

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

## Explanatory Notes

### Short title

The short title of the Bill is the Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014.

### Policy objectives and the reasons for them

#### *Queensland Building and Construction Commission*

In May 2013, the Queensland Government's response to the recommendations of the Transport, Housing and Local Government Committee *Report No. 14, Inquiry into the Operation and Performance of the Queensland Building Services Authority 2012* was tabled in Parliament.

The response included a Ten Point Action Plan to implement agreed recommendations relating to the Queensland Home Warranty Scheme, dispute resolution, building certification procedures, and licensing. The Department of Housing and Public Works (DHPW) established an Implementation Committee to consult with key stakeholders and make recommendations to the Minister for Housing and Public Works on implementation of the Government's response.

The first implementation stage, involving the establishment of the Queensland Building and Construction Commission (QBCC) to replace the former Queensland Building Services Authority (QBSA) and the appointment of a Commissioner, has been completed.

The second stage of implementation includes the transfer of plumbing and drainage and swimming pool licensing functions from DHPW to the QBCC, providing for the internal review of QBCC decisions and amendments regarding excluded individuals. These amendments are contained in the *Professional Engineers and Other Legislation Amendment Bill 2014* which was introduced into Parliament on 22 May 2014.

In the third implementation stage, the Bill will further implement the Government's Ten Point Action Plan. In addition to the legislative amendments flowing from the Government response to the Parliamentary Committee's Inquiry into the former QBSA, the Bill also includes other legislative amendments to enable the Commission to become more effective in balancing the interests of consumers and licensees.

#### *Housing 2020 strategy*

In July 2013 the Government released the 'Housing 2020 Strategy' with an aim of delivering a flexible, efficient and responsive housing assistance system for the most vulnerable Queenslanders, featuring a stronger service delivery role for community housing providers, and providing lower-income households with the help they need to secure appropriate and affordable housing in the private rental market.

A key objective of this strategy is to achieve more efficient and effective delivery of the full range of housing services by progressively transferring the management of department-owned and managed social housing and other housing assistance functions to approved providers.

The proposed amendments to the *Housing Act 2003* and the *Residential Tenancies and Rooming Accommodation Act 2008* support the strategy goal of transferring management of 90 per cent of social housing to the community housing sector by 2020. The amendments are designed to ensure the smooth transition of public housing tenancies and other housing assistance functions to approved providers, and to make sure the right arrangements, including protection for confidential client information, are in place to support the ongoing delivery of accountable and responsive services.

## **Achievement of policy objectives**

### ***Queensland Building and Construction Commission***

The Bill implements the third implementation stage of the Government's Ten Point Action Plan by

- implementing amendments to update and improve the licensing system;
- introducing an improved demerit point system that includes heavier sanctions for recalcitrant contractors and better protection for consumers;
- expanding the Queensland Home Warranty Scheme to extend coverage, including to new swimming pool construction and manufactured homes, as well as introducing optional additional cover and clarifying the provisions of the scheme to reduce uncertainty and assist with the management of claims;
- introducing an early dispute intervention process to allow the QBCC to conciliate/mediate disputes between consumers and contractors at no cost; and
- repealing the *Domestic Building Contracts Act 2000* and introducing a new part into the *Queensland Building and Construction Commission Act 1991* (QBCC Act) which details the minimum requirements to be included in domestic building contracts and includes the introduction of Level 1 contracts and Level 2 contracts.

The Bill also includes amendments which do not flow from the Government response to the Parliamentary Committee's Inquiry but are aimed at enabling the Commission to become more effective in balancing the interests of consumers and licensees. These amendments include dispute resolution prior to rectification orders being made, a new provision clarifying access to the Supreme Court and mirroring the powers contained in the *Home Building Act 1989* (NSW), service of documents, the granting of stop work orders, clarifying that the Commission can assist consumers who have been the victims of fraud and deceit through the entering of a contract with an unlicensed contractor by giving them access to the Queensland Home Warranty Scheme and empowering the QBCC to direct rectification of consequential damage on an adjacent residential site, for example where a builder performs plumbing and drainage works that has the effect of diverting or channelling water overflow onto an adjacent residential property.

