a person is being directly supervised under clause 59, that person will not commit an offence under clause 56 for not holding a licence for their work, and the licensee directly supervising the person will not commit an offence under clause 57 for directing or supervising the person.

*Clause 59(1)* provides for the responsibilities that a licensee who is responsible for directly supervising such a person must discharge. It is an offence to fail to discharge those responsibilities. The subclause makes the licensee ultimately responsible for ensuring the work complies with the requirements of the Act, including the code requirements and the offence provisions in the Act and a regulation made under the Act.

*Clause 188* allows the chief executive of the department responsible for the Act to make guidelines for matters within the scope of the Act to help compliance with the Act. Under clause 188(2)(c), the chief executive may make guidelines for licensees who are responsible for directly supervising trainees carrying out plumbing or drainage work or unlicensed persons carrying out drainage work.

Clause 46(4) essentially requires a person who is directly supervising a person under clause 59 to have regard to guidelines that are relevant to that form of supervision. Failure to comply with the guidelines is not an offence under clause 46, but is a ground on which the commissioner may take disciplinary action against the licensee.

However, a licensee's failure to follow the guidelines about direct supervision is an offence under clause 59 because clause 59(3) provides that if the licensee fails to have regard to a guideline that is relevant to direct supervision, the licensee is taken to have contravened clause 59(1).

In summary, a licensee's failure to discharge their responsibilities under *clause 59* will make the licensee liable for the offence in *clause 59* and disciplinary action of the kind mentioned in *clause 52 or 55*, including the following:

- suspension of their licence for a period of time
- having a condition imposed on their licence prohibiting them from being responsible for directly supervising trainees
- a monetary penalty of up to 200 penalty units being imposed on them.

It is proposed that a guideline about direct supervision of individuals under clause 59 will require the licensee to tailor their direct supervision under *clause 59* to the skills and experience of person doing the work, by providing direction to the person on how to do the work that is commensurate with those skills and experience. For example, a trainee in their fourth year of a plumbing apprenticeship will be better placed to work independently or under less supervision than a first-year apprentice. Under the guideline, the licensee will not have to give to the experienced apprentice as much direction as they must give to the inexperienced apprentice.

The guideline will allow licensee providing direct supervision the flexibility to allow trainees greater independence as their skills and experience increase over time. However, in all cases, the licensee will be required to ensure the work done by a person they are directly supervising meets the requirements of the Act.

## **60 Contravening licence conditions**

*Clause 60* is based on section 122 of the repealed *Plumbing and Drainage Act 2002*.

The clause makes it an offence for a licensee to breach a condition of their licence.

Conditions are imposed on licenses to limit the work that the licensee may undertake to work that they have the qualifications and experience to perform competently and safely.

There is a maximum penalty of 100 penalty units for this offence.

## **61 Limits on provisional licensees**

*Clause 61* is based on s 123 of the repealed *Plumbing and Drainage Act 2002*.

Clause 19(2) sets out the circumstances in which the commissioner may grant a provisional licence, rather than a full licence, when an application for a full licence is made.

*Clause 61* prohibits a provisional licensee from carrying out plumbing or drainage work unless they are supervised by a person who is licensed for the work. This prohibition reflects the fact that, in many cases, provisional licensees are not competent to carry out the full range of plumbing or drainage work authorised by their licence, without supervision provided by a person who holds a full licence for the work.

A person with a provisional plumbing licence can work for a licensed plumber, or a business that employs a licensed plumber, who can supervise the provisional licensee.

*Clause 61(2)* provides that the offence does not apply in relation to carrying out the work mentioned in *clause 58(1)(a), (d) or (e)*, which is work that may be carried out without a licence.

The maximum penalty for this offence is 100 penalty units.

## **62 Returning suspended or cancelled licence**

*Clause 62* is based on section 71 of the repealed *Plumbing and Drainage Act 2002*.

The clause applies if the commissioner of QCAT suspends or cancels a licensee's licence.

In these circumstances, the licensee must give the commissioner their licence within 10 business days after receiving the information notice about the suspension or cancellation of their licence, unless the licensee has a reasonable excuse for failing to do so.

The maximum penalty for this offence is 10 penalty units.

The clause is intended to ensure an individual cannot carry out work unlawfully, under the guise of having a licence that is in effect, after their licence has been suspended or cancelled.

The clause provides that if a licensee's licence is suspended for a period of time, the commissioner must return the licence to the licensee as soon as practicable after the suspension ends, so the licensee can resume working under their licence without delay.

## **63 Surrendering licence**

*Clause 63* is based on section 72 of the repealed *Plumbing and Drainage Act 2002*.

This clause provides for the circumstances in which a licensee may surrender their licence.

They may do so by notifying the commissioner of their intention to surrender their licence. The licence is surrendered from the day the licensee gives notice of their intention to the commissioner, or on a later date stated in the notice. The licensee must then return the licence to the commissioner within 10 business days after the date of surrender, unless the licensee has a reasonable excuse not to do so.

The maximum penalty for failing to return a licence is 10 penalty units.

## **Division 2            Offences about carrying out plumbing and drainage work**

### **64    Complying with code requirements for plumbing or drainage work**

*Clause 64* is based on section 82 of the repealed *Plumbing and Drainage Act 2002*, and creates two separate offences.

First, the clause provides that a person carrying out plumbing or drainage work must ensure that the work complies with the code requirements for the work. The term 'code requirements' is defined in clause 9. The requirements include the technical requirements of the Queensland Plumbing and Wastewater Code, Queensland Development Code and the Plumbing Code of Australia.

Second, the clause requires a person who prepares a plan for plumbing or drainage work to ensure that the plan complies with the code requirements. As a result of the clause, a person is prohibited from drafting a plan that would require plumbing or drainage work to be installed in a way that does not comply with the code requirements. The definition of the term 'plan' is in the dictionary for the Bill, located in schedule 1.

*Clause 64(3)* makes it clear that if a permit is issued for work, the fact that it was issued is irrelevant as far as an offence against the clause is concerned. As a consequence, the fact that a permit was issued for plumbing or drainage work that is to be carried out in accordance with a plan that does not comply with the code requirements is irrelevant, and therefore will not serve as a defence in a prosecution for an offence against *clause 64*.

The maximum penalty for each offence is 100 penalty units.

The intention for this clause is two-fold. First, the clause is intended to ensure all plumbing and drainage work is done in compliance with the code requirements, which are designed to ensure plumbing and drainage work is carried out to an appropriate standard and, therefore, will not pose a risk to public health or safety or the environment.

Second, the clause is intended to ensure that all designers and draftspersons who make plans for plumbing and drainage work take the code requirements into account when carrying out their work. Their doing so helps ensure an application for a permit for the work is not refused, and potential delays and additional costs associated with having plans modified so they comply with the code requirements, and a new application having to be made, are avoided.

Plans that comply with the code requirements also help to ensure plumbing or drainage work done in accordance with the plans will comply with the code requirements. If work does not comply with the code requirements, an inspector who inspects the work must give the person responsible for the work an action notice stating action that must be taken to rectify the work, resulting in delays, which can be costly.

The notes at the end of the provision are intended to alert the reader to *clauses 9 and 46*. *Clause 9* defines the term 'code requirements'. *Clause 46* requires licensees who are carrying out plumbing or drainage work to have regard to any guidelines that are relevant to carrying out the work. Those guidelines may provide guidance as to how to carry out plumbing or drainage work in accordance with the code requirements and, in particular, how to interpret requirements in the code requirements.

## **65 Installing things as part of plumbing or drainage work**

*Clause 65* prohibits a person from installing a thing as part of plumbing or drainage work, unless it is allowed to be installed under the clause.

The word 'thing' is used for the provision to encompass the vast array of devices, products and items that could potentially be installed as part of plumbing or drainage work.

The things that may lawfully be installed, as part of plumbing or drainage work, are listed in *clause 65(1)*.

*Clause 65(1)(a)* allows a person to install a WaterMark product that complies with the code requirements, but prohibits the installation of a WaterMark product prescribed by regulation as a prohibited WaterMark product. It is intended that a regulation will prohibit the installation of particular WaterMark products that are considered to be unsuitable despite their WaterMark certification.

*Clause 65(1)(b)* allows a person to install a thing that is the whole or part of a secondary on-site sewage treatment plant, as defined in the clause. It is proposed that a regulation will provide for the circumstances in which such an approval may be given. It is proposed that an approval for an on-site sewage treatment plant will only be given if the chief executive is satisfied that the treatment plant is capable of adequately treating the sewage it is required to treat.

*Clause 65(1)(c)* allows a person to install a thing that is the whole or part of an on-site sewage treatment plant that does not produce secondary quality effluent, and therefore does not require a treatment plant approval, if the thing complies with the code requirements.

*Clause 65(1)(d)* allows a person to install an environmentally relevant on-site sewage facility, as defined by the schedule. Such facilities are usually very large facilities that service resorts, caravan parks and other types of tourist facilities often operating in areas not serviced by a local government or service providers sewerage treatment facility. They regularly operate with small package treatment plants for between 21 and 1500 equivalent persons.

*Clause 65(1)(e)* allows a person to install a thing that is the whole or part of a greywater treatment plant if a treatment plant approval has been given for the thing.

It is proposed that a regulation will provide for the circumstances in which such an approval may be given. It is proposed that an approval for a greywater treatment plant will only be given if the chief executive is satisfied that the treatment plant is capable of adequately treating the greywater it is required to treat.

The maximum penalty for this offence is 100 penalty units. A separate offence is committed for each thing that is installed in contravention of the offence in *clause 65(1)*.

*Clause 65(1)(f)* allows a person to install something prescribed by regulation as a thing that is approved for installation as plumbing or drainage. It is proposed that a regulation will prescribe something that is used for firefighting as a thing that is approved for installation if the thing:

- is a part of a fire service; and
- is installed downstream of a testable backflow prevention device that is a WaterMark product.

The installation of unsuitable or uncertified products poses significant risks to the environment, and public health and safety and therefore a deterrent, in the form of an offence with a relatively large maximum penalty, is required. A similar provision was previously in the *Plumbing and Drainage Regulation 2003*. However, due to an increase in the installation of uncertified or unsuitable products, particularly those imported from overseas, the clause that replaces that provision has been placed in the Act, where a higher maximum penalty that reflects the seriousness of the offence can be imposed.

This offence will complement offences under the *Queensland Building and Construction Act 1991* relating to non-conforming building products. Those offences, impose duties on building supply chain participants (including installers) to ensure building products used in Queensland are safe and fit for the intended purpose.

## **66 Permit required for permit work**

*Clause 66* creates two offences, each of which is intended to help ensure plumbing and drainage work is undertaken to an appropriate standard.

A permit allows permit work to be carried out to the extent stated in the permit. It is proposed that a regulation will provide for applications for permits and the issuing of permits for permit work.

If a person applies for a permit for permit work, in many cases the plans for the work will be assessed by the relevant local government for compliance with the code requirements. If the work complies with the requirements, a permit may be issued, but if it does not, a permit may not be issued, or may be issued subject to conditions stated on the permit.

After the work has been completed, or at particular stages, the work must be inspected by a local government inspector. If the work does not comply with the permit, or a condition of the permit, the inspector will require action to be taken to address the issue.

Under *clause 69*, plumbing or drainage that is the result of the permit work may not be used until an inspector issues a certificate stating that the work is compliant, and the plumbing or drainage is operational and fit for use. Work that does not meet the standards set in the code requirements will not be compliant.

The requirement to obtain a permit before carrying out permit work and the requirement to have the work inspected for compliance, together help to ensure the work meets appropriate standards and is operational and fit for use.

Given the importance of obtaining a permit before carrying out permit work, *clause 66* prohibits a person from carrying out permit work for which a permit has not been issued, or to carry out the work other than in compliance with any conditions of the permit.

The clause also prohibits persons from directing others to carry out permit work where a permit has not been issued, or to carry out the work other than in compliance with the permit conditions.

By capturing both the person who carries out the work and the person who has directed them to do so, the clause creates a high degree of accountability for all parties who are responsible for permit work that is not compliant. *Clause 66(2)* is intended to ensure that a person can advise a person who is directing them, regardless of who that person is (for example, a supervisor or builder) that it is an offence to direct them to perform work that does not comply with a permit, or for which a permit needs to be obtained, where a permit has not been obtained.

*Clause 66(3)* provides that in a proceeding for an offence against *clause 66(2)*, it is a defence for the person to prove that the person did not know, and could not reasonably be expected to have known, that the work the person is directing another person to carry out is permit work.

*Clause 66(3)* is intended to ensure that a person, such as a homeowner or other consumer, who engages a plumber and directs them to carry out work other than in accordance with a permit, in ignorance of the need for a permit to be issued before the work may be carried out, will not be convicted of an offence against *clause 66(2)*.

The maximum penalty for each offence is 250 penalty units.

## **67 Directing persons to carry out non-compliant work**

Clause 67 prohibits persons from directing others to carry out plumbing or drainage work that does not comply with code requirements, as defined in the Act.

Just as *clause 66(2)* prohibits a person from directing another person to carry out permit work other than in accordance with a permit, *clause 67(1)* prohibits a person (for example, a supervisor or builder) from directing another person to carry out plumbing or drainage work, of any kind, in a way that does not comply with the code requirements. The requirement to ensure work complies with the code requirements is intended to make sure work is done to an appropriate standard and, therefore, will be fit for use and not pose a risk to the community or the environment.

*Clause 67(2)* acts in a similar way to *clause 66(3)*. It provides that in a proceeding for an offence against *clause 67(1)*, it is a defence for the person to prove that the person did not know, and could not reasonably be expected to have known, that the way they are directing another person to carry out plumbing or drainage work does not comply with the code requirements.

*Clause 67(2)* is intended to ensure that a person, such as a homeowner or other consumer, who engages a plumber and directs them to carry out work other than in accordance with the code requirements, in ignorance of the fact that the way in which they are directing the plumber to carry out the work does not comply with the code requirements, will not be convicted of an offence against *clause 66(1)*.

*Clause 67(3)* prohibits a person from directing another person to install a thing as part of plumbing or drainage work if the thing is not mentioned in *clause 65(1)(a) to (f)* as a thing that may be installed as part of plumbing or drainage work.

*Clause 67(4)* acts in a similar way to *clause 66(3)* and *67(2)*. It provides that in a proceeding for an offence against *clause 67(3)*, it is a defence for the person to prove that the person did not know, and could not reasonably be expected to have known, that the thing the person is directing another person to install, as part of plumbing or drainage work, is not a thing mentioned in *section 65(1)(a) to (f)*, and therefore is not a thing that can be lawfully installed.

*Clause 67(4)* is intended to ensure that a person, such as a homeowner or other consumer, who engages a plumber and directs them to install a thing that may not lawfully be installed, in ignorance of the fact the thing may not be lawfully installed, will not be convicted of an offence against *clause 67(3)*.

The maximum penalty for each offence in *clause 67* is 100 penalty units.

*Clause 67* will ensure an appropriately licensed person can advise another person who is directing them, regardless of who that person is (for example, a supervisor or builder), that it is an offence to direct the licensee to perform plumbing and drainage work that does not comply with the code requirements, or to install products that are not allowed to be installed under *clause 65*. By penalising a person directing the licensee to install an unapproved product, the licensee is afforded a degree of protection from coercion.

The notes at the end of the clause are intended to alert the reader to *clauses 9* and *46*. *Clause 9* defines the term 'code requirements'. *Clause 46* requires licensees who are carrying out plumbing or drainage work to have regard to any guidelines that are relevant to carrying out the work. Those guidelines may provide guidance as to how to carry out plumbing or drainage work in accordance with the code requirements and, in particular, how to interpret requirements in the code requirements.

### **68 Polluting water service provider's water service or sewerage service provider's sewerage system**

*Clause 68* is based on section 128A of the repealed *Plumbing and Drainage Act 2002*.

This clause creates two offences. First, it prohibits a person from doing anything likely to pollute water in a water service provider's water service when carrying out plumbing work. Second, the clause makes it an offence to do anything likely to pollute a sewerage service provider's sewerage system when carrying out drainage work.