### ***Housing 2020 strategy***

To achieve the policy objective of ensuring that transferred services and other functions that support the delivery of housing services are undertaken in a responsive and accountable way, the Bill proposes amendments to the *Housing Act 2003* and the *Residential Tenancies and Rooming Accommodation Act 2008*:

- facilitating the transfer of confidential client information, protected by law, to support the provider to continue delivering services that are responsive and targeted to the needs of clients;
- enabling the chief executive to delegate certain housing services functions to suitably qualified and experienced persons, which may include employees of an approved provider;
- extending the statutory obligation on clients to not give false or misleading housing service information to providers delivering funded services, to ensure services are provided to eligible people in need;
- allowing an approved, provider to update and maintain records on the Housing Register; and
- amending the mechanism by which providers become the lessor of existing public housing tenancies by providing for a deemed termination and re-grant of the tenancy agreements after the provider gives the State notice.

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

As the current structure of the QBCC in Queensland is set out in legislation, the only way of achieving the policy objectives is to amend the primary legislation.

The *Housing Act 2003* governs the provision of housing assistance services and the *Residential Tenancies and Rooming Accommodation Act 2008* establishes the rules for rental accommodation in Queensland. A significant number of matters relevant to the provision of funded housing services are managed through agreements with providers. Amendments are required to appropriately facilitate the transfer of public housing and other housing assistance functions and to arrange for the ongoing management of these services by providers.

### **Estimated cost for government implementation**

Any costs that may be incurred by the QBCC in implementing these legislative reforms will be met through the existing resources of the QBCC, with the exception of those changes to the Queensland Home Warranty Scheme including mandatory cover for swimming pools and manufactured homes, and optional additional cover, which will be met by the consumers of those products.

The DHPW administers housing assistance programs and services under the *Housing Act 2003*, using the Housing Fund, under the direction of the chief executive and Minister. Under the Act, the chief executive decides whether a service is delivered by DHPW, an approved, registered provider or other entity.

Any costs that may be incurred by the DHPW in implementing these legislative amendments

will be met through the existing resources of the DHPW.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### ***Queensland Building and Construction Commission***

#### Power to require production of documents

Section 106A of the QBCC Act currently allows an inspector to require production of documents that relate to a person's obligations under the QBCC Act or the *Domestic Building Contracts Act 2000* and the person does not have protection from self-incrimination. The proposed amendment of s106A will expand the power to require production of documents relevant to the commission of an offence against the QBCC Act and other Acts relating to the QBCC (i.e. not just in relation to people with obligations under the QBCC Act or *Domestic Building Contracts Act 2000*). It may be argued that this is an infringement of fundamental legislative principles because it expands the obligation to provide documents in circumstances where the persons providing the documents are not protected from self-incrimination.

At present the QBCC's power to investigate matters via the production of documents is limited to the serving of a notice upon the individual licensee being investigated. Clearly the individual or company under investigation would have little or no incentive to be open and honest in the provision of such documentation. More importantly, effective investigation requires the accessing of documentation that may not be held by the licensee being investigated.

However, the potential contravention of the fundamental legislative principles is considered to be outweighed by the risk posed to the public in not extending the investigative power in the proposed manner. This is considered a reasonable extension of investigative powers given knowledge of the facts leading to a contravention may be a critical factor in preventing harm to a person or significant damage to property.

The amendment will improve regulation of the building industry by ensuring the QBCC has the power to investigate all offences and potential offences detected by, or reported to, the QBCC.

#### General regulation-making power

There are a number of new provisions to be inserted under part 5 of the QBCC Act relating to the statutory insurance scheme which potentially contravene fundamental legal principles as they provide for certain matters to be dealt with by way of a regulation, including the circumstances that a person will or will not be entitled to assistance under the scheme. These provisions may be considered to have insufficient regard to rights and liberties of individuals and the institution of Parliament.

It is considered that these provisions are justified on the basis that they help to ensure that the scheme is able to be readily adapted and amended to accommodate the changing needs of industry and the community and, in some cases, enable the QBCC to address technical issues which are best contained in regulation.

#### Transitional regulation-making power

The Bill enables a transitional regulation to be made about a matter to facilitate the

implementation of the reforms in the Bill. The inclusion of this power raises the issue of whether the Bill has sufficient regard to the institution of the Parliament.

Although the Bill provides for a range of transitional issues, it is possible that unanticipated matters may arise given the complexity of implementing the reforms. It should be noted that the transitional regulation-making power expires 1 year after the commencement of the provision.

### ***Housing 2020 strategy***

While the provisions of the Bill are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following matters.

#### Disclosure of confidential client information

The proposed amendments to the *Housing Act 2003* allowing confidential client information to be transferred from the department to approved providers may raise concerns. Further, it may be argued that providing for immunity from criminal liability under confidentiality provisions to allow information to be transferred infringes fundamental legislative principles.

However, it is considered necessary for legislative provisions to enable the lawful and protected disclosure of this information, as this cannot be facilitated by contractual arrangements with third parties, such as an approved provider.

To deliver on the government objective of transferring management of at least 90% of existing public housing to the non-government sector by 2020, it is considered necessary to allow for the disclosure of confidential information to an approved third party including by providing immunity from certain provisions imposing criminal liability for disclosure of information. The disclosure of information is required to ensure that public housing, once transferred to an approved provider for management can continue to be provided in ways that are responsive and tailored to the circumstances and needs of clients.

The Bill ensures confidential information is disclosed only in relation to the provision of housing services and in ways that are lawful and appropriate. New section 94A provides that confidential information may only be disclosed to an authorised person and that the immunity from criminal and civil liability only applies where the information is disclosed for the purpose of providing housing services. This immunity is considered justified to protect those who perform housing services functions.

#### Delegation of functions and powers to persons other than a public service employee

It may be argued that the extension of delegated powers of the chief executive to persons other than public service employees may raise concerns. The Bill ensures that delegations only extend to appropriately qualified persons and are restricted to certain specified functions relating to the provision of service to clients.

In order that housing services can continue to be provided appropriately and responsively by an approved provider it is considered appropriate to empower providers through delegations to make specified 'housing service decisions'. These include decisions about eligibility for assistance, the type of assistance to provide and the conditions that attach to the provision of housing services. Certain chief executive functions under the *Housing Act 2003* are currently delegated to public service employees. The Bill provides for delegation outside the public service only to an appropriately qualified person. Also new section 99B provides that a delegate performing delegated functions or exercising delegated powers is subject to the *Crime and*

*Corruption Act 2001, Judicial Review Act 1991, the Ombudsman Act 2001 and the Public Interest Disclosure Act 2010.*

## **Consultation**

### ***Queensland Building and Construction Commission***

When inquiring into the operation and performance of the former QBSA, the Transport, Housing and Local Government Committee consulted with key industry groups including home builders and building contractors, industry participants and relevant experts. The Committee widely advertised its inquiry and received and considered 109 submissions, received a public briefing from eight witnesses representing industry and government organisations, and held a public hearing at which it heard from 34 witnesses that included home owners and their representatives, builders, tradespeople and their representatives, academics, lawyers and officers from the former QBSA.

To assist with informing the Minister's response to Parliament, KPMG was engaged to undertake consultation with industry, licensees/builders, consumer groups and individual consumers in Brisbane, Gold Coast, Townsville and Rockhampton.

Consultation on the content of the Bill was undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, Department of Justice and Attorney-General and the Office of the Queensland Parliamentary Counsel.

### ***Housing 2020 strategy***

Extensive consultation was undertaken with stakeholders on the Housing 2020 Strategy, including the objective of transferring management of at least 90% of existing public housing to the community housing sector by 2020.

Consultation on the content of the Bill was undertaken with the Department of the Premier and Cabinet, Queensland Treasury and Trade, Department of Justice and Attorney-General, Department of Communities, Child Safety and Disability Services, Department of State Development, Infrastructure and Planning, Department of Health, the Public Safety Business Agency and the Office of the Queensland Parliamentary Counsel.

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

### ***Queensland Building and Construction Commission***

The building industry is regulated in all states and territories in Australia and the provisions regulating building work vary from state to state. The form of the regulator varies depending on the jurisdiction. In some states the regulator is a department of government, while in others there is a statutory authority and/or commission.