The maximum penalty for each of these offences is 250 penalty units.

The intent of this clause is to prevent individuals from carrying out work in a way that is likely to contaminate broader sewerage and water services, as this pollution has the potential to significantly affect public health and safety.

## **Division 3 Offences about use restrictions**

### **69 Using plumbing or drainage before inspection certificate or final inspection certificate issued for permit work**

*Clause 69* makes it an offence to use plumbing or drainage that is the result of permit work, unless an inspection certificate, or final inspection certificate, has been issued for the permit work stating the work is compliant and the plumbing or drainage that is the result of the work is operational and fit for use.

The examples included in the clause are intended to make the intention for the clause clear.

Without this provision, it would be lawful for a person to use plumbing or drainage that is the result of permit work without first having the work inspected to ensure it is compliant and that the plumbing or drainage is operational and fit for use. Defective or incomplete work that is not inspected, and rectified or completed, could pose a risk to public health and safety or the environment.

The clause does not require a final inspection to be issued for all of the work the subject of the permit before any of the plumbing or drainage that is the result of the work can be used. The clause ensures that even if all of the permit work for premises has not been completed, if part of the work is inspected by a local government inspector and the inspector issues an inspection certificate stating that particular work that was inspected is compliant and the plumbing or drainage that is the result of that work is operational and fit for use, a person can lawfully use that plumbing or drainage.

Under *clause 69(2)*, an inspector, or a licensee carrying out or supervising the permit work, does not commit an offence under *clause 69(1)* when testing the operation of the plumbing or drainage, or commissioning plumbing by:

- checking the operation of a water supply system to confirm it is operational and fit for use and that the apparatus installed in the system are functioning correctly; or
- checking the temperature of hot water at an outlet is not more than the maximum temperature allowed for the hot water under the Plumbing Code of Australia.

There is a maximum penalty of 250 penalty units for this offence.

## **70 Owner's obligation for operating and maintaining plumbing and drainage**

*Clause 70* creates two offences relating to a failure to properly maintain plumbing and drainage on premises.

First, it makes it an offence for the owner of premises to fail to take all reasonable steps to ensure that all the plumbing and drainage on the premises is kept in good condition and operates properly. This ensures that the plumbing and drainage will not adversely affect public health or safety, or the environment.

Second, the clause obliges the owner of the premises to ensure that, if a permit has been issued for permit work for plumbing or drainage on the premises, the plumbing or drainage is operated and maintained in accordance with that permit.

This new provision has been introduced to ensure that homeowners continue to meet obligations set by the conditions of a permit for plumbing or drainage work done on their premises.

For example, there is anecdotal evidence suggesting that the majority of home owners with on-site treatment facilities that include on-site sewage treatment plants are failing to ensure that their on-site treatment plants are maintained in accordance with permit conditions and manufacturer's instructions. This poses a serious risk to public health and safety and the environment.

## **Division 4            Prohibitions on removing or tampering with particular devices**

### **71    Backflow prevention devices**

*Clause 71* makes it an offence for a person to remove a backflow prevention device, or make such a device inoperable, unless this action is authorised by an Act.

The offence carries a maximum penalty of 250 penalty units.

A backflow prevention device is installed in a water supply system to protect drinking water supplies from contamination or pollution due to backflow. Water in a water supply system is normally maintained at a significant pressure to enable water to flow from a tap, shower, or other fixture. However, the water pressure may fail or be reduced when a water main bursts, pipes freeze, or there is unexpectedly high demand on the water system. Reduced pressure in the pipe may allow contaminated water to be drawn up into the water supply system, contaminating the water in the system. For example, if a hose attached to the water supply system were left in a rain water tank and the water pressure dropped, the rain water could be drawn into the water supply system, contaminating the water in the system. A backflow device that has been installed correctly and has not been tampered with would prevent this from happening.

This clause is designed to ensure that public health and safety is protected from the risks posed by the consumption of contaminated water.

### **72    Temperature control devices**

*Clause 72* is based on section 128J of the repealed *Plumbing and Drainage Act 2002*.

*Clause 72* makes it an offence for a person to remove a temperature control device installed at premises, or make such a device inoperable.

Temperature control devices are used to prevent scalding, and are particularly important for children, the elderly, and people with disabilities.

The maximum penalty for this offence is 250 penalty units.

### **73    Tampering with water meter**

*Clause 73* is based on section 128JA of the repealed *Plumbing and Drainage Act 2002*.

The clause makes it an offence to tamper with a water meter or its associated plumbing in a way that may hinder the water meter's capacity to accurately measure the volume of water supplied to premises.

The accuracy of a water meter is critical in enabling the water service provider for the water supply for the premises to accurately charge a consumer for water. This provision is designed to prevent individuals from tampering with their water meters to avoid water charges.

There is a maximum penalty of 250 penalty units for this offence.

## **Division 5          Discharge and disposal offences**

### **74    Discharging toilet waste and water**

*Clause 74* is based on 128K of the repealed *Plumbing and Drainage Act 2002*.

It provides that the owner of a premises in a sewered area commits an offence if waste and water from a toilet or soil fixture is not discharged into the sewerage system for the area, or an on-site sewage treatment plant that is approved for use for testing purposes.

If the premises are in an unsewered area, the owner must ensure the waste and water is discharged into an on-site sewage facility or an environmentally relevant on-site sewage facility.

There is a maximum penalty of 250 penalty units for this offence.

This penalty reflects the severe health impacts that arise from the unsafe disposal of blackwater.

### **75    Permissible and prohibited discharges**

*Clause 75* is based on section 128N of the repealed *Plumbing and Drainage Act 2002*.

*Clause 75(1)* prohibits persons from discharging waste into an on-site sewage facility unless the waste is sewage that the facility is designed to receive.

*Clause 75(2)* prohibits persons from discharging prohibited substances into an on-site sewage facility. Prohibited substances can damage such a facility.

However, *clause 75(3)* provides that a person does not commit an offence under *clause 75(2)* only because the person discharges a substance that has a temperature greater than 38 degrees C into an on-site sewage facility, if the substance was used for cooking food or cleaning and was discharged into the facility via a fixture on the premises where the facility is installed. This subclause is primarily intended to ensure a person may lawfully pour boiling water used for cooking food down a kitchen sink or water that is hotter than 38 degrees C used for cleaning, down a laundry tub that is connected to an on-site sewage facility.

The maximum penalty for committing an offence against *clause 75(1)* or *(2)* is 250 penalty units.

This clause is designed to prevent unnecessary damage to on-site sewage facilities and the risks to public health and safety and the environment that might result from that damage.

## **76 Disposing of contents of on-site sewage facility**

*Clause 76* is based on section 128P of the repealed *Plumbing and Drainage Act 2002*.

The provision mandates how contents of an on-site sewerage facility must be disposed of. The contents of on-site sewerage facilities have the capacity to cause health and environmental problems if handled or disposed of inappropriately, and therefore this clause creates two offences to prevent substandard disposal practices. These offences are intended to protect public health and safety, prevent water and produce contamination (e.g. fruit trees), protect the environment, and prevent bad odours.

Under *clause 76(1)(a)*, where the on-site sewage facility has been installed for testing purposes only, the effluent must only be disposed of in accordance with the permit that authorised the installation of the facility.

Under *clause 76(1)(b)*, if the sewage facility is not installed for testing purposes only (i.e. has been installed for regular use), the effluent must be disposed of to common effluent drainage or in accordance with the permit that authorised the installation of the facility.

The maximum penalty for the offence is 250 penalty units.

Additionally, the person disposing of the effluent must ensure it does not cause an odour that unreasonably interferes, or is likely to unreasonably interfere, with the use or enjoyment of other premises. The person must also ensure that any ponding or run-off of the effluent does not cause a danger or health risk, and is contained in the land application area for the effluent. If there is no land application area, any ponding or run-off must be contained on the premises.

The maximum penalty for the offence is 100 penalty units.

Under *clause 76(2)*, the contents of the facility other than effluent must also be disposed of in accordance with the permit for the installation of the facility.

The maximum penalty for the offence is 250 penalty units.

*Clause 76(4)* provides that the offence in the clause does not apply to effluent or other contents removed from an on-site facility for the purpose of testing the contents.

## **77 Disposing of contents of greywater treatment plant**

*Clause 77* is based on section 128OA of the repealed *Plumbing and Drainage Act 2002*.

The clause makes it an offence for a person to dispose of the contents of a greywater treatment plant into the sewerage system for the area without the local government's approval.

There is a maximum penalty of 100 penalty units for this offence.

Incorrectly or unlawfully disposing of the contents of a greywater treatment plant is a serious offence. Uncontrolled discharges of a greywater treatment plant's contents, such as sludge, into a sewerage system can adversely impact the sewerage service provider's infrastructure. Therefore, an approved method of discharging the contents of a greywater treatment plant is required to limit the risk of overflows and consequent health hazards.

## **78 Discharging kitchen greywater**

*Clause 78* is based on section 128L of the repealed *Plumbing and Drainage Act 2002*, and mandates how kitchen greywater is to be discharged.

*Clause 78(1)* provides that the owner of premises in a sewered area commits an offence if kitchen greywater is not discharged into the sewerage system for the area. In an unsewered area, the greywater must be discharged into a greywater use facility that includes a greywater treatment plant, an on-site sewage facility or an environmentally relevant on-site sewage facility.

There is a maximum penalty of 250 penalty units for this offence.

In addition, the owner of the premises has a responsibility to manage any ponding or run-off of the greywater.

*Under clause 78(2)*, if the premises are not in a sewered area, the owner of the premises must ensure the greywater is contained in a land application area for the greywater. If there is no land application area, they must ensure any ponding or run-off is contained on the premises. The owner must also ensure that any ponding or run off does not cause a danger or health risk, and does not cause an odour that unreasonably interferes, or is likely to unreasonably interfere, with the use or enjoyment of other premises.

The maximum penalty for this second offence is 100 penalty units.

## **79 Discharging and using greywater, other than kitchen greywater**

*Clause 79* is based on section 128M of the repealed *Plumbing and Drainage Act 2002*.

The clause deals with the use of greywater that is not kitchen greywater. Kitchen greywater is dealt with in *clause 78*.

*Clause 79(2)* requires the owner of premises in a sewered area to ensure that the greywater is only discharged into a greywater use facility, onto a garden or lawn using a bucket or hose or into the sewage system for the area.

If the area is not seweraged, the owner may lawfully discharge the greywater into a greywater use facility, onto a garden or lawn using a bucket or hose, or into an on-site sewage facility or an environmentally relevant on-site sewage facility.

There is a maximum penalty of 250 penalty units for contravening this offence.

*Clause 79(3)* applies if premises are in a seweraged area.

*Clause 79(3)(a)* applies if the greywater has been discharged into a greywater use facility that includes a greywater treatment plant that is installed on the premises and treats water to the standard required by the Queensland Plumbing and Wastewater Code. It requires the owner to ensure the treated greywater is used on the premises only for washing a vehicle, path or exterior wall of the premises, flushing a toilet, supplying cold water to a washing machine, supplying a closed loop laundry system or for irrigating a garden or lawn.

*Clause 79(3)(b)* applies if the water is discharged into a greywater use facility that includes a greywater treatment plant that is installed on the premises but does not treat the greywater to the standard mentioned in *clause 79(3)(a)*. It requires the owner to ensure the greywater is used on the premises only for irrigating a garden or lawn.

The maximum penalty for failing to comply with *clause 79(3)* is 250 penalty units.

*Clause 79(4)* requires the owner of a premises to ensure that the greywater does not cause an odour that unreasonably interferes, or is like to unreasonably interfere, with the use or enjoyment of other premises. The owner must also ensure that any ponding or run off of the greywater does not cause a danger or health risk. In addition, the owner must ensure that if there is a land application area for the greywater, any ponding or run-off is contained on that area, and if there is no such area, is contained on the premises.

There is a maximum penalty of 100 penalty units for a failure to comply with *clause 79(4)*.

## **80 Stormwater installation not to be connected to on-site sewage facility or sanitary drain**

*Clause 80* is based on section 128O of the repealed *Plumbing and Drainage Act 2002*.

*Clause 80(1)* makes it an offence for the owner of premises to allow any part of a stormwater installation for the premises to be connected to an onsite sewage facility or a sanitary drain.

Allowing stormwater to be discharged into an onsite sewage facility may result in the facility overflowing and discharging untreated sewage into the environment, posing a significant health hazard.

The prohibition against connecting stormwater drainage to a sanitary drain is intended to make it easier for local governments to reduce the surcharge load on their sewerage systems during rain events.

If the owner of a premises allows the stormwater installation to be connected to a sanitary drain or onsite sewage facility, they will be liable for a maximum penalty of 250 penalty units.

Under *clause 80(2)*, the owner of premises must take all necessary steps to disconnect a stormwater installation from an onsite sewage facility or sanitary drain as soon as they become aware of the connection. If, for example, a person has bought a property where the downpipes are connected to a sanitary drain, although they are not responsible for the connection, as soon as they become aware of it, they must take all reasonable steps to disconnect the installation from the sanitary drain.

The maximum penalty for this offence is 250 penalty units.

## **Division 6            Offences relating to finishing notifiable work**

### **81    Who is a *relevant person* for notifiable work**

This clause is based on parts of section 87 of the repealed *Plumbing and Drainage Act 2002*.

For introductory information about notifiable work, see the explanatory notes for clause 6.

The clause defines the term *relevant person*, for notifiable work, for the purposes of *clause 83*, which imposes requirements on the person captured by the definition.

Under the clause:

- if the work in question is in being done for or by a public sector entity, as defined in the clause, or an entity listed under *clause 134 (2)*, the relevant person is that entity;
- if the work is not being done for or by a public sector entity, the relevant person is:
  - the person who supervises the carrying out of, or directs another person to carry out the work under *subclause (1)(b), (c) or (d)*; or
  - if no one supervises the carrying out of, or directs the licensee who carries out the work to carry out the work under *subclause (1)(b), (c) or (d)* – the licensee who carries out the work.

### **82    When notifiable work is finished**

This clause is based on parts of section 87 of the repealed *Plumbing and Drainage Act 2002*.

The clause determines when notifiable work is finished, for the purposes of *clause 83*. *Clause 83* imposes requirements on the relevant person for notifiable work, as defined in *clause 81*. The most important requirement is to give the commissioner a notice about the notifiable work when it is finished.

*Clause 82(1)* deals with a single item of notifiable work, such as the installation of a new toilet in an established home. Under the clause, if it is intended that the notifiable work will be paid for, the work is taken to be finished when an invoice for the work is given to the person who asked for the work to be done. However, if the work is intended to be done free of charge, it will be taken to be finished when it becomes operational. The term 'operational' is not defined. The clause relies on the natural dictionary meaning of the term, which is 'ready for use, in working order'.

*Clauses 82(2), (3) and (4)* deal with a situation where notifiable work is carried out with other notifiable work as part of 1 transaction. These provisions are intended to deal with a scenario in which a number of items of notifiable work are carried out by the same plumber as part of a single transaction. For example, a plumber might carry out multiple items of notifiable work for the renovation of a kitchen and a bathroom in an established home as part of a single transaction with the home owner.

Under *clause 82(3)*, if it is intended that all or part of the notifiable work the subject of the transaction will be paid for, any notifiable for which payment is to be made is finished when an invoice for the work is given to the person who asked for the work to be done.

The examples for *clause 82(3)* illustrate how the clause is to be applied.

In the first example, 2 invoices are given to the home owner for the notifiable work. As a result, the relevant person for the work will be required to satisfy *clause 83* twice in relation to the work.

However, in the second example, only 1 invoice is given to the home owner for all of the notifiable work. As a result, the relevant person for the work will be required to satisfy *clause 83* only once in relation to the work.

*Clause 83(3)* applies if all or part of the notifiable work forming part of the transaction will be carried out free of charge. It provides that any of the notifiable work that is carried out free of charge is finished when the work becomes operational.

The example for *clause 82(4)* illustrates how the clause is to be applied.