### ***Housing 2020 strategy***

All jurisdictions are pursuing policy directions that aim to strengthen the role of the non-government housing sector in service delivery, including implementation of the National Regulatory System for Community Housing to establish a consistent approach to monitoring

the performance of the regulated sector and to make it easier for providers to operate across jurisdictions.

Legislation to facilitate the administration of housing programs, including the funding of registered providers and other entities to deliver services is in place in all other jurisdictions. Smaller scale management transfers have been undertaken in other places. However, under the 2020 Strategy, Queensland has committed to a more expansive program than other jurisdictions. States and Territories are monitoring developments in Queensland including the legislative arrangements that facilitate transfer of management and ongoing provision of service for potential application in their jurisdictions.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* sets out the short title of the Act.

*Clause 2* provides that the Act (other than sections 34 and 35, and parts 3 to 5) commences on a date to be fixed by proclamation.

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

*Clause 3* provides that part 2 amends the *Queensland Building and Construction Commission Act 1991*.

*Clause 4* inserts into section 3 of the Act a new paragraph providing that one of the objects of the Act is to regulate domestic building contracts to achieve a reasonable balance between the interests of building contractors and building owners.

*Clause 5* modifies the scope of the commissioner's power to act independently of policies made by the board.

*Clause 6* inserts a new section 37 which allows an applicant for a contractor's licence, a nominee supervisor's licence, a site supervisor's licence or a fire protection occupational licence to choose to renew their licence for a period of either 1 or 3 years.

*Clause 7* omits section 37A(2)(d) and (e) and replaces those paragraphs with a single paragraph (d). The amendment is a consequential amendment made following the omission of section 37C by clause 9.

*Clause 8* removes the reference to any amount by which the renewal fee is increased under section 37C. The amendment is a consequential amendment made following the omission of section 37C by clause 9.

*Clause 9* omits section 37C which made provision for increases in licence renewal fees in circumstances where the commission had given a direction under section 72 of the Act for the rectification of building work.

*Clause 10* omits section 38(4). This amendment is a consequential amendment made following the omission of section 37C by clause 9.

*Clause 11* inserts a new part 3, division 6, which comprises new section 39. The new section deals with the restoration of licences.

New section 39(1) provides that the section applies if a licence has been cancelled under section 38(3). New section 39(3) provides that the licensee may request that the commission restore the licence. New section 39(3) requires the commission to restore the licence if the request is made within 3 months of being cancelled and is accompanied by the prescribed fee.



*Clause 12* inserts into section 42C(3) a new paragraph which prevents the offence in section 42C(1) from applying to a student who, for work experience, personally carries out fire protection work as part of a pre-vocational course. The amendment will allow a student to carry out this type of work as part of their course.

*Clause 13* omits section 49B(3), ensuring that in all cases, before ordering that a licence be suspended or cancelled, the tribunal must give the licensee a reasonable opportunity to show cause why it should not be cancelled or suspended.

*Clause 14(1)* removes from section 50A a reference to the Minister and replaces it with a reference to the commissioner. The amendment transfers the power to approve an audit program from the Minister to the commissioner.

*Clause 14(2)* includes an amendment that is a consequential amendment made following the repeal of the *Domestic Building Contracts Act 2000* by clause 79 and the insertion of key aspects of that Act in new schedule 1B.

*Clause 14(3)* omits section 50A(3), allowing the commission to audit a licensee as often as it considers necessary rather than only once every two years.

*Clause 15* omits section 50B, which required the commission to give notice of an approved audit program before it starts. Removal of this section will increase the commission's ability to detect and take action against non-complying licensees in a timely manner.

*Clause 16* removes references to the *Domestic Building Contracts Act 2000* from section 50C and replaces them with references to new schedule 1B, following the repeal of the *Domestic Building Contracts Act 2000* by clause 79 and the insertion of key aspects of that Act in new schedule 1B.