### **83 Action after notifiable work is finished**

*Clause 83* is based on parts of section 87 of the repealed *Plumbing and Drainage Act 2002*.

The clause imposes requirements on the relevant person for notifiable work, as defined in *clause 81*, and includes penalties for failure to comply with those requirements.

*Clause 83(1)* is subject to *clause 83(4)*. It requires the relevant person for notifiable work to give the commissioner a notice about the work within 10 business days of finishing the work, unless the person has a reasonable excuse. The relevant person must also pay the fee prescribed by a regulation for giving the notice.

If the relevant person is a licensee, clause 83(4) allows the relevant person to delegate the responsibility for complying with clause 83(1) to a nominated representative if they wish to do so. *Clause 83(4)* allows plumbers and drainers to focus on carrying out work and to leave administrative tasks, such as complying with clause 83(1), in the hands of an administrative assistant who acts as their nominated representative.

Audit programs may be conducted by the QBCC under clause 47 of the Act to monitor and enforce compliance with the requirements for giving notices about notifiable work to the commissioner.

*Clause 83(5)* requires the commissioner to make a copy of the notice available to the local government. Local governments may, but need not, inspect notifiable work the subject of notices given to the commissioner, under audit programs to ensure the work is of the required standard. *Clause 83(6)* provides that a local government is not required to inspect each instance notifiable work about which a notice is given to the commissioner.

*Clause 83(2)* provides that the relevant person need not comply with clause 83(1) if a permit has been issued solely for the notifiable work or for work that includes the notifiable work.

Although a permit need not be obtained for carrying out notifiable work, a permit may be obtained for the notifiable work, or for a combination of the notifiable work and permit work. Under a proposed regulation, notifiable work that is the subject of a permit will be dealt with in the same way as permit work. For example, it will be inspected to ensure it complies with relevant requirements. For this reason, it is considered unnecessary to require the relevant person for the notifiable work give the commissioner a notice about the work under *clause 83(1)*.

*Clause 83(3)* requires the relevant person to give a copy of the notice of notifiable work to an occupier of the premises or any other person who asked for the work to be carried out, together with an explanatory statement.

An explanatory statement is defined in *clause 83(6)* as a document stating that the notice was given to the commissioner, how a person can inspect the notice, and that the local government may contact an occupier to arrange an inspection.

## **Division 7            Other Offences**

### **84    False or misleading information**

*Clause 84* is based on section 128RA of the repealed *Plumbing and Drainage Act 2002*.

*Clause 84(1)* makes it an offence for a person to give an authority administering this Act information that they know is false or misleading in a material particular.

*Clause 84(2)* provides that, despite *clause 84(1)*, if the information is in a document, the person may lawfully give the information to the authority as long as they also state how the document is false or misleading, and give the authority the correct information if it can reasonably be obtained.

The maximum penalty for this offence is 100 penalty units.

The clause is intended to prevent persons from intentionally providing information to authorities that is false or misleading, and thereby wrongfully obtaining licences, permits, or avoiding liability under the Act.

### **85 Misleading representation by builder, manufacturer or supplier of on-site sewage treatment plant**

*Clause 85* states that a person who builds, manufactures, or is the supplier of an on-site sewage treatment plant must not make a representation that suggests, or might reasonably suggest, that an approval is in force for the plant, or that the manufacture, installation, operation, service or maintenance of the plant complies with the conditions of an approval, unless such an approval is actually in force.

The maximum penalty for this offence is 100 penalty units.

### **86 False advertising or misleading representation of particular things**

*Clause 86* prohibits a person falsely advertising or making misleading representations in relation to:

- WaterMark products; and
- on-site sewage treatment plants other than secondary treatment plants (e.g. septic tanks); and
- environmentally relevant on-site sewage facilities; and
- greywater treatment plants; and
- any other thing prescribed by regulation as being approved for installation as plumbing or drainage.

Note: this provision does not deal with secondary on-site sewage treatment plants as they are dealt with specifically by clause 85.

The purpose of this clause is to ensure that consumers are not misled about the suitability of a product to be installed as plumbing or drainage. For example, WaterMark products are certified as meeting a number of criteria and standards to ensure they are fit for use in plumbing and drainage work. If a person were to falsely represent a product as a product that had WaterMark certification when it did not, this could adversely impact on consumers.

This new provision has been included in this Act to provide a consistent approach to deter the increase in the use of non-certified products, and to deter retailers and manufacturers from engaging in dishonest conduct.

The maximum penalty for this offence is 100 penalty units.

This offence will complement offences under the *Queensland Building and Construction Act 1991* relating to non-conforming building products. Those offences, impose duties on building supply chain participants to ensure building products used in Queensland are safe and fit for the intended purpose.

## **87 Obstructing Investigator or Inspector**

*Clause 87* is based on section 128T of the repealed *Plumbing and Drainage Act 2002*.

This clause makes it an offence for a person to obstruct (i.e., assault, hinder, resist, attempt to obstruct or threaten to obstruct) an investigator or inspector exercising a power under this Act, unless the person has a reasonable excuse.

The maximum penalty for this offence is 100 penalty units. This maximum penalty better reflects the seriousness of this offence, and is consistent with similar offences under other Acts, such as the QBCC Act, and the *Fair Trading Act 1989*.

## **88 Impersonating Inspector or Investigator**

*Clause 88* is based on section 128U of the repealed *Plumbing and Drainage Act 2002*.

This clause makes it an offence for a person to impersonate an inspector or investigator. There is a maximum penalty of 100 penalty units for this offence, which has increased from 40 penalty units under the previous Act to better reflect the seriousness of the offence.

# **Part 4 Legal proceedings**

## **Division 1 General**

### **89 Proceedings for offences**

*Clause 89* provides that an offence against the Act is a summary offence and, as such, is to be heard in the Magistrates Court. A proceeding for the offence must commence within 2 years of the commission of the offence, or within 1 year of the offence coming to the complainant's knowledge, whichever is the later.

For example, if a person impersonated an investigator and thereby committed an offence under Clause 88, and the complainant became aware that a misrepresentation had been made on that same day, the proceedings would need to commence within two years. However, if the complainant did not become aware that the person had been impersonating an investigator until 3 years later, the proceedings could still begin 1 year after the complaint became aware.

This clause also provides that a statement in a complaint for an offence against the Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

Therefore, if a complainant makes a complaint about an offence against the Act having been committed, and states in their complaint that the information relating to the offence came to their attention on a particular day, that statement will be evidence that the stated day is actually the day the matter of the complaint came to the person's knowledge.

## **90 Who may prosecute**

*Clause 90(1)* specifies that a prosecution for an offence, other than a crime, against the Act may only be started by the chief executive, the commissioner or the local government for the area in which the offence was allegedly committed.

The provision also clarifies that the chief executive, the commissioner or the Attorney-General may authorise a person to start a prosecution for an offence, other than a crime, against the Act.

The purpose of including the words 'other than a crime' in subclause (1) is to clarify that only the Attorney-General, or a person duly authorised by the Attorney-General, may start a prosecution for an offence that is a crime.

This clause has been included to restrict the range of persons who have standing to prosecute offences under this Act.

Subclause 90(2) is an evidentiary provision. It provides a rebuttable presumption that the person who starts the prosecution is authorised to do so.

## **Division 2 Evidence**

### **91 Application of division**

*Clause 91* states that the division applies to proceedings for offences against the Act.

### **92 Appointments and authority**

*Clause 92* is based on section 135 of the repealed *Plumbing and Drainage Act 2002*.

The clause creates two presumptions that may be relied in a proceeding in relation to the matters mentioned in the clause, for an offence against the Act.

*Clause 92(a)* creates a presumption that the chief executive, the commissioner, a member, the assistant commissioner, and investigator or an inspector has been properly appointed.

*Clause 92(b)* creates a presumption that the chief executive, the commissioner, a member, the assistant commissioner, an investigator or an inspector had the requisite authority to perform their duties under the Act at the relevant times.

These presumptions do not apply where a party to the proceeding requires proof of the relevant appointment or authority, and gives reasonable notice of that requirement.

The purpose of this clause is to enhance the efficiency of proceedings while still ensuring that the parties have the opportunity to confirm the authority or appointment of the relevant official if either of those is in doubt.

### **93 Signatures**

*Clause 93 is based on section 136 in the repealed *Plumbing and Drainage Act 2002*.*

It provides that a signature purporting to be the signature of the Minister, the chief executive, the commissioner, a member, the assistant commissioner, an investigator or an inspector is evidence of the signature it purports to be. Therefore, if a document bearing the signature of one of those persons is entered into evidence, it must be accepted that that document was in fact signed by that person.

This clause is intended to enhance the efficiency of proceedings brought under the Act.

### **94 Authentication of council documents**

*Clause 94 is based on section 33Y of the repealed *Plumbing and Drainage Act 2002*.*

It provides that a document made by the Services Trade Council is sufficiently made if the document is signed by the assistant commissioner. This allows the assistant commissioner to sign documents on behalf of the council.

### **95 Other evidentiary aids**

*Clause 95 is based on section 137 of the previous version of the *Plumbing and Drainage Act 2002*.*

*Clause 95(1)* provides that a certificate purporting to be signed by the chief executive, commissioner, chairperson or assistant commissioner stating a matter mentioned in the clause is evidence of the matter. For example, a certificate may state that a licence or an inspector's appointment was or was not in force on a stated day.

*Clause 95(2)* states that a certificate purporting to be signed by the chief executive stating that a document is a copy of, or an extract of, the Plumbing Code of Australia, the Queensland Plumbing Wastewater Code or the Queensland Development Code, is evidence of that matter. This presumption also applies to a certificate signed by the chief executive stating that an edition, version or part of one of those documents was in force at a stated time or period.

The provision does not say the evidence mentioned is conclusive evidence; it is only evidence, and there is nothing to prevent the defendant from challenging it and bringing evidence to the contrary.

### **96 Conduct of representatives**

*Clause 96 is based on section 140 of the repealed *Plumbing and Drainage Act 2002*.*

This clause deals with the relationship of a person (the principal) and their agent (representative). In particular, it deals with how a principal's state of mind about particular conduct may be proven where they have been represented by their agent.

Under clause 96(1), if there is a requirement to prove a principal's state of mind about particular conduct undertaken by the representative on behalf of the principal, it is sufficient to show that conduct engaged in by the representative was undertaken within the representative's actual or apparent authority, and the representative held the relevant state of mind. 'State of mind' is defined in this clause as the person's belief, intention, knowledge, opinion or purpose, and their reasons for belief, intention, opinion or purpose.

Under clause 96(2), conduct engaged in by the representative that is within the scope of their actual or apparent authority is presumed to have been engaged in by their principal.

This presumption is rebutted if the principal could not influence the representative's conduct or, if the principal was in a position to influence the representative's conduct, took reasonable steps to prevent the conduct. For the purpose of this clause *engaging* in conduct includes failing to engage in conduct.

The effect of this clause is that, if a representative of a person is working within the scope of their actual or apparent authority, and they engage in conduct while holding the relevant state of mind, their principal is also taken to have engaged in that conduct while holding the same state of mind.

## **97 Evidential immunity for individuals complying with particular requirements**

*Clause 97 is based on section 33TF of the repealed Plumbing and Drainage Act 2002.*

It is primarily concerned with limited protection against self-incrimination. The clause applies if a person gives the commissioner or an investigator information or a document under clause 48 or clause 180.

Under this provision, evidence derived from the information or a document given under the relevant clauses is not admissible as evidence against the individual in any proceeding to the extent that the information or documents tend to incriminate the individual, or expose the individual to a penalty.

The protection provided by the clause does not extend to a proceeding against the individual in question about the false or misleading nature of the information or anything in the document. In addition, if the individual is a licensee, the immunity does not extend to a proceeding against the licensee for an offence against the Act, or a disciplinary proceeding against the licensee under Part 2, division 10 of the Act.

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## **Division 3            Payment of penalties and fines**

### **98    Payment of particular penalties and fines**

*Clause 98* states who the penalties and fines recovered under his Act should be paid to.

Clause 98(1) provides that the penalties recovered under this Act for proceedings where the complainant is the commissioner, or a person authorised by the commissioner, must be paid to the QBCC.

Clause 98(2) requires a fine recovered because of an infringement notice under this Act, and for which the QBCC is the administering authority, to also be paid to the QBCC.

For this clause *administering authority*, for an infringement notice or infringement notice offence, means the entity prescribed under a regulation as the administering authority for the notice or offence (*State Penalties Enforcement Act 1999, schedule 2*).

## **Part 5                Administration by QBCC**

### **Division 1            Functions of commissioner**

#### **99    Plumbing and drainage functions of commissioner**

*Clause 99* is based on section 32 of the repealed *Plumbing and Drainage Act 2002*.

There is no intention to change the meaning of this provision.

This clause sets out the functions for plumbing and drainage that the commissioner is required to perform, all of which are generally operational in nature. The commissioner's role in relation to plumbing and drainage was established in legislation in November 2014.

The commissioner's functions continue to include administering the licensing scheme for plumbing and drainage, and approving audit programs and auditing licensees to monitor and enforce compliance with the prescribed requirements for notifiable work.

The functions of the commissioner also include performing any other functions relating to plumbing and drainage given to the commissioner under the Act, for example approving forms for use under the Act. The commissioner's functions also include performing any other functions given to the commissioner under the *Queensland Building and Construction Commission Act 1991*.

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## **Division 2      Assistant commissioner**

### **100 Appointment of assistant commissioner**

*Clause 100* is based on section 32A of the repealed *Plumbing and Drainage Act 2002*.

This clause requires the commissioner to appoint a person as assistant commissioner for this Act. The assistant commissioner must be employed under the *Queensland Building and Construction Commission Act 1991*, section 29F.

*Clause 194* ensures that the person who held office as assistant commissioner immediately before the commencement of the new Act, having been appointed to the office under the repealed *Plumbing and Drainage Act 2002*, will continue to hold that office under the new Act, on the same terms and conditions as those that applied to the person before the new Act commenced.

As a result of this provision, the Governor in Council need not reappoint the person as assistant commissioner under the new Act following the commencement of the new Act.

### **101 Functions and powers of assistant commissioner**

*Clause 101* is based on section 32B of the repealed *Plumbing and Drainage Act 2002*.

The clause establishes the role, functions and powers of the assistant commissioner, which are similar to those of the former registrar of the Plumbing Industry Council. It is intended that the assistant commissioner will provide the council with any administrative support it reasonably needs. This support includes arranging meetings of the council and taking minutes at those meetings. The clause gives the assistant commissioner all the powers reasonably necessary to carry out these duties.

### **102 Reports to the council**

*Clause 102* is based on section 32C in the repealed *Plumbing and Drainage Act 2002*.

Clause 102(1) allows the chairperson or 4 members of the council to ask the assistant commissioner to give the council a report about the functions for plumbing and drainage performed by the commissioner under the Act, including the licensing and disciplinary functions performed by the commissioner.

A report may include details of licensing and disciplinary functions performed by the commissioner and any offences under the Act for which the commissioner or an investigator has served an infringement notice.

Under this clause, requests for reports may be made from time to time. Alternately, standing requests may be made for reports to be provided for each meeting of the council. A report that is requested must be given to the chairperson as soon as practicable after the request is made.

The reports will keep the council informed of issues relating to the regulation of the plumbing and drainage trade. The council may use information contained in a report as a basis for making a recommendation to the commissioner about the performance of one or more of the commissioner's functions for the trade, under clause 106(c). If, as a result of a report, the council becomes aware of issues relating to the trade that the council considers the Minister should know about, the council may report to the Minister on the issues, under clause 106(b).

### **103 Representation of council at QCAT proceedings**

*Clause 103 is based on section 32D of the repealed *Plumbing and Drainage Act 2002*.*

The clause deals with the representation of the council at proceedings at QCAT.

After the commissioner has issued a show cause notice to a licensee about a disciplinary matter and has considered the accepted representations about the show cause notice, the commissioner may decide to take disciplinary action against the licensee.

Under section 87 of the QBCC Act, the licensee may make an application to the council for an internal review of the commissioner's decision. If the licensee is not satisfied with the outcome of the council's internal review, the licensee may make an application to QCAT for an external review of the council's decision.

Clause 103(2) allows the assistant commissioner to act on behalf of the council in an external review proceeding before QCAT. The purpose of this provision is to ensure that it is not necessary for each member of the council who made the internal review decision to attend the QCAT proceeding for external review.

### **104 Delegations**

*Clause 104 is based on section 144A(2) of the repealed *Plumbing and Drainage Act 2002*.*

The clause allows the assistant commissioner to delegate the assistant commissioner's functions under the Act to an officer of the QBCC.

However, the clause prohibits the assistant commissioner from delegating their power to delegate. This prohibition ensures that a person to whom a function is delegated under the clause may not delegate the function to another person.

## **Division 3            Service Trades Council**

Subdivision 1 outlines the establishment, function, powers, membership and business of the council.

The council is an independent regulatory body that represents Queensland service trades. It was formed in 2016 to protect public health and safety, and the environment, and to replace the Plumbing Industry Council, whose powers were

transferred to the QBCC in 2014.

## **Subdivision 1 Establishment, functions and powers of the council**

### **105 Establishment**

*Clause 105* provides that the Services Trades Council established under the repealed *Plumbing and Drainage Act 2002*, section 5 continues, and notes that under the QBCC Act, section 6(c), the council constitutes part of the QBCC.

As a part of the QBCC, the council is subject to the guidance and leadership provided by the Queensland Building and Construction Board (QBC board), which is the QBCC's governing body. In addition to providing guidance and leadership, the QBC board decides the strategies and the operational, administrative and financial policies to be followed by the QBCC. It also ensures the QBCC performs its functions and exercises its powers in a proper, effective and efficient way.

### **106 Functions**

*Clause 106* is based on section 6 of the repealed *Plumbing and Drainage Act 2002*, and outlines the functions of the council.

*Clause 106(a)* provides that the council is responsible for conferring on national policy development and implementation for the plumbing and drainage trade.

Under *clause 102*, the council will be able to receive reports about licensing and disciplinary functions performed by the commissioner and also penalty infringement notices served on licensees by the QBCC. The information in the reports will keep the council informed of issues relating to the trade and will therefore assist the council to confer on national policy development.

As a key industry stakeholder, the council will confer regularly with the department, which is responsible for developing strategic policy for the State, and contributing to the development of national policy.

*Clause 102(b)* allows the council to report to the Minister on any issue relating to the trade that the Minister refers to it or the council considers the Minister should know about. The reports mentioned above will assist the council to deal with any issues the Minister refers to it and help to ensure it can report to the Minister on important issues relating to the trade.

*Clause 106(c)* allows the council to make recommendations to the commissioner about the performance of the commissioner's functions under the Act. If, for example, a licensee has received a number of penalty infringement notices for offences committed under the Act, the council might decide to recommend that if the licensee commits another offence the commissioner consider taking disciplinary action in relation to the licensee.

Alternatively, the council might decide to recommend that the commissioner conduct an audit program under *clause 47*, to find out whether licensees have been complying

with the requirement to notify the commissioner when they have completed notifiable work.

*Clause 106(d)* deals with the requirement for the council to establish a panel to assist the commissioner to effectively and efficiently perform the commissioner's functions under part 2, divisions 1 to 7, which relate to licensing for the plumbing and drainage trade.

*Clause 130* requires the council to establish a panel to assist the commissioner to carry out the commissioner's licensing functions.

*Clause 106(e)* allows the council to establish other panels to assist the council to effectively and efficiently perform its functions. For example, the council might decide to establish a panel to conduct research that will assist the council to perform one or more of its functions.

*Clause 106(f)* refers to the council's power, under the *Queensland Building and Construction Commission Act 1991*, to conduct internal reviews of decisions about disciplinary matters made by the QBCC commissioner.

The commissioner makes original decisions on licensing and disciplinary matters for the plumbing and drainage trade.

The QBCC has a contemporary complaints management process for the plumbing and drainage trade. A licensee who is dissatisfied with an original decision made by the commissioner on a licensing matter has two options. They can apply for an internal review of the original decision, which will be undertaken by a senior officer of the QBCC. If dissatisfied with the internal review decision, they can apply for an external review of the internal review decision. Alternatively, they can apply for an external review undertaken by the Queensland Civil and Administrative Tribunal (QCAT) without first applying for an internal review of the original decision.

Under *clause 106(f)*, the council has responsibility for undertaking internal reviews of original decisions about disciplinary matters. This allows a licensee who is not satisfied with an original decision on a disciplinary matter made by the commissioner to apply for an internal review of the decision to be undertaken by the council, or to apply for an external review of the original decision to be undertaken by QCAT, or both. An application for review must be made under section 87 of the *Queensland Building and Construction Commission Act 1991*.

*Clause 106(g)* allows the council to perform other functions relating to the plumbing and drainage trade given to the council under the Act or another Act. Under the *Queensland Building and Construction Commission Act 1991*, the council has the power to conduct internal reviews of decisions about disciplinary matters made by the commissioner under *clause 52*.

At present, the functions of the council revolve primarily around issues relating to the plumbing and drainage trade. It is intended that in the future the council will consider issues relating to other service trades.

## **107 Powers**

*Clause 107* is based on section 7 of the repealed *Plumbing and Drainage Act 2002*.

The clause states that the council has all the powers given to it under the Act or another Act, and the power to do anything reasonably necessary to perform its functions.

Under the *Queensland Building and Construction Act 1991*, the council has the power to conduct internal reviews of decisions about disciplinary matters made by the commissioner under the *clause 52*.

## **108 Delegations**

*Clause 108* is based on section 144A(1) and (3) of repealed *Plumbing and Drainage Act 2002*.

*Clause 108* confers powers of delegation to the council. It allows the council to delegate its functions and powers under the *Plumbing and Drainage Act 2017* to an officer of the QBCC or a panel member.

The new clause expressly prohibits delegation of the council's power to conduct an internal review of a decision made by the commissioner on a disciplinary matter. The reason for the prohibition is that it is considered that the council's role as an internal reviewer is too important to the industry for it to be delegated to a relevant officer of the QBCC or a panel member.

The new clause also prohibits delegation of the power to delegate, ensuring that a person to whom a function is delegated under the clause is not allowed to delegate the function to another person.

## **Subdivision 2 Membership of the council**

### **109 Appointing members**

*Clause 109* is based on section 8 of repealed *Plumbing and Drainage Act 2002*.

Clause 109(1) provides that the council consists of members appointed by the Governor in Council.

Under *clause 109(2)*, the Governor in Council also decides the number of members to be appointed.

However, *clause 109(3)* provides that the membership must consist of a member who will represent consumers, and the assistant commissioner as a representative of the QBCC. It must also include at least one representative of each of the departments and industry entities mentioned in new *clause 109(3)(b)*.

This membership ensures that the council is comprised of a wide range of representatives with the range of expertise and knowledge necessary for the proper functioning of the council.

*Clause 193* ensures that a person who was a member, deputy member or temporary member of the council immediately before the commencement of the Act will continue to be a member, deputy member or temporary member of the council under the Act. As a result of that clause, the Governor in Council need not reappoint each member, deputy member and temporary member of the council as it existed immediately before the commencement of the Act.

### **110 Appointing deputy members**

*Clause 110* is based on section 9 of repealed *Plumbing and Drainage Act 2002*.

*Clause 110* empowers the Governor in Council to appoint a deputy member for each member, whose function is to attend council meetings when the member is unavailable due to absence or disqualification under *clause 112*.

Under *clause 110(2)*, the deputy member must represent the same entity or interest as the member they are acting for.

Under *clause 110(3)*, when attending a meeting, the deputy member has the same duties, powers, protection and rights as the member they are deputy for, but cannot be appointed as a chairperson or deputy chairperson.

*Clause 110* is intended to ensure that the council's operation is not hindered or compromised by the absence of a member.

*Clause 193* ensures that a person who was a deputy member of the council immediately before the commencement of the Act will continue to be a deputy member of the council under the Act. As a result of that clause, the Governor in Council need not reappoint each deputy member of the council.

### **111 Appointing temporary members**

*Clause 111* is based on section 10 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 111(1)* empowers the Minister to appoint a temporary member to fill the position of a member who is absent on approved leave under *clause 119*, if there is no deputy member for the member, or the deputy member for the member is unable to act for the member during the leave of absence.

*Clause 111(2)* provides that a temporary member may not be appointed to act for the chairperson or deputy chairperson under *clause 115* or *116*.

*Clause 111* ensures that even where a deputy member is unavailable, a member's leave of absence will not affect the appropriate composition of the council, and thereby hinder its functioning capacity.

*Clause 193* ensures that a person who was a temporary member of the council immediately before the commencement of the Act will continue to be a temporary

member of the council under the Act. As a result of that clause, the Governor in Council need not reappoint each temporary member of the council.

### **112 Disqualification as member, deputy member or temporary member**

*Clause 112* states the grounds on which a person may be disqualified from becoming or continuing to be a member of the Service Trades Council.

A person is disqualified from being a member, deputy member or temporary member, where they have recorded a conviction (other than a spent conviction) for an indictable offence, or have been convicted of an offence under this Act. A person is not disqualified if their conviction under an indictable offence is not recorded.

A person is also disqualified where they are an insolvent under administration within the meaning of section 9 of the *Corporations Act 2001* (Cth), or where they have been disqualified from managing corporations under part 2D.6 of the same Act.

Additionally, a person who has not consented to the chief executive asking the police commissioner for a report or other information about the person's criminal history, under *clause 120*, cannot become a member, deputy member or temporary member.

This section ensures that all members appointed and serving on the Service Trades Council are fit and proper persons who will uphold the integrity of the council.

### **113 Conditions of appointment**

*Clause 113* is based on section 12 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 113* allows the Governor in Council to decide the remuneration and allowances a member or deputy member is entitled to. The clause also allows the Governor in Council to decide other conditions of a member or deputy member for matters not already provided for by the Act.

### **114 Term of appointment**

*Clause 114* is based on section 13 of the repealed *Plumbing and Drainage Act 2002*. Its wording has been updated to reflect contemporary drafting practice, but there is no intention to change the meaning of this provision.

This clause provides that a member's term of appointment cannot be for more than four years, and that a member's appointment can end during the term of the appointment if they are disqualified under *clause 112*.

### **115 Chairperson**

*Clause 115* is based on section 14 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 115(1)* provides that the chairperson of the council is the member appointed by the Governor in Council as the chairperson.

The section allows the Governor in Council to appoint a person as the chairperson of the council at the same time as they are appointed as a member of the council.

Under the clause, when a person's appointment as a member ends the person's appointment as chairperson also ends.

Clause 193 ensures that the person who was the chairperson of the council immediately before the commencement of the Act will continue to be the chairperson under the Act.

### **116 Deputy chairperson**

*Clause 116* is based on section 15 of the repealed *Plumbing and Drainage Act 2002*.

*Clause 116(1)* provides that the deputy chairperson of the council is the member appointed by the Governor in Council as the deputy chairperson.

Under *clause 116(2)*, a person may be appointed as the deputy chairperson when they are appointed as a member.

Under *clause 116(3)*, the deputy chairperson holds office for the term, ending not later than the person's term of appointment as a member. However, under *clause 116(4)*, if the person stops being a member during the term of office, their appointment as deputy chairperson ends when they stop being a member.

Under *clause 116(5)*, the role of the deputy chairperson is to act as chairperson during a vacancy in the office of chairperson and during periods when the chairperson while the office of chairperson is vacant, and periods when the chairperson is absent from duty.

*Clause 193* ensures that the person who was the deputy chairperson of the council immediately before the commencement of the Act will continue to be the deputy chairperson under the Act.

### **117 Resigning as a member**

*Clause 117* is based on section 16 of the repealed *Plumbing and Drainage Act 2002*.

The clause provides for the resignation from office of a member, deputy member or temporary member. It also provides for the resignation from the roles of chairperson or deputy chairperson.

The clause allows a person holding an appointment to resign by giving a signed notice to the Minister. It also allows a person resigning from the office of chairperson or deputy chairperson to continue to be a member if they wish to do so, or resign from the council entirely.

All resignations take effect on the day the member gives notice, or a later day if one is specified in the notice.

### **118 Vacating office**

*Clause 118* is based on section 17 of the repealed Plumbing and Drainage Act 2002.

*Clause 118(1)* provides that the office of a member, deputy member or temporary member becomes vacant if the member, deputy member or temporary member is disqualified under section 112 or resigns under section 117.

Under *clause 118(2)*, the office of a member also becomes vacant if the member is absent from 3 consecutive council meetings for which appropriate notice was given by the assistant commissioner under section 125, and the member did not obtain the council's permission to be absent or take an approved leave of absence under section 119.

*Clause 118(2)* ensures that all council members are required to regularly attend council meetings and to obtain permission to be absent from 3 or more meetings in a row, or obtain approved leave, if they wish to remain as members of the council.

### **119 Leave of absence for members**

*Clause 119* is based on section 18 of the repealed Plumbing and Drainage Act 2002.

*Clause 119(1)* allows the Minister to approve leave, for a member, for 3 or more meetings.

Under *clause 119(2)*, if the deputy chairperson is absent on approved leave, the Minister may appoint another member to act in the deputy chairperson's office during the deputy chairperson's absence.

*Clause 119(2)* ensures that the council can continue operating in situations where the deputy chairperson is on leave, and the chairperson is absent.

### **120 Criminal history report**

*Clause 120* is based on section 19 of the repealed *Plumbing and Drainage Act 2002*.

Under *clause 120(1)*, if a person is being considered for an appointment as a member of the council, the chief executive may ask the police commissioner for a written report about the person's criminal history, and a brief description of the circumstances of any conviction mentioned in the report.

However, the chief executive may request the information only if the person concerned has given their consent for the request to be made. The requirement for consent ensures that the person in question has the option to refuse to give their consent for the chief executive to request the information. This is appropriate given that the information is highly sensitive personal information. Despite this, under clause 112, the person will be disqualified from becoming a member, deputy member or temporary member if they do not give their consent for the request for information.

Under *clause 120(2)*, if the chief executive makes such a request, the police commissioner must comply with the request to the extent that the information is accessible to the police commissioner or in their possession.

It is intended that information about a person's criminal history will inform the decision about whether the person is a suitable person to be appointed to the council. A definition of 'criminal history' has been inserted in schedule 1. The definition excludes spent convictions. A definition of 'spent conviction' has also been inserted in the dictionary.

Under clause 120(4), the chief executive must destroy any information received under clause 120 as soon as practicable after the information is no longer needed. Clause 120(4) ensures that all members appointed to the council are appropriate for the position, and that any information obtained to help make this determination is not misused.

### **121 Disclosing new convictions**

*Clause 121 is based on section 20 of the repealed Plumbing and Drainage Act 2002.*

It requires a member, deputy member or temporary member of the council who is convicted of an offence during the term of their appointment to immediately give notice of the conviction to the chief executive, unless the person has a reasonable excuse for not doing so.

The intent of this clause is to deter members of the council from failing to disclose a change in their criminal history that could affect their suitability to continue in their office.

Clause 121(4) requires the chief executive to destroy information received under the clause as soon as practicable after the information is no longer needed for the purpose it was given. This reduces the risk that the highly sensitive personal information obtained under this division will be misused or accidentally disclosed.

### **122 Criminal history is confidential**

*Clause 122 is based on section 21 of the repealed Plumbing and Drainage Act 2002.*

Clause 122 imposes restrictions on the disclosure of information about a person's criminal history. Those restrictions are appropriate given that the information is highly sensitive personal information and the fact that inappropriate disclosure of the information could be detrimental to the person.

This clause makes it an offence to disclose criminal history information obtained under clause 120 (which allows the chief executive to ask for a criminal history report about a prospective member) or 121 (which requires a member to disclose new convictions), unless the disclosure is allowed under clause 122(2) of this clause.

The maximum penalty for the offence is 100 penalty units. The purpose of this offence is to deter individuals from inappropriately disclosing highly sensitive personal information.