*Clauses 17* updates the note after section 51B(1) to ensure it informs the reader that a person mentioned in schedule 1A is exempt from the requirement to hold a contractor's licence in the circumstances stated in the schedule. The amendment removes redundant references to section 42(5) to (8) which were repealed in by an earlier Bill.

*Clause 18* amends the heading to remove the reference to permitted individuals. The amendment is a consequential amendment made following the omission of part 3A, division 2, which dealt with the categorisation of an individual as a permitted individual, by clause 20.

*Clause 19* removes references in section 56AC to the commencement of the section, as the references are redundant. By reducing the time frames mentioned in the section from 5 to 3 years, the amendments will relax the restrictions that currently exclude individuals from holding a contractor's licence to work in the building industry.

To provide clarity, the references to 'company' in section 56AC have been replaced with references to 'construction company', which has been defined.

Defining and including the term construction company ensures that a person will not be excluded if their insolvency event is the result of their being a director of a company unrelated to the construction industry. For example, if a contractor is a director of their spouse's

hairdressing business, and that business becomes insolvent, the contractor will not be excluded. However, if the insolvent company is a construction company, as defined in the section, the contractor would be excluded.

*Clause 20* omits part 3A, division 2 which comprises a single provision, section 56AD. That section prescribed the process by which an individual may make an application to the commission to become a person permitted to hold a contractor's licence, following exclusion under section 56AC. The intent of this amendment is to repeal the previous permitted individual regime under which an excluded individual could apply to the commission to be taken as not excluded in certain circumstances.

*Clause 21* removes all references in section 56AF to the categorisation of a person as a permitted individual, following the omission of part 3A, division 2, which dealt with that categorisation. The clause introduces a new process to be followed when the commission determines that a licensee is an excluded individual for a relevant event.

*Clauses 22 and 23* amend sections 56AG and 58 respectively to reflect the repeal of the previous 'permitted individual' regime under which an excluded individual could apply to the commission to be taken as not excluded in particular circumstances.

*Clause 24* amends section 61 to reflect the repeal of the previous 'permitted individual' regime under which an excluded individual could apply to the commission to be taken as not excluded in particular circumstances, and could apply to the tribunal for a review of a decision made by the commission not to categorise the individual as a permitted individual.

*Clause 25* omits section 67AP.

*Clause 26* amends the definition of 'conviction' for the purposes of Part 3E.

*Clause 27* removes references to the *Domestic Building Contracts Act 2000* following the repeal of that Act by clause 79 and the insertion of key aspects of that Act in new schedule 1B. The clause updates the definition of a demerit offence so that is an offence against a provision prescribed by regulation or a contravention of a requirement imposed under the Act and prescribed by regulation.

*Clause 28* amends section 67AW(2)(a) so the number of points allocated to a demerit offence is prescribed under the regulation. The amendment allows for the flexibility to increase the number of points over time to a point where the demerit offence system is highly effective in encouraging compliance with the QBCC Act and curtailing inappropriate behaviour on the part of licensees.

*Clause 29(1)* removes redundant references and replaces references to the tribunal with a reference to the commission, transferring the responsibility for deciding that proper grounds exist for taking disciplinary action against a licensee from the tribunal to the commission.

*Clause 29(1)* includes consequential amendments required following amendments in the Professional Engineers and Other Legislation Amendment Bill 2014 that transfer operational functions and powers for pool safety set out in the *Building Act 1975* to the commission. The amendments also reflect the introduction of new part 6A of the QBCC Act, which includes new

section 74G. The new part deals with disciplinary proceedings.

*Clause 29(2)* introduces a definition of appeal that refers to a review of a decision of the commission by the tribunal under section 86. Section 86 forms part of new part 7, division 3, subdivision 1 of the QBCC Act, introduced by the Professional Engineers and Other Legislation Amendment Bill 2014.

*Clause 30(1)* amends the heading for section 67AZB to omit 'or investigation'.

*Clause 30(2)* increases the maximum number of demerit points that may be allocated to a licensee for convictions mentioned in section 67AZB(1), from 6 to 20.

*Clause 30(3)* replaces the reference in section 67AZB(3) to 6 demerit points with a reference to more demerit points, allowing the commission to allocate more than 6 demerit points for demerit offences mentioned in section 67AZB(3).