## **Subdivision 3 Business of the council**

### **123 References to members**

*Clause 123* is an interpretative provision that is based on section 22 of the repealed *Plumbing and Drainage Act 2002*

It provides that, in the division, a reference to a member includes a reference to a deputy member or a temporary member who is acting for a member while the member is absent.

#### **124 Conduct of business**

*Clause 124* is based on section 23 of the repealed *Plumbing and Drainage Act 2002*.

It allows the council to conduct its business as it considers appropriate, subject to the restrictions imposed in the subdivision (subdivision 3).

#### **125 Times and places of meetings**

*Clause 125* is based on section 24 of the repealed *Plumbing and Drainage Act 2002*.

This clause allows the chairperson to set the times and places for meetings of the council. However, the clause requires the chairperson to call a meeting if the chairperson is asked, in writing, by the Minister or at least 4 members, to do so, or the assistant commissioner gives the chairperson notice that an internal review application has been received.

If the chairperson is given notice about an internal review application, a meeting must be held between 5 – 14 business days after the chairperson is given notice. This requirement is intended to ensure that the council deals with internal review applications in a timely manner. Typically, such an application would be made by a licensee if the commissioner has decided to take disciplinary action against the licensee under clause 52 of the Act and the licensee is dissatisfied with the decision. Under section 86C of the QBCC Act, the council has the power to make an internal review decision about the commissioner's decision.

Although the clause requires the chairperson to decide the time and places for meetings of the council, it is the assistant commissioner who gives notice of a meeting to each member of the council. This is because the assistant commissioner has responsibility for helping the council to perform its functions, including by providing the council with administrative support. The assistant commissioner must give each member of the council notice stating when and where each meeting is to be held and the agenda for the meeting. This notice must be given at least 5 business days before the meeting is held.

## **126 Quorum**

*Clause 126* is based on section 25 of the repealed *Plumbing and Drainage Act 2002*. It states that a quorum for a meeting of the council is 4 members.

## **127 Presiding at meetings**

*Clause 127* is based on section 26 of the repealed *Plumbing and Drainage Act 2002*.

This clause requires the chairperson to preside at all meetings where they are present and sets out alternative arrangements that apply when the chairperson is absent.

Ordinarily, the deputy chairperson will preside at meetings where the chairperson is not present. However, if both the chairperson and deputy chairperson are absent or their offices are vacant, the members at the meeting must choose a member to preside at that meeting.

## **128 Conducting meetings**

*Clause 128* is based on section 27 of the repealed *Plumbing and Drainage Act 2002*.

This clause provides for how meetings of the council must be conducted. It determines how decisions of the council may be made, and allows a meeting to be held in person, or via technology that allows the members to hear and participate in the discussions instantaneously.

The provision requires questions raised at a meeting to be decided by majority vote of the members in attendance. Each member in attendance has a vote, and if the votes are equal, the presiding member has a casting vote to decide the outcome. All members participating remotely (for example, via teleconference) under clause 128 (4) are taken to be at the meeting, and therefore their vote is also counted.

If a member in attendance abstains from voting, they are taken to have voted for the negative.

The clause also allows resolutions to be validly made outside of meetings, if notice of the resolution is given in compliance with procedures approved by the council, and a majority of the members agree to the resolution in writing.

## **129 Minutes**

*Clause 129* is based on section 28 of the repealed *Plumbing and Drainage Act 2002*.

This clause requires the council to keep minutes of each meeting and a record of its resolutions. The assistant commissioner is responsible for helping the council perform its functions. It is intended that the assistant commissioner will keep minutes of the council's meetings and records of the council's resolutions.

Clause 129(2) applies if a member votes against the passing of a resolution at a meeting. It requires the council to record the fact that the member voted against the resolution in the minutes of the meeting, if the member asks the council to do so.

### **130 Establishing panels**

*Clause 130 is based on section 29 of the repealed Plumbing and Drainage Act 2002.*

It requires the council to establish a panel and provides for the functions of the panel. Those functions include assisting the commissioner to perform the commissioner's functions under part 2, divisions 1 to 7, which deal with the licensing of individuals.

The key function of the panel is to assist the commissioner to make decisions relating to complex licence applications, for example, applications made by plumbers who have acquired their qualifications and experience overseas. The panel will do so by providing advice and making recommendations to the commissioner.

It is important to note that the role of the panel established under this clause is purely an advisory role. The panel will provide advice and recommendations in relation to particular licensing matters, but the commissioner is not bound to act on the advice or the recommendations. If the panel gives the commissioner advice about a matter, the commissioner must make an independent decision on the matter after taking into account all relevant information, including the advice of the panel.

The clause also allows the council to establish other panels to assist the council to perform its functions effectively and efficiently. The clause will, for example, allow the council to establish panels to conduct research that will assist the council to perform one or more of its functions, such as research on national policy development and on issues relating to the trade that the Minister refers to it.

### **131 Panel members and other matters about panels**

*Clause 131 is based on section 30 of the repealed Plumbing and Drainage Act 2002.*

The clause deals with panel members and other matters about panels. It allows the council to appoint a person to a panel and to decide the terms of reference of a panel. It also allows the council to decide other matters about the panel that are not provided for under the Act. In addition, the clause allows the Governor in Council to decide the fees and allowances of panel members.

### **132 Disclosing interests**

*Clause 132 is based on section 31 of the repealed Plumbing and Drainage Act 2002.*

This clause is intended to ensure a member of the council (or a deputy member or temporary member who is acting for a member), or a panel member, who has a conflict of interest in relation to a decision can be excluded from the decision-making process. It does so by requiring the person to disclose the conflict of interest at a council or panel meeting, and prohibiting the person from taking part in a decision about the issue giving rise to the conflict of interest, unless the council or panel otherwise directs.

## **Part 6            Role of local governments**

### **Division 1        Preliminary**

#### **133 Local laws and local planning instruments**

*Clause 133 is based on subsections 3(2) and (3) of the Standard Plumbing and Drainage Regulation 2003.*

The clause provides that the Act does not exclude or limit the making of a local law or planning instrument about plumbing or drainage work, to the extent that it is not inconsistent with the Act.

The note at the end of clause 133(1) is intended to inform the reader of provisions in the *City of Brisbane Act 2010* and the *Local Government Act 2009* that provide that if there is any inconsistency between a local law and a law made by the State, including a law in the new Act, the law made by the State prevails to the extent of the inconsistency.

### **Division 2        Administrative matters**

#### **134 Administration by local governments and other entities**

*Clause 134 is based on section 89 of the repealed Plumbing and Drainage Act 2002. That section required each local government to administer the Standard Plumbing and Drainage Regulation 2003 for its area.*

Clause 134 requires local governments to administer the Act within their own local government areas. However, this requirement does not extend to an area within a local government area that is under the control of another entity (a *special administration area*). The responsibility to administer the Act within a special administration area is imposed on the entity that has control of the area.

However, under clause 134, a local government may administer the Act for an area it does not control, either within or next to its local government area, if the controlling entity for that area asks the local government to do so.

#### **135 Monitoring particular greywater use facilities**

*Clause 135 is based on section 143B of the repealed Plumbing and Drainage Act 2002.*

The clause allows a regulation to prescribe the types of greywater use facilities that local governments must monitor.

A local government must monitor each greywater use facility that is prescribed, to ensure the facility is operated in accordance with the permit for the installation of the facility and any conditions of the permit, and that the facility is not adversely affecting public health or safety, or the environment.

### **136 Monitoring particular on-site sewage facilities**

*Clause 136* is based on section 143C of the repealed *Plumbing and Drainage Act 2002*.

The clause allows a regulation to prescribe the types of on-site sewerage facilities that local governments must monitor.

A local government must monitor each greywater use facility that is prescribed, to ensure the facility is operated in accordance with permit for the installation of the facility and any conditions of the permit, and that the facility is not adversely affecting public health or safety, or the environment.

### **137 Local government to have regard to particular guidelines**

*Clause 137* provides that local governments must have regard to the guidelines made by the department under clause 188 when administering this Act.

For example, the department may publish guidelines about how local governments are to administer particular aspects of the plumbing and drainage laws in their local government areas.

The purpose of this provision is to facilitate greater consistency in decision making across local governments.

Local governments will be required to apply the interpretation outlined in the guideline in making a decision under the Act. If they do not, and the decision is appealed, it is expected that the decision maker for the appeal will also have regard to the guideline when deciding the appeal.

## **Division 3 Plumbing and drainage inspectors**

### **138 Appointment and qualifications**

*Clause 138* is based on section 107(1) of the repealed *Plumbing and Drainage Act 2002*.

The clause allows each local government to appoint an authorised person to be an inspector if satisfied the person has the qualifications and experience prescribed by regulation.

An inspector holds their office subject to the conditions specified in the inspector's instrument of appointment.

For clause 138, the term 'authorised person' is defined as:

- for the Brisbane City Council, a person who is appointed under the *City of Brisbane Act 2010* to ensure members of the public comply with the local government related laws; or
- for another local government area, person who is appointed under the *Local Government Act 2009* to ensure that members of the public comply with the Local Government Acts.

### **139 Functions of inspectors**

*Clause 139* is based on section 114 of the repealed *Plumbing and Drainage Act 2002*.

The clause states that the function of a plumbing and drainage inspector is to conduct investigations and inspections for monitoring and enforcing compliance with the *Plumbing and Drainage Act 2017*, the *Planning Act 2016*, *Local Government Act 2009*, and *City of Brisbane Act 2010*, to the extent that those Acts relate to plumbing and drainage on premises.

### **140 Inspector to have regard to particular guidelines**

*Clause 140* requires plumbing inspectors to have regard to the guidelines made under clause 188 that are relevant to performing their functions. It is intended the guidelines will facilitate a higher degree of consistency in the processes followed by inspectors across local governments and special administration areas when carrying out their inspection functions.

For example, the department may publish a guideline, for plumbing inspectors to follow, stating how a particular aspect of the code requirements is to be interpreted by inspectors in carrying out inspections of plumbing and drainage work, to encourage consistency across the state.

Inspectors will be required to apply the interpretation outlined in the guideline in making a decision under the Act. If they do not, and the decision is appealed to a tribunal under the *Planning Act 2016*, tribunal members will be expected to have regard to the guideline when deciding the appeal against the inspector's decision. This may result in the original decision being overturned in favour of an interpretation that is consistent with the guideline.

### **141 Advising commissioner of appointment of inspectors**

*Clause 141* is based on section 107(2) of the repealed *Plumbing and Drainage Act 2002*.

The clause requires local governments to advise the commissioner each time they appoint an inspector. In addition, each year, each local government must give the commissioner an up to date list of its inspectors as at 1 July. The list must be given to the commissioner within 20 business days after that day. This ensures that the commissioner has a current record of all inspectors who undertake functions under the Act.

## **Division 4            Enforcement by local governments**

### **142 When enforcement notice may be given**

*Clause 142* is based on aspects of section 116 of the repealed *Plumbing and Drainage Act 2002*.

Clause 142(1) provides that a local government may issue an enforcement notice to a person who carried out plumbing or drainage work where the local government has formed a reasonable belief that the plumbing and drainage work does not comply with the Act, and in particular, the code requirements. Such a belief may be formed following an inspection of permit work or an audit of notifiable work.

The power mentioned in clause 142(1) is in addition to the power to issue action notices under the regulation. A local government is not required to issue a show cause notice prior to issuing an action notice. This can be contrasted with enforcement notices, where as a show cause notice may be required.

Clause 142(2) allows a local government to issue an enforcement notice to the owner of premises requiring the owner to take action mentioned in the notice if the local government reasonably believes that plumbing or drainage on the premises:

- constitutes a danger or health risk to occupiers of the premises or the general public;
- is defective and should be altered, repaired or replaced; or
- has insufficient capacity to cope with the sewerage or greywater generated on the premises; or
- is in a condition that unreasonably interferes, or is likely to interfere, with the use or enjoyment of neighbouring premises, through overflows or odours and the like; or
- if the plumbing or drainage is the result of permit work, the plumbing or drainage was installed without first obtaining a permit from the local government, or if a permit was obtained, the plumbing or drainage was installed without complying with the permit.

Also, an enforcement notice may be issued to the owner of premises that is not in a seweraged area if the absence of an on-site sewerage and drainage facility on the premises poses a danger or health risk to occupiers and the public.

In addition, a local government may issue an enforcement notice to the owner of premises if the owner has contravened an offence in part 3, division 3, 4 or 5 of the Act.

Finally, clause 142(3) allows a local government to issue an enforcement notice to the owner of premises requiring the owner to take the action mentioned in the notice if the local government reasonably believes that plumbing on the premises has polluted or could be polluting:

- the water supply of the premises; or
- a water service provider's water service.

The purpose of clause 142 is to ensure that plumbing or drainage that poses a risk to public health or safety, or the environment, is dealt with appropriately. This purpose is achieved by providing local governments with powers to take action where they become aware of risks posed. This power is necessary for local governments to administer the Act in their local areas.

To ensure that these powers are used appropriately particular restrictions apply in relation to the use of these powers. See clause 143 (Show cause notice).

### **143 Show cause notice**

*Clause 143 is based on section 115 of the repealed *Plumbing and Drainage Act 2002*.*

Clause 143 requires a local government to issue a show cause notice before giving a person an enforcement notice under clause 142, unless the notice relates to plumbing or drainage that the local government believes on reasonable grounds to be a danger to persons or a risk to public health.

The purpose of this requirement is to provide the recipient of a notice with natural justice. Under the clause, a show cause notice must outline the facts and circumstances forming the basis for the belief that an enforcement notice should be issued, and invite the recipient of the notice to make a written submission giving reasons why the local government should not give the person an enforcement notice.

The show cause notice must state the timeframe for making a submission and how to make a submission. The period allowed for making a submission must be at least 20 business days from when the show cause notice is given.

As mentioned above, no show cause notice is required if the proposed enforcement notice relates to plumbing or drainage that is a danger to persons or a risk to public health. This exception allows the local government to give the enforcement notice to the relevant person without first having to:

- give the person a show cause notice; and
- wait at least 20 business days for the person to make a submission; and

- consider the submission before giving the person the enforcement notice.

The exception allows local governments to ensure that public health and safety and the environment are not harmed in the additional time required for completing the show cause notice process.

#### **144 Use of enforcement notice**

*Clause 144 is based on aspects of sections 116 and 117 of the repealed *Plumbing and Drainage Act 2002*.*

The purpose of clause 144 is to provide some guidance to local government as to the types of action that may be required of the recipient of an enforcement notice. To that end, clause 144(1) provides that without limiting what may be required of a person under an enforcement notice, local governments may issue enforcement notices that require a person to:

- apply for a permit;
- do, or not do, a stated thing to ensure plumbing or drainage work complies with the Act or a permit; or
- alter, repair or replace plumbing or drainage.

Clause 144(1) also provides that an enforcement notice about plumbing polluting the water supply in premises or a water service, may require a person to:

- install a backflow prevention device; or
- register a backflow prevention device that is required to be registered under a regulation; or
- have a backflow prevention device inspected, tested and, if necessary, repaired or replaced by a licensee for the work.

Clause 144(2) provides that if the local government reasonably believes that it is not possible or practical to make plumbing or drainage the result of plumbing or drainage work comply with the code requirements, a permit for the work or any conditions of a permit for the work, or to remove a danger to persons or a risk to public health posed by the work, the enforcement notice may require all or part of the plumbing or drainage to be removed.

Under clause 144(3), an enforcement notice that requires plumbing or drainage work on premises to stop being carried out may be given by fixing it to the premises in a way that a person entering the premises would normally see the notice. For example, the notice may be taped to the front door or gate for premises, ensuring the notice will be seen by the relevant individuals before further work is undertaken.

## **145 Requirements for enforcement notice**

The purpose of clause 145(1) is to ensure that certain minimum requirements are met by local governments when they issue enforcement notices. The requirements in clause 145(1) are intended to ensure a recipient of an enforcement notice is advised why the notice has been issued, the action they are required to take and by when the action must be taken. The requirements are also intended to ensure the recipients is made aware of their right to appeal against a decision to issue the enforcement notice, under the *Planning Act 2016*.

The purpose of clause 145(2) is to ensure local governments meet the requirements relating to show cause notices under clause 143, if they are applicable, and consider all submissions made in compliance with a show cause notice if such a notice was required to be issued before an enforcement notice was issued, under clause 143. To this end, the provision makes it clear that an enforcement notice will be of no effect if the local government was required, under clause 143, to issue a show cause notice, but:

- the local government did not give a show cause notice to the recipient of an enforcement notice before giving the person the enforcement notice; or
- if a show cause notice was given to the person - the local government did not consider all submission made to it by the person.

The second limb of this provision puts the onus on local government to demonstrate that it has fully considered all submissions put to it by the recipient of a show cause notice before issuing an enforcement notice.

## **146 Contravening, or tampering with, enforcement notice**

*Clause 146(1)* provides that a person must not contravene an enforcement notice. The maximum penalty for this offence is 250 penalty units. This amount is consistent with the highest penalties under the Act. It aligns contravention of an enforcement notice with other serious offences that involve acting outside of the plumbing and drainage framework, including for example, carrying out work without a licence and offences that have the potential to pose a risk to public health and safety.

*Clause 146(2)* prohibits persons from dealing with an enforcement notice fixed to premises in a way that is reasonably likely to prevent the person who was given the notice from seeing it. The maximum penalty for this offence is 250 penalty units. This clause has been included in response to reports of individuals intentionally removing enforcement notices and thereby interfering with the relevant person's ability to comply with the enforcement notice. This could result in a significant risk to public health and safety, and the environment and this is why the penalty has been aligned with other offences dealing with health and safety issues.

## **147 Application for permit in response to show cause or enforcement notice**

*Clause 147* is a new provision that is based on section 172 of the *Planning Act 2016*.

The clause provides that, if a person applies for a permit in response to a show cause notice or in compliance with an enforcement notice, they must not withdraw the application. The maximum penalty for contravening this provision is 250 penalty units. Withdrawing an application made in response to an enforcement notice would be tantamount to refusing to comply with the enforcement notice.

The person must also take all necessary and reasonable steps to enable the application to be decided as soon as practicable, unless the person has a reasonable excuse. Those steps might include quickly providing the local government with any further information about the application that the local government has requested. The maximum penalty for this offence is 250 penalty units.

After the application is decided, if the person appeals the decision, they must take reasonable steps to enable the appeal to be decided as soon as practicable, unless the person has a reasonable excuse. Those steps might include filing an application for an appeal quickly, rather than waiting until the last day of the appeal period to file an application. The maximum penalty for this offence is also 250 penalty units.

This clause is intended to ensure that if a permit is required to carry out plumbing or drainage work to address issues with plumbing or drainage work identified in a show cause notice or an enforcement notice, and the person who receives the notice applies for the permit, the person will not:

- withdraw the application, and by doing so, indirectly contravene the enforcement notice; or
- delay or inhibit the assessment of the application by, for example, refusing to provide information required by the local government in order to assess the application.

The clause is also intended to ensure that if the person appeals the decision on the application, the person will not delay or inhibit the appeal by, for example, refusing to provide information required to decide the appeal.

#### **148 Administering entity may remedy contravention**

*Clause 148* is a new provision that is based on section 173 of the *Planning Act 2016*.

Clause 148 applies if a person contravenes an enforcement notice given by an administering entity, as defined in clause 11(1)(a). The clause allows an administering entity to take action to remedy the contravention.

The administering entity may do anything reasonably necessary to ensure the enforcement notice is complied with. The authority may also recover any reasonable costs and expenses incurred as a debt owed by the person to the authority.

An administering entity is an entity that is not a local government, but is responsible for administering the Act within an area. Therefore, this provision does not apply to cases where the enforcement notice was issued by a local government.

If an enforcement notice given by a local government is contravened, section 132 of the *City of Brisbane Act 2010* or section 142 of the *Local Government Act 2009*, will apply instead. These provisions allow local governments to enter premises, undertake necessary work and recover the cost of the work from the owner of the premises.

#### **149 Action notices**

*Clause 149* allows a regulation to provide for circumstances in which a local government, or local government inspector, may give an 'action notice' to the responsible person for plumbing or drainage work, requiring the responsible person to take action of the type prescribed in the regulation.

Local governments have powers under the 132(1)(d) of the *Local Government Act 2009* and section 121 the *City of Brisbane Act 2010* to inspect work the subject of a permit.

It is proposed that a regulation made under the Act will require the responsible person for work that is the subject of a permit (permit work, notifiable work, or a combination of both) to contact the relevant local government to arrange for the work to be inspected, at various stages of completion of the work.

It is intended that the regulation will allow an inspector to give the responsible person for the work an inspection certificate, or a final inspection certificate, stating the work is compliant, within the meaning of the regulation, if inspector is indeed satisfied that the work is compliant. Work will only be compliant if it complies with the code requirements and satisfies other elements of the definition of 'compliant' included in the regulation.

However, if the inspector is not satisfied that all of the work is compliant, it is proposed that the inspector will be required to give the responsible person an action notice that will require the responsible person to take action required to satisfy the inspector that the work is compliant. Such action may include:

- carrying out work to rectify defective work; or
- asking the local government to re-inspect the work; or
- making a declaration, in the approved form, declaring that work that is covered is compliant; or
- giving the inspector information about the products used in the work; or
- requesting an amended permit, if the work differs substantially from the plan that accompanied the permit.

#### **150 Stay of enforcement notice or action notice**

*Clause 150* is based on section 171 *Planning Act 2016*.

The clause states that lodging an appeal against an enforcement notice or action notice stays (or halts) the operation of the notice until the tribunal or court hearing the appeal decides otherwise, or the appeal is dismissed or ended by the applicant withdrawing their application for the appeal. As a consequence, the notice need not be complied with until the tribunal or court hearing the appeal decides the operation of the notice is continued, or the appeal is dismissed or otherwise ended.

However, under clause 150(2) and (3), if an enforcement notice is about plumbing or drainage work that a local government reasonably believes to be a danger to persons or a risk to public health, the lodging of an appeal will not stay the operation of the enforcement notice. As a result, the enforcement notice must be complied with regardless of the appeal.

The purpose of this exclusion is to ensure that the public remains protected against health hazards while proceedings are ongoing.

## **Part 7            Investigators**

### **Division 1        General provisions about investigators**

#### **Subdivision 1   Appointment**

##### **151 Investigators**

*Clause 151* states that part 7 includes provision for the appointment of investigators, and gives investigators particular powers.

##### **152 Functions of investigators**

*Clause 152* states the functions of investigators. Those functions are to help the commission deal with issues about compliance with the Act in relation to licensing, and to monitor and enforce compliance with the Act.

##### **153 Investigator to have regard to particular guidelines**

*Clause 153* provides that when performing a function as an investigator, an investigator must have regard to any guidelines that are relevant to performing that function. The guidelines referred to are guidelines that may be made by the chief executive under clause 188(1) and (2)(f). It is intended that the guidelines will help investigators perform their functions.

For further information about the ways in which the guidelines may assist investigators in performing their functions, see the explanatory notes for clause 188.

##### **154 Appointment and qualifications**

*Clause 154* is based on section 33A of the repealed *Plumbing and Drainage Act 2002*.

The clause empowers the commissioner to appoint a QBCC officer as an investigator. The appointment must be made by instrument in writing. However, an appointment may only be made if the commissioner is satisfied that the officer is suitably qualified.

It is intended that the commissioner will appoint as investigators officers who have the technical expertise required to inspect and assess plumbing and drainage work, and the qualifications and experience to carry out the administrative aspects of an investigators role.

### **155 Appointment conditions and limit on powers**

*Clause 155* is based on section 33C of the repealed *Plumbing and Drainage Act 2002*.

The clause allows the commissioner to impose conditions on an investigator's appointment, constraining the investigator's powers. The conditions may be stated in the investigator's instrument of appointment, or in a signed notice from the commissioner that is given to the investigator. In addition, conditions may be imposed on the appointment of investigators generally, by regulation.

In addition, an investigator's appointment may be limited by a statement in the investigator's instrument of appointment, a signed notice from the commissioner that is given to the investigator or a regulation.

### **156 When office ends**

*Clause 156* is based on section 33F of the repealed *Plumbing and Drainage Act 2002*.

This clause specifies a non-exhaustive list of circumstances under which an investigator may cease to hold office.

The clause does not limit the ways in which an investigator may cease to hold office.

### **157 Resignation**

*Clause 157* is based on section 33G of the repealed *Plumbing and Drainage Act 2002*.

This clause allows an investigator to resign by giving the commissioner a notice of resignation signed by the investigator.

## **Subdivision 2 Identity cards**

### **158 Issue of identity card**

*Clause 158* is based on section 33D of the repealed *Plumbing and Drainage Act 2002*.

This clause provides that the commissioner must give each investigator an identity card that identifies the person as an investigator under the Act, specifies an expiry date, and contains a recent photo and the signature of the investigator. The clause allows for a single identity card to be issued for the Act and for other purposes, such as for identifying an investigator for another Act. That is, an investigator could hold a single identity card to identify them as an inspector under the Act, and as an inspector under another Act they have been appointed under.

This clause is intended to ensure that each investigator has an identity card that enables the public and other officials to easily confirm the investigator's appointment.

### **159 Production or display of identity card**

*Clause 159 is based on section 33E of the repealed *Plumbing and Drainage Act 2002*.*

The clause provides that an investigator may exercise a power in relation to a person only if the investigator first produces his or her identity card, or has the identity card clearly displayed so the card is clearly visible to the person when the power is exercised.

The clause provides that, if it is not practicable to comply with these requirements, the investigator must show the person their identity card at the first reasonable opportunity.

The clause ensures that if an investigator exercises a power in a way that affects a person, that person will have access to the investigator's identity card, confirming the investigator's name and their appointment.

### **160 Return of identity card**

*Clause 160 is based on section 33H of the repealed *Plumbing and Drainage Act 2002*.*

This clause applies if the office of an investigator comes to an end. It provides that, unless the person has a reasonable excuse, the person must return their identity card to the commissioner within 21 days after their office ends. Failure to do so will make the person liable to a maximum penalty of 10 penalty units.

The purpose of this clause is to reduce the chances of a person who has held, but no longer holds, office as an investigator fraudulently using their identity card after they have ceased to be an investigator to assist them to exercise powers as though they were still an investigator.

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## **Subdivision 3            Miscellaneous provisions**

### **161 References to exercise of powers**

*Clause 161* is an interpretation provision that deals with a provision in part 7 that refers to an exercise of a power by an investigator but does not refer to a specific power. Under the clause, the reference in part 7 should be read to be an exercise of all or any of the investigator's powers under part 7 or a warrant, to the extent to which the powers are relevant.

### **162 Reference to document includes reference to reproductions from electronic document**

*Clause 162* deals with the interpretation of references in part 7 to documents. It provides that if a reference is made to a document that reference includes a reference to an image in writing that is produced from an electronic document, or reasonably capable of being produced from an electronic document, with or without the aid of another article or device.

For example, a reference to a document could include a reference to a text file on a computer that has not yet been printed out.

## **Division 2            Entry of places by investigators**

Division 2 is based on part 2, division 6, subdivision 2 of the repealed *Plumbing and Drainage Act 2002*.

### **Subdivision 1    Power to enter**

#### **163 General power to enter places**

*Clause 163* is based on section 331 of the repealed *Plumbing and Drainage Act 2002*.

The clause states the conditions under which investigators have the power to enter places in order to exercise their functions under the Act. The clause gives an investigator the power to enter a place with the occupier's consent, by warrant, or, if the place is a public place, during its ordinary open hours. If the investigator enters a place by consent or by warrant, they must comply with clause 166, which requires the investigator to tell the occupier a number of matters.

If the investigator has only been able to enter the premises because they have obtained the consent of the occupier, that power to enter is limited by any conditions of entry imposed by the occupier. The occupier also has the right to withdraw consent at any time, at which point the investigator must leave the place. Further requirements for obtaining consent are contained in subdivision 2.

Similarly, if entry is authorised only by warrant, the power is limited by the terms of the warrant.

The purpose of this clause is to ensure that inspectors enter private premises only to the extent that is authorised by the informed consent of the occupier or a warrant.

## **Subdivision 2 Entry by consent**

### **164 Application of subdivision**

*Clause 164* states that subdivision 2 applies if an investigator intends to ask the occupier of a place for consent to the investigator, or another investigator, entering the place under clause 163(1)(a).

### **165 Incidental entry to ask for access**

*Clause 165* gives the investigator a limited power to enter land around or on parts of a place reasonably necessary to contact the owner for the purpose of obtaining consent to enter.

More specifically, the investigator may enter land around the premises to an extent that is reasonable to contact the occupier, or enter part of the place the investigator reasonably considers members of the public are ordinarily allowed to enter when they wish to contact the occupier, for example, the driveway or front door of the premises.

### **166 Matters investigator must tell occupier**

*Clause 166* is based on section 33J of the repealed *Plumbing and Drainage Act 2002*.

The clause imposes a number of requirements on an investigator who proposes to ask the occupier of a place for consent to enter the place. Before asking for the consent, the investigator must inform the occupier of the purpose for which entry is required and the powers to be exercised, and that the occupier has the option to refuse consent. The investigator must also tell the occupier that consent may be given subject to conditions, and may be withdrawn at any time.

The clause is intended to ensure the occupier does not incorrectly assume they are obliged to give consent to the investigator's proposed entry.

### **167 Consent acknowledgment**

*Clause 167* provides a mechanism for obtaining proof that consent to enter a place was given.

Under clause 167(1), if an investigator has asked an occupier of premises for consent to a proposal to enter the premises, and the occupier has given verbal consent to the proposal, the investigator may ask the occupier to sign an acknowledgment of the consent.

Clause 167(2) states the requirements that an acknowledgement must satisfy in order to be valid.

Under clause 167(3), if the acknowledgement is signed, the investigator must immediately give the occupier a copy of it.

This acknowledgement is an important evidentiary tool that may be entered into evidence as proof that consent was obtained, if an issue arises in a proceeding about whether the occupier consented to the entry.

Clause 167(4) provides that, in the absence of an acknowledgement, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented to the entry.

This provision is intended to ensure that consent to enter private property is properly obtained and documented, and can serve as proof that consent was obtained in any relevant court proceedings about the entry.

### **Subdivision 3 Entry under warrant**

#### **168 Application for warrant**

*Clause 168 is based on section 33K of the repealed Plumbing and Drainage Act 2002.*

The clause deals with an application for a warrant to enter a place. Ordinarily, a warrant to enter a place would only be required where it is not possible to obtain consent to the entry.

Under the clause, the investigator must prepare a written application stating the grounds on which the warrant is sought. The application must be sworn.

The clause allows the magistrate to refuse to consider the application until the investigator provides all the information that the magistrate requires in order to decide the application. The information must be given in the way the magistrate requires.

#### **169 Issue of warrant**

*Clause 169 is based on section 33L of the repealed Plumbing and Drainage Act 2002.*

Clause 169(1) allows the magistrate to issue a warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is at the place a particular thing or activity that may provide evidence of an offence against the Act, or such a thing or activity will be at the place within the next 7 days.

Clause 169(2) lists the information that must be contained in the warrant.

#### **170 Electronic application**

*Clause 170 is based on section 33M of the repealed Plumbing and Drainage Act 2002.*

The clause allows an investigator to apply for a warrant, using various forms of electronic communication, where the investigator reasonably considers it is necessary to do so due to the need to make the application urgently or other special circumstances, such as the fact that the investigator is in a remote location.

Under the clause 170(2), before submitting the electronic application, the investigator must prepare a written application stating the grounds on which the warrant is sought under clause 168(2). However, the electronic application may be submitted before the written application is sworn.

Further requirements for electronic applications are stated in clause 171.

### **171 Additional procedure if electronic application**

*Clause 171* states the requirements that must be met before a magistrate may issue a warrant in response to an electronic application. It requires the magistrate to be satisfied that it was necessary to make the application electronically and that the way the application was made was appropriate.