*Clause 30(4)* clarifies the intent of the provision.

The amendments introduced by clause 30, together with other amendments included in the Bill, will make the demerit offence system more effective in encouraging compliance with the QBCC Act and curtailing inappropriate behaviour on the part of licensees. The new system will allow the commission to remove non-compliant licensees from the industry, providing better safeguards for consumers.

*Clause 31* removes section 67AZG which provides for a process whereby a person who is not a licensee can be considered not fit and proper as a result of the accumulation of demerit points allocated to the person.

*Clause 32* omits from section 67AZM references to section 67AZG which has been omitted by this Bill.

*Clause 33* inserts a new part 4 in the QBCC Act and introduces new section 67AZN following the repeal of the *Domestic Building Contracts Act 2000* by clause 79 and the insertion of key aspects of that Act in new schedule 1B.

The new section provides that domestic building contracts are regulated under schedule 1B. It clarifies that the provisions of schedule 1B apply to domestic building contracts and the parties to those contracts.

*Clause 34* inserts new section 71AC in part 5 of the QBCC Act. New section 71AC is intended to replace sections 73 and 74 of the QBCC Act, which currently provide the relevant framework.

The new section provides a new streamlined framework for the commission to seek and accept tenders to carry out rectification work. The section allows the commission to seek a tender for carrying out building work from only 1 licensed contractor if the commission is of the opinion that a person may be entitled to assistance under the statutory insurance scheme and the estimate to rectify the building work is less than \$20000, reducing red tape associated with rectifying such work.

*Clause 35* omits section 73 and 74 which are redundant as a result of clause 34.

*Clause 36* omits part 5 and inserts a new part to replace it. The new part introduces division 1, which sets out the preliminary matters for the new part, including definitions for particular terms used in the part.

New section 67WB (Work not covered under the statutory insurance scheme) encompasses various types of building work other than building work for residential houses and some units, as the scope of the scheme is intended to be limited to such dwellings. The section is consistent with new section 67X which states that the purpose of the statutory insurance scheme is to provide assistance to consumers of residential construction work for loss associated with work that is defective or incomplete.

New section 67WC (Meaning of *primary insurable work*) contains the definition of primary insurable work. The definition captures the construction of a residence and a swimming pool, if carried out by a building contractor and the insurable value of the work is more than the regulated amount.

New section 67WD (Meaning of *associated insurable work*) contains the definition of associated insurable work. The definition captures any additional work that may be carried out under a contract for primary insurable work relating to a residence, if it is carried out on the site of the residence or proposed residence and is for residential purposes. The provision clarifies that such work might include work that is not building work, such as excavation work.

New section 67WE (Meaning of residence) contains the definition of residence. This definition captures a single detached dwelling such as a house; 1 or more attached dwellings separated by a common wall, such as a town house; and a building containing 2 or more dwellings not exceeding 3 storeys in height. The section makes it clear that boats, caravans and similar things are not residences.

New section 67WF (Meaning of *related roofed building*) contains the definition of related roofed building. The definition captures a building, other than a residence, that has an impervious roof and is on the site of a residence or proposed residence.

New section 67X (Statutory insurance scheme) provides that the statutory insurance scheme previously established by the QBCC Act is continued. The section states that the purpose of the scheme is to provide assistance to consumers of residential construction work for loss associated with work that is defective or incomplete. It limits the scope of the scheme to the provision of assistance to a consumer who has suffered loss as a consequence of residential construction that is defective or incomplete.

New section 67Y (Assistance available under the statutory insurance scheme) provides that the circumstances under which a person is entitled to assistance under the statutory insurance scheme are prescribed by regulation. By allowing a regulation to be made prescribing the relevant circumstances, the section allows the circumstances to be changed relatively quickly and easily.

New section 67Z (Optional additional cover) sets out who may obtain optional insurance cover

that is additional to the standard cover provided by the statutory insurance scheme and the circumstances in which the cover can be obtained. Optional additional cover is defined to mean additional assistance provided to a person, or the additional amount of assistance to be paid under the statutory insurance scheme, as prescribed by regulation.

New section 68 (Persons not entitled to assistance under statutory insurance scheme) contains provisions that exclude particular persons from entitlement to assistance under the statutory insurance scheme in the circumstances mentioned in the section or prescribed by a regulation. The section precludes a licensed contractor who carries out speculative residential construction work from obtaining assistance under the scheme. It also precludes a person who has entered into 1 or more building contracts, in force at the same time, to construct 3 or more living units, from obtaining such assistance.

New section 68A (Licensed contractor pays insurance premium on behalf of consumer) provides that a licensed contractor who pays an insurance premium under the new division does so on behalf of a consumer. It also provides that the contractor is not entitled to assistance under the statutory insurance scheme as a result of paying the premium.

New section 68B (When insurance premium is payable by licensed contractor) specifies when an insurance premium must be paid by a licensed contractor. In all cases, the premium must be paid before the relevant work starts.

New section 68C (When insurance premium is payable by construction manager) provides that if a principal engages a construction manager under a contract and the manager holds a contractor's licence, the manager must pay an insurance premium to the commission within the time frame specified by the section. Failure to comply with the section will result the manager being liable to pay a penalty of up to 100 penalty units.

New section 68D (Setting of insurance premiums) allows the commission to set the amount of an insurance premium payable under the statutory insurance scheme. The section requires the commission to publish the amount of insurance premium payable, or the way it is calculated, in the gazette. The commission must review insurance premiums payable at least once every year.

New section 68E (Obligation of assessment manager or compliance assessor in relation to insurance premium) contains provisions preventing an assessment manager or a compliance manager from issuing a development approval or compliance permit for residential construction work unless they have written information from the commission showing that the insurance premium has been paid or they to the applicant produces satisfactory evidence that no insurance cover is payable.

New section 68F (Notice of cover) requires the commission to issue a notice of insurance cover for residential construction work if an insurance premium is accepted. It allows the commission to revoke or cancel a notice of cover if the commission becomes aware that the work for which the notice was issued is not residential work.

New section 68G (Refund of insurance premium if notice of cover is revoked) provides that if the commission revokes a notice of cover under section 68F, it must refund the amount paid.

New section 68H (Cover of residential construction work) contains provisions for the terms of

insurance cover which are prescribed by regulation and the circumstances under which cover comes into force.

New section 68I (Commencement of cover) contains provisions for the different commencement date of the insurance cover for residential construction depending on the type of contract and whether additional cover is provided.

New section 69 (Cancellation of cover and return of premium) contains provisions when insurance cover for residential construction can be cancelled and the premium refunded.

New section 70 (Residential construction work carried out under a contract with a consumer) contains provisions to require either additional insurance premium to be paid or a refund of the premium already paid if a variation of the contract changes the value of the residential construction work.

New section 70A (Speculative residential construction work) applies if a licensed contractor has paid the insurance premium for speculative residential construction work and the value of that construction work changes because of a variation in the work. If the value of the work increases, the contractor must pay the corresponding additional insurance premium to the Commission before any work relating to the variation starts. If the value of the work decreases, the Commission may refund part of the insurance premium already paid.

New section 70B (Optional additional cover) applies if, after a consumer has obtained optional additional cover for residential building work, the value of that construction work changes because of a variation in the work. If the value of the work increases, the consumer must pay the corresponding additional insurance premium to the Commission before any work relating to the variation starts. If the value of the work decreases, the Commission may refund part of the insurance premium already paid.

New section 70C (Partial refunds of insurance premiums) provides that a regulation may provide how to calculate the part of an insurance premium that is refunded.

New section 71 empowers the commission to recover funds from building contractors.

New section 71(1) provides that if the commission makes any payment on a claim under the statutory insurance scheme, the commission is entitled to recover the amount of the payment as a debt from the relevant building contractor by whom the relevant residential construction work was, or was to be, carried out or from any other person through whose fault the claim arose.

New sections 71(4) to 71(6) provide defences to contractors being pursued for a refund by the commission if they can establish that the contractor's details were included in a relevant document without the contractor's authority and that the contractor also took all reasonable steps to ensure that this did not occur.