The clause also describes the procedures that must be followed if a warrant is issued in response to an electronic application. After the original warrant is issued, the magistrate must immediately give a copy of the warrant to the investigator if it is reasonably practicable to do so. The copy may be given by sending a copy by fax or email, for example. However, if it is not practicable to immediately send a copy to the investigator, the investigator must complete a form of warrant. In order to do this, the magistrate must inform the investigator of the date and time the warrant was issued and the other terms of the warrant listed in clause 169(2). The investigator must then record that information on the form of warrant. The copy of the warrant, or the form of warrant serves as a duplicate warrant, and is as effective as the original warrant.

The investigator must send the sworn written application and, if relevant, the completed form of warrant, to the magistrate at the first reasonable opportunity. The magistrate must attach the sworn application and the form of warrant to the original warrant and give the documents to the clerk of the relevant magistrate's court.

If an issue arises in a proceeding about whether an exercise of a power (for example, an entry to a place) was authorised by a warrant, and the original warrant is not produced in evidence in court, the person asserting the lawfulness of the exercise of power of entry bears the onus of proving that it was authorised by a warrant.

This clause does not limit the requirements of clause 168 (Application for warrant).

### **172 Defect in relation to a warrant**

*Clause 172* is based on section 33N of the repealed *Plumbing and Drainage Act 2002*.

The clause provides that a warrant is not invalidated by a defect in the warrant, unless the defect affects the substance of the warrant in a material particular. Similarly, a warrant is not invalidated if there is a defect with compliance with subdivision 3, unless the defect affects the substance of the warrant in a material particular.

The clause is intended to ensure that evidence collected under a warrant that has a minor technical error is not rendered inadmissible as evidence in a proceeding.

The clause is also intended to ensure that a failure to strictly comply with subdivision 3 in relation to obtaining the warrant will not invalidate the warrant, and make any evidence obtained by use of the warrant inadmissible, unless the failure affects the substance of the warrant in a material particular.

### **173 Entry procedure**

*Clause 173* is based on section 33O of the repealed *Plumbing and Drainage Act 2002*.

The clause provides for the things an investigator with a warrant to enter a place must do, or make a reasonable attempt to do, before entering the place. The investigator must identify himself or herself to an occupier of the place by showing the investigator's identity card or another document evidencing their appointment, give the person a copy of the warrant, tell the person that the investigator is permitted by the warrant to enter the place, and give the person an opportunity to allow the investigator immediate entry to the place without using force.

The investigator is not required to comply with this procedure where the investigator believes on reasonable grounds that immediate entry to the place is necessary to ensure the effective execution of the warrant is not frustrated, for example, where the investigator has reason to believe evidence is being, or may soon be, destroyed.

## **Division 3      Investigators' powers and related matters**

### **Subdivision 1    General power of investigators after entering places**

#### **174 Application of subdivision**

*Clause 174* is an application provision for subdivision 1. It states that an investigator may exercise a power under the subdivision if they enter a place:

- under clause 163(1)(a), which allows an investigator to enter a place with an occupier's consent if the requirements of clause 166 (Matters investigator must tell occupier) have been satisfied; or
- under clause 163(1)(c), which allows an investigator to enter a place if the entry is authorised by a warrant, and the requirements of clause 166, if relevant, have been satisfied.

The powers under subdivision 1 are subject to the conditions of the consent or warrant.

#### **175 General powers**

*Clause 175* is based on section 33P of the repealed *Plumbing and Drainage Act 2002*.

The clause specifies what an investigator may do after gaining authorised access to a place. Each of the activities mentioned in clause 175(1)(a) to (h) is defined as a general power.

Under clause 175(2), an investigator has the power to take a necessary step to allow the exercise of a general power.

Under clause 175(3), if the investigator removes a document to copy it, the investigator must copy the document and return it as soon as practicable.

Under clause 175(4), if the investigator removes from the place an article or device reasonably capable of producing a document from an electronic document in order to produce the document, for example a laptop, the investigator must return the article or device as soon as practicable after producing the document, for example, by printing the document.

### **176 Power to require reasonable help**

*Clause 176 is based on section 33Q in the repealed Plumbing and Drainage Act 2002.*

The clause gives an investigator the power to require the occupier of the place, or a person at the place, to give the investigator reasonable help to exercise a general power under clause 175. The reasonable help required might include, for example, giving the investigator a document or other information. Other examples of help required include finding a document in an office or opening a safe or locked drawer.

Clause 176(2) requires an investigator making a help requirement of a person, to warn the person that, under clause 177, it is an offence to fail to comply with the request for help.

### **177 Offence to contravene help requirement**

*Clause 177 requires a person of whom a help requirement has been made under clause 176 to comply with the requirement, unless they have a reasonable excuse.*

If the person is an individual, it is a reasonable excuse for the individual not to provide the reasonable help required if doing so might incriminate the individual or expose the individual to a penalty. The clause provides the individual with protection against self-incrimination.

The maximum penalty for failing to comply with a help requirement is 40 penalty units.

## **Subdivision 2 Other information-obtaining powers of investigators**

### **178 Power to require name and address**

*Clause 178 is based on section 33R in the repealed Plumbing and Drainage Act 2002.*

The clause specifies the circumstances in which an investigator may require a person to state the person's name and residential address. This request is called a 'personal details requirement'.

Under clause 178(1), the power to make a personal details requirement may be used where the investigator finds the person committing an offence against the Act, or finds them in circumstances that lead the investigator to reasonably suspect the person has just committed an offence under the Act. The investigator may also exercise the power where they have information that raises a reasonable suspicion that the person has just committed such an offence.

Under clause 178(3), the investigator may also require the person to produce evidence of the person's name or address where it would be reasonable expect the person to have the evidence available.

When imposing a requirement under this clause, the investigator must warn the person that, under clause 179, it is an offence to not comply with the requirement.

### **179 Offence to contravene personal details requirement**

*Clause 179 is based on section 33T of the repealed *Plumbing and Drainage Act 2002*.*

The clause makes it an offence for a person to fail to comply with a personal details requirement made of them under clause 178, unless they have a reasonable excuse.

The maximum penalty for this offence is 40 penalty units.

The clause includes a restriction that will ensure a person may only be convicted of the offence under this clause if they are also found guilty of the offence for which the personal details requirement was made.

### **180 Power to require production of document**

*Clause 180 is based on section 33S in the repealed *Plumbing and Drainage Act 2002*.*

The clause gives an investigator the power to require a person to produce, or make available, to the investigator at a reasonable time and place, a document that the person has received under the Act.

Under clause 180(3), if the document is in an electronic document, the person must produce or make available a clear written reproduction of the document, for example, by providing a printed copy.

Under clause 180(4), once the document is produced or made available, the investigator may keep the document in order to make a copy of it.

Under clause 180(5), if the investigator copies the document, or an entry in the document, the investigator may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry. This requirement would be made for evidentiary purposes.

Under *clause 180(7)*, after copying the document, or an entry in the document, the investigator must return the document as soon as practicable, unless the investigator requires the copy to be certified, in which case the investigator may keep the document until the certification has been provided and then return it.

### **181 Offence to contravene document production requirement**

*Clause 181(1)* makes it an offence for a person to fail to comply with a document production requirement made of the person under clause 180 unless the person has a reasonable excuse.

The fact that complying with a document production requirement might tend to incriminate the person, or expose them to a penalty, is not a reasonable excuse for non-compliance. Therefore, the person must produce the document, and rely on the evidentiary immunity provided by clause 97.

Under *clause 181(3)*, the investigator must inform the person, in a reasonable way.

The maximum penalty for failure to comply with this provision is 40 penalty units.

### **182 Offence to contravene document certification requirement**

*Clause 182* makes it an offence for a person to fail to comply with a document certification requirement made under clause 182, unless they have a reasonable excuse. Like in clause 181, the fact that compliance with the document certification requirement might tend to incriminate or expose the person to a penalty is not a reasonable excuse for failing to comply. The person may still rely upon the limited immunity contained in clause 97.

The maximum penalty for this offence is 40 penalty units.

The clause also requires the investigator, when making the request, to inform the person that they must comply with the document certification requirement despite the fact that doing so might tend to incriminate them, or expose them to a penalty, and that a limited immunity exists under clause 97. If the investigator fails to give this warning, the person cannot be convicted of the offence of contravening the document certification requirement.

## **Division 4            Miscellaneous provisions relating to investigators**

### **Subdivision 1    Damage**

#### **183 Duty to avoid inconvenience and minimise damage**

*Clause 183* imposes a duty upon investigators to take all reasonable steps to cause as little inconvenience and damage as possible when exercising a power. The clause also makes reference to clause 185, which allows a person to claim compensation for loss incurred because of the exercise or purported exercise of an investigator's power.

## **184 Notice of damage**

*Clause 184* is based on section 33U in the repealed *Plumbing and Drainage Act 2002*.

This clause provides for what is to happen if something is damaged by an investigator or by a person acting under an investigator's direction or authority when exercising or purporting to exercise a power. This clause requires the investigator to, as soon as practicable, give written notice of the particulars of the damage to the person who appears to be the owner or the person in control of the damaged thing.

The notice must also state that the person who suffered the damage may claim compensation from the QBCC under clause 185. Where the investigator believes the damage was caused by a latent defect in the damaged thing, or by other circumstances beyond their control, they may state this belief in the notice.

If it is impracticable to give the notice to the owner of the property, the investigator must leave the notice where the damage happened, or in a conspicuous position in a reasonable secure way so that the relevant person is likely to see it.

If the investigator reasonably suspects that giving notice might frustrate or hinder their investigation, they may delay giving the notice for so long as they continue to have the reasonable suspicion, and remain in the vicinity of the place.

This clause does not apply to damage the investigator reasonably believes is trivial. Similarly, the clause does not apply if the investigator reasonably believes that no-one is apparently in possession of the damaged thing, or that it has been abandoned.

## **Subdivision 2 Compensation**

### **185 Compensation**

*Clause 185* is based on section 33V in the repealed *Plumbing and Drainage Act 2002*.

It provides that a person may claim compensation from the QBCC if the person incurs a loss or expense because of the exercise, or purported exercise of a power under this division. Amongst other things, compensation may be claimed for loss or damage which is incurred as a result of complying with any requirement under this division.

Compensation may be claimed and ordered in a proceeding brought in a court with jurisdiction for cases involving the sum of compensation claimed, or in a proceeding for an alleged offence against the Act for which the investigation that caused the damage was undertaken.

The court may only order the payment of compensation if it is satisfied that in the circumstances of the particular case, it is just to make the order. In making this determination, the court must have regard to any relevant offence committed by the claimant, and any other matters prescribed by regulation.

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## Part 8 Miscellaneous provisions

### 186 Approval of forms

*Clause 186* provides that the chief executive or the commissioner may approve forms for use under this Act.

### 187 Electronic notices

*Clause 187* is based on section 87A of the repealed *Plumbing and Drainage Act 2002*.

This clause enables the chief executive or the commissioner to approve an electronic system for online lodgement of approved forms. It is intended that the online service will facilitate licensees and other entities performance of responsibilities under the Act, such as lodgement, referral, and other functions necessary to the processing of plumbing and drainage forms and notices.

### 188 Guidelines

*Clause 188(1)* provides chief executive with a power to make guidelines for matters within the scope of this Act to help compliance with the Bill.

This provision needs to be read with other provisions in the bill that require individuals to have regard to relevant guidelines. These provisions include:

- clause 46(1), which requires licensees who are carrying out plumbing or drainage work to have regard to a guideline that is relevant to carrying out the work.
- clause 46(2) and (4), which require licensees who are supervising plumbing or drainage work to have regard to a guideline that is relevant to their supervisory role. This will apply to the supervision of other licensees, provisional licensees, apprentices, and unlicensed persons undertaking drainage work.
- clause 49(1)(c) and (d), which are grounds on which the commissioner may take disciplinary action against a licensee for failing to have regard to a relevant guideline for carrying out or supervising plumbing or drainage work.
- Clause 59(3) provides that a licensee commits an offence if they fail to have regard to a guideline about the direct supervision of an apprentice or an unlicensed person carrying out drainage.
- Clause 137 provides that local governments must have regard to guidelines that are relevant to the role of administering the Act within their government area.
- Clause 140 provides that local government inspectors must have regard to guidelines that are relevant to their functions under the Act.
- Clause 153 provides that investigators must have regard to guidelines that are relevant to their functions under the Act.

Clause 188 marks a major departure from the policy of the repealed *Plumbing and Drainage Act 2002*.

Under the section 144 of the repealed Act the chief executive's power was limited to publishing "information about plumbing and drainage work including, for example, information about legislation and technical standards for the work". There was no requirement for anyone to have regard to the information published by the chief executive.

By contrast, under the Bill the abovementioned clauses impose requirements on licensees, local government, inspectors and investigators to have regard to the guidelines. These requirements were modelled on a similar requirement placed on building certifiers in section 133A of the *Building Act 1975* (BA). Under the BA certifiers are required to have regard to guidelines and a failure to do so could have disciplinary consequences.

Similar to the provision relating to certifiers under the BA, a failure of a licensee to have regard to a guideline will be likely to have disciplinary consequences. Where the failure relates to the supervision of a trainee or an unlicensed person carrying out drainage work it will also amount to an offence under clause 59(3) of the Bill.

A failure on the part of a local government, inspector or investigator to have regard to a guideline will not give rise to disciplinary consequences. It could however affect the validity of a decision, particularly if on appeal it was established that a decision maker failed to have regard to a guideline, and that this failure was likely to have affected the decision.

For example, a guideline to licensees, local governments and inspectors could include a direction to interpret a provision in the code requirements in a particular way. The purpose of such a direction would be to facilitate a consistent application of the code requirements across the State. This issue of consistent application of the code requirements by local government inspectors was raised by a range of key stakeholders during consultation on the plumbing and drainage framework.

If an inspector were to interpret the code requirement in a way that was not consistent with the guideline this could be challenged through an appeal to the development tribunal. It is likely that the members of the development tribunal, when considering the merits of the appeal, would take the guideline into account.

Clause 188(2) provides a non-exhaustive list of the matters that a guideline can be issued about. This could include guidelines on:

- how to carry out plumbing or drainage work, including ways of complying with the code requirements for plumbing or drainage work;
- how licensees are to supervise or direct other licensees carrying out plumbing or drainage work;
- how licensees who are responsible for directly supervising trainees carrying out plumbing or drainage work or unlicensed persons carrying out drainage work;

- how local governments are to administer the Act;
- how inspectors are to perform their functions under the Act;
- how investigators are to perform their functions under this Act.

Clause 188(3) provides that the chief executive must publish the guidelines on the department's website. The purpose of this provision is to ensure that individuals or entities who are affected by a guideline are able to access the guideline.

### **189 Public access to documents**

*Clause 189* provides that a regulation may prescribe how documents and registers relating to powers or functions under the Act may be made accessible to the public. The regulation may specify the form the documents are to be kept in, whether they must be available for inspection and/or purchase, and the period for which the documents must be kept.

Failure of a person to comply with a regulation made under this clause is an offence, which attracts a maximum penalty of 50 penalty units.

The clause also makes it an offence for a person to obstruct another person from inspecting or purchasing a document that must be kept available for inspection or purchase under a regulation. The maximum penalty for this offence is 50 penalty units.

It is intended that clause 189 and the regulation will work together to ensure that the public has sufficient access to information that will assist them to comply with the requirements of the Act and its regulations, and that owners have access to records relating to their properties.

Under clause 189(4), the requirement to provide access to documents prescribed by regulation does not extend to information of a purely private nature about an individual, or sensitive security information.

However, under clause 189(5), the exemption mentioned in clause 189(4) does not apply to the register of licensees kept under clause 41. Clause 41(5) ensures that any publicly available part of the register of licensees must not include the residential or email address, phone number or signature of a licensee. However, other private information about a licensee may be included on the publicly available part of the register, if the information is of the type prescribed by regulation for the register. It is proposed that a regulation will allow the licensee's name, details about any disciplinary action taken against the licensee and the licensee's convictions against the Act (if any) to be included in the publicly available part of the register.

### **190 Fees payable to QBCC**

*Clause 190* is based on section 33X in the repealed *Plumbing and Drainage Act 2002*. There is no intention to change the meaning of this provision.

This clause provides that fees payable under the Act must be paid to the Queensland Building and Construction Commission unless a regulation provides otherwise. It requires all revenue received to be used for the administration of the Act, including monitoring and enforcing compliance. It also allows funds that are not immediately required for the administration of the Act to be used to advance the principles, standards or trade of plumbing and drainage.

This could include, for example, funding educational and training activities directed at improving understanding of relevant codes and standards by members of plumbing industry.

### **191 Regulation-making power**

*Clause 191* is based on section 145 of the repealed *Plumbing and Drainage Act 2002*.

The clause gives the Governor in Council power to make regulations under the Act.

Two regulations were made under the repealed *Plumbing and Drainage Act 2002*: the *Standard Plumbing and Drainage Regulation 2003* (SPDR) and the *Plumbing and Drainage Regulation 2003* (PDR).

It is proposed that a new regulation will be made under the Act. That regulation will repeal the SPDR and the PDR and provide for key administrative elements of the new legislative scheme. The regulation will be drafted in accordance with contemporary, plain English drafting practices and be structured in a logical way.

## **Part 9 Repeal and transitional provisions**

Part 9 contains transitional provisions.

### **Division 1 Repeal**

#### **192 Act repealed**

*Clause 192* repeals the *Plumbing and Drainage Act 2002*. It is intended that the *Plumbing and Drainage Act 2017* will replace the 2002 Act.

### **Division 2 Transitional provisions**

#### **193 Members of council**

*Clause 193* ensures that a person who was a member, deputy member or temporary member of the council immediately before the commencement of the Act will continue to be a member, deputy member or temporary member of the council under the Act.

As a result of this provision, the Governor in Council need not reappoint each member, deputy member and temporary member of the council as it existed immediately before the commencement of the Act.

*Clause 193* also ensures that a person who was the chairperson or deputy chairperson of the council immediately before the commencement of the Act will continue to be the chairperson or deputy chairperson under the Act.

#### **194 Assistant commissioner**

*Clause 194* ensures that the person who held office as assistant commissioner immediately before the commencement of the Act, having been appointed to the office under the repealed *Plumbing and Drainage Act 2002*, will continue to hold that office under the new Act, on the same terms and conditions as those that applied to the person before the new Act commenced.

As a result of this provision, the Governor in Council need not reappoint the person as assistant commissioner under the new Act following the commencement of the new Act.

#### **195 Licence applications**

*Clause 195* states that an application for a licence made under the repealed *Plumbing and Drainage Act 2002* that was not decided when the *Plumbing and Drainage Act 2017* commenced, must be decided as if the repealed Act had not been repealed. If a licence is issued because of a decision under this clause, clause 196 applies as if the licence were a licence in force immediately before the commencement of this Act.

For example, if an application for a plumber's licence was made under the *Plumbing and Drainage Act 2002* and not decided before the new Act commences, under this clause the application would be decided under the *Plumbing and Drainage Act 2002* as if it had not been repealed.

*Clause 196* will apply to the licence as if the licence were a licence in force immediately before the commencement of the new Act.

#### **196 Licences**

*Clause 196(1)* provides that a licence issued under the repealed *Plumbing and Drainage Act 2002* that is in force immediately before the commencement of the new Act continues in force on same conditions under the new Act after it commences.

For example, a plumber's licence in force under the repealed Act will continue in force as a plumber's licence under the new Act, with the conditions imposed on the licence under the repealed Act.

Under clause 196(2), if an endorsement was made on the licence and was in force immediately before the commencement of the new Act, the licence is taken to have the same endorsement.

## **197 Disciplinary action**

*Clause 197* deals with a situation where the commissioner has started, but not finished, disciplinary action under the repealed *Plumbing and Drainage Act 2002* before the commencement of the new Act.

The clause allows the commissioner to finish taking the action under the repealed Act as if it had not been replaced by the new Act.

For example, if the commissioner had given a licensee a show cause notice under the repealed Act before the commencement of the new Act, and the time for making a submission to the commissioner had not elapsed before the commencement of the new Act, the licensee could make a submission to the commissioner after the commencement of the new Act. The commissioner could, after considering the submission, take disciplinary action against the licensee under the repealed Act, as if it had not been replaced by the new Act.

## **198 Permits and certificates**

*Clause 198(1)* provides that a compliance permit issued under the repealed *Plumbing and Drainage Act 2002* and in force immediately before the commencement of the new Act is taken to be a permit under the new Act, and continues with same conditions.

As a result of clause 198(1), if a person was granted a compliance permit under the repealed Act and the compliance permit was in effect immediately before the commencement of the new Act, the person will be taken to have a permit under the new Act after the Act has commenced. The permit will be subject to the same conditions as those that applied to the compliance permit immediately before the new Act commenced.

Under clause 198(2), a compliance certificate approving work that is issued under the repealed Act and is in force immediately before the commencement of the new Act is taken to be one of the following:

- if the work approved by the compliance certificate constitutes all of the work authorised by the compliance permit issued for the work – a final inspection certificate for the work; or
- if the work approved by the compliance certificate constitutes only some of the work authorised by the compliance permit issued for the work – an inspection certificate for the work.

## **199 Compliance requests for compliance assessment of plan for plumbing or drainage work**

Under *clause 199*, if a person made a compliance request for compliance assessment of a plan for plumbing or drainage under the repealed *Plumbing and Drainage Act 2002* and the local government had not decided the request before the commencement of the new Act, the local government must decide the compliance request under the repealed Act as if it had not been replaced by the new Act.

## **200 Compliance requests for compliance assessment of plumbing or drainage work**

Under *clause 200*, if a person made a compliance request for compliance assessment of plumbing or drainage under the repealed *Plumbing and Drainage Act 2002* and the local government had not inspected the work and decided the request before the commencement of the new Act, the local government must decide the request under the repealed Act as if it had not been replaced by the new Act.

## **201 Information requests**

*Clause 201* deals with a situation where an information request was made under the repealed *Plumbing and Drainage Act 2002* in relation to a compliance request for compliance assessment of a plan for plumbing or drainage work, and the information requested was not given to the local government before the commencement of the new Act. If the period for providing the information requested had not elapsed before the commencement, the information request must be dealt with under the repealed Act as if it had not been replaced by the new Act.

## **202 Applications for chief executive approval**

*Clause 202* provides that applications made under the repealed *Plumbing and Drainage Act 2002*, but not decided or withdrawn before the commencement of the new Act, are to be dealt with under the repealed Act as if it had not been replaced by the new Act.

## **203 Chief executive approvals**

*Clause 203* provides that a chief executive approval issued under the repealed *Plumbing and Drainage Act 2002* and in force immediately before the commencement of the new Act is treated as if it were a treatment plant approval under the new Act, and continues with the same conditions.

## **204 Investigators and inspectors**

*Clause 204* continues the appointment of investigators and inspectors who held their positions under the repealed *Plumbing and Drainage Act 2002* immediately before the commencement of the new Act, without the need for reappointment under clauses 154(1) and 138(1), respectively.

Their continued appointment is, however, subject to the terms of this new Act.

## **205 Enforcement Notices**

*Clause 205* provides that a notice to perform plumbing or drainage work given under the repealed *Plumbing and Drainage Act 2002*, and in force immediately before the commencement of this Act, is to be treated as if the notice had been given under the new Act.

## **206 Plumbing or drainage work**

*Clause 206* states that plumbing or drainage work that was lawfully carried out under the repealed *Plumbing and Drainage Act 2002* is taken to have been lawfully carried out under this Act.

## **207 References to repealed Act and regulations**

*Clause 207* states that, if a document or an Act refers to the *Plumbing and Drainage Act 2002*, the *Plumbing and Drainage Regulation 2003*, or the *Standard Plumbing and Drainage Regulation 2003*, the reference may be taken to be a reference to the new Act, if the context allows for that outcome. The reference to the new Act will include a reference to a regulation made under the new Act.

## **208 Transitional regulation-making power**

*Clause 208* provides that a regulation may be made to allow or facilitate anything that needs to be done to achieve the smooth transition from the operation of the repealed *Plumbing and Drainage Act 2002*, to the operation of the new Act that has not been sufficiently provided for by this part (part 9) of the new Act.

A transitional regulation made under this clause may operate retrospectively to a day not earlier than the commencement of this provision. Both this provision, and any transitional regulation made under it will expire 1 year after the day this clause commences.

This provision ensures that any transitional matter that arises after the commencement of the Act may be appropriately and swiftly addressed.

# **Part 10 Amendment of Acts**

## **Division 1 Amendment of this Act**

### **209 Act amended**

*Clause 210* states that division 1 amends this Act.

### **210 Amendment of long title**

*Clause 210* amends the long title to remove from the long title words in the title referring to amendments of other Acts. The words will be redundant after the amendments of various Acts set out in part 10, division 2 have taken effect.

## **Division 2 Amendment of the Planning Act 2016**

Division 2 includes consequential amendments of the *Planning Act 2016*

## **211 Act amended**

*Clause 211* states that division 2 amends the *Planning Act 2016*. These amendments primarily relate to appeals provided for in that Act.

## **212 Amendment of s 229 (Appeals to tribunal or P&E Court)**

*Clause 212* includes a consequential amendment of section 229 of the *Planning Act 2016*. The amendment provides for the 'appeal period' for an appeal under the Planning Act that relates to a decision made under the new Act. For the new Act, the appeal period is the period in which a person may appeal against a particular decision made under the new Act. Different periods apply for decisions of different types made under the new Act.

## **213 Amendment of s 251 (Matters tribunal may consider)**

*Clause 213* amends section 251 of the *Planning Act 2016*. The amendments are intended to achieve two outcomes. The first is to ensure section 251 will refer to the new Act rather than the repealed *Plumbing and Drainage Act 2002*. The second is to clarify the types of appeals to which section 251 relates.

The amendments will ensure section 251 applies only to an appeal under the Planning Act about an application or request made under the new Act, or the *Building Act 1975*, if the application or request made relates to a decision made subsequently under the new Act or the Building Act, other than a decision made by the Queensland Building and Construction Commission, and an information notice about the decision was given or was required to be given under the new Act or the Building Act.

An example of an application captured by section 251, as amended, would be an application for a permit made to a local government under the new Act. The decision on the application would be made by local government.

An example of an application that would not be captured by section 251, as amended, would be an application for a licence made to the commissioner. The decision on the application would be made by the commissioner.

## **214 Amendment of sch 1 (Appeals)**

*Clause 214* amends schedule 1 of the *Planning Act 2016*, which provides for appeals under that Act. The clause replaces references in the schedule 1 to the repealed *Plumbing and Drainage Act 2002* with references to the new Act and includes other minor amendments. The clause makes it possible for a person affected by a decision made under the new Act, other than a decision made by the Queensland Building and Construction Commission (including the commissioner of the Commission), to appeal against the decision under the Planning Act.

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

*Clause 215* amends the dictionary of the *Planning Act 2016*. It removes the definition *Plumbing and Drainage Act*, which refers to the repealed *Plumbing and Drainage Act 2002*. The clause does not replace the definition. The definition is not required because each reference to the new Act in the *Planning Act* is a reference to the full title of the Act.

The clause also updates the definitions *drainage work* and *plumbing work* so they each refer to the new Act.

## **Division 3 Amendment of the Queensland Building and Construction Commission Act 1991**

### **216 Acts amended**

*Clause 216* provides that this division amends the QBCC Act.

### **217 Insertion of new s 30D**

*Clause 217* inserts a new section 30D (Mechanical services occupational licence) into the QBCC Act. The new section allows for a mechanical services occupational licence to be issued and specifies what the licence authorises the holder to do. It also allows for the new mechanical services occupational licence to be divided into classes by regulation.

### **218 Amendment of s 32AB (Entitlement to a fire protection occupational licence)**

*Clause 218* amends section 32AB of the QBCC Act, which sets out the criteria of which the QBCC must be satisfied before an applicant is entitled to a fire protection occupational licence. The amendment expands the application of the section to apply to a mechanical services occupational licence by inserting a reference to a mechanical services occupational licence.

### **219 Amendment of s 37 (Period of renewal)**

*Clause 219* expands section 37 of the QBCC Act to address the renewal of the new mechanical services occupational licence.

### **220 Insertion of new s 42CA**

*Clause 220* inserts a new section 42CA (Unlawful carrying out of mechanical services work) of the QBCC Act.

The new section makes it an offence for an individual to personally carry out or personally supervise mechanical services work, unless the individual holds a mechanical services occupational licence of the relevant class for the work or otherwise holds a licence, registration or authorisation under the QBCC Act or another Act to carry out or supervise the work.

The provision excludes from its ambit persons who carry out mechanical services work as apprentices, trainees or students or for a person who holds a mechanical services licence.

In addition, the clause includes provision for a regulation to be made to allow prescribed types of mechanical services work to be lawfully carried out by unlicensed persons.

#### **221 Insertion of new s 42DA**

*Clause 221* inserts a new section 42DA (Licensed contractor must not engage or direct unauthorised person for mechanical services work) of the QBCC Act which makes it an offence for a licensed contractor to engage or direct an employee to carry out mechanical services work unless the employee is authorised to carry out the work under the QBCC Act or another Act.

#### **222 Amendment of s 44E (Conditions of permit)**

*Clause 222* amends section 44E of the QBCC Act to provide that an owner-builder permit is subject to the condition that the permittee must not personally carry out mechanical services work valued at more than \$1100, or another amount prescribed by regulation.

#### **223 Amendment of s 56AB (Operation of pt 3A)**

*Clause 223* amends section 56AB of the QBCC Act to exclude the new mechanical services occupational licence from the application of Part 3A (Excluded and permitted individuals and excluded companies).

#### **224 Amendment of s 57 (Operation of pt 3B)**

*Clause 224* amends section 57 of the QBCC Act to exclude the new mechanical services occupational licence from the application of Part 3B (Permanently excluded individuals).

#### **225 Amendment of s 62 (Operation of pt 3C)**

*Clause 225* amends section 62 of the QBCC Act to exclude the new mechanical services occupational licence from the application of Part 3C (Convicted company officers).

#### **226 Amendment of s 67AV (Operation of pt 3E)**

*Clause 226* amends section 67AV of the QBCC Act to exclude the new mechanical services occupational licence from the application of Part 3E (Disqualified individuals).

#### **227 Amendment of s 75 (Tribunal work defined)**

*Clause 227* amends section 75 of the QBCC Act to expand the definition of tribunal work to include mechanical services work.

## **228 Insertion of new sch 1, pt 16 (Transitional provision for Plumbing and Drainage Act 2017)**

*Clause 228* provides that upon commencement of the mechanical service licence, individuals who currently hold a refrigeration, air-conditioning and mechanical services including unlimited design licence or a refrigeration, air-conditioning and mechanical services including limited design licence will be taken to hold the equivalent mechanical services licence, subject to any conditions applying to the licence.

## **229 Amendment of sch 1A (Exemptions from requirement to hold contractor's licence)**

*Clause 229* amends sections 1, 2, 3 and 7 of schedule 1A of the QBCC Act which sets out for the circumstances in which a person need not hold a contractor's licence.

The amendments specify that the exemptions for employees, subcontractors and partnerships do not apply to the carrying out of mechanical services work. The amendment also provides that a person who holds, and undertakes work permitted by, the new mechanical services occupational licence does not contravene the requirement to hold a contractor's licence.

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

*Clause 230* of the Bill amends Schedule 2 of the QBCC Act to define the following terms:

“automated bleeding device”

“cooling tower”

“mechanical services work”

“medical gas”

“medical gas system”

“mechanical services occupational licence”

## **Division 4 Minor and consequential amendments**

### **231 Acts amended**

*Clause 231* provides that schedule 2 amends the Acts it mentions.

## **Schedule 1 Dictionary**

The dictionary defines terms used throughout the Act.

## **Schedule 2 Minor and consequential amendments**

Schedule 2 contains a number of minor and consequential amendments required as a result of the new Act.