Division 9 of new Part 5 introduces new section 71A, which deals with tenders for rectification work.

New section 71A (Tenders for rectification work) provides that the Commission may seek tenders for carrying out building work if it is of the opinion that a person may be entitled to

assistance under the statutory insurance scheme, and subsection (2) the Commission may accept whatever tender it considers appropriate even if it is not for the lowest cost. Subsection (3) states that tenders for carrying out the building work must be sought from the number of licensed contractors that the Commission considers to be reasonable in the circumstances. Subsection (4) states that if the estimate to rectify the building work is less than the amount prescribed by the regulation, the Commission is only required to seek a tender for carrying out the building work from 1 licensed contractor. Subsection (5) states that the Commission may authorise the person for whom the building work requiring rectification was or was to be carried out; or a claims management consultant, to act for the Commission in seeking the tenders for carrying out building work.

Section 71B (Statutory insurance scheme not to affect licensing decisions) provides that when the Commission decides the action to be taken in relation to a licensee's licence, the Commissioner must not have regard to the implications for the statutory insurance scheme.

Section 71C (Notice of entitlement to assistance under the statutory insurance scheme) provides that to be eligible to be entitled to assistance under the statutory insurance scheme, notice of the claim must be given to the commission in a way prescribed by regulation.

Section 71D (Multiple contracts for the same residential construction work) provides that although separate contracts may have been taken out between a licensed contractor and a consumer to carry out residential construction work, these contracts could be considered a single contract with the contract price being the sum of the separate contracts.

Section 71E (Protection of expressions associated with statutory insurance scheme) provides that a person must not use a declared expression in connection with selling the right to participate in any warranty or insurance scheme unless the person does so on behalf of the commission and the scheme relates to the Act. A maximum penalty of 100 penalty units applies for failure to comply. Also a person must not use any variation of a declared expression in connection with selling the right to participate in any insurance or warranty scheme which implies the scheme is associated with this Act. A maximum penalty of 100 penalty units applies for failure to comply. The definition of 'declared expression' is provided.

Section 71F (When work is taken to have started) provides that a regulation may prescribe when residential construction work is taken to have started for the purposes of this part.

*Clause 37* replaces part 6 and the heading and inserts new provisions for the rectification of building work and remediation of consequential damage.

New section 71G (Definitions for pt 6) contains the definitions to be used throughout this part.

New section 71H (What is consequential damage) contains provisions to define consequential damage. This is damage that is caused or consequential of building work at a building site (known as the relevant site) that occurs without regard to the intention, negligence, or recklessness of the person responsible for the building work, and it is damage that occurs to a residential property at the relevant site. There are detailed definitions for 'damage' to a residential property, as well as what constitutes a 'residential property'. The definition of damage is inclusive, concerning the types of damage that the Department wants to put beyond dispute, rather than definitive.

New section 71I (Who is taken to carry out building work for this part) contains provisions which defines a number of categories involving a ‘licensed contractor’; a ‘building contractor’; categories of ‘person’; and a ‘principal’ who was the contracting party.

New section 71J (Who may request remediation of consequential damage to an adjacent residential property) provides that only the owner or occupier of a residential property adjacent to a building site may request the commission give a direction to remedy any consequential damage to the property.

New section 72 (Power to require rectification of building work and remediation of consequential damage) contains provisions which apply if a person wants rectification of building work or any damage under section 72 and also applies to building work that a consumer finds is defective or incomplete. The types of damage considered to be consequential damage are considered, and if satisfied the person making the claim must give the commission all reasonable information to consider the claim. A consumer making a claim may have to participate in a process involving the person who carried out the building work and instigated by the commission.

New section 72A (Powers and limitations of directions to rectify or remedy) contains provisions which specify the powers of the commission to require rectification of building work and consequential damage; and the powers and limitations of the commissions directions to rectify.

New section 73 (Offence to fail to comply with direction to rectify or remedy) contains provisions which makes it an offence regarding the rectification of building work once directed by the commission, with a maximum penalty of 250 penalty units. However this direction is qualified by a stay of decision by the tribunal, in which case the direction to rectify does not have to be complied with for the period of the stay.

New section 74 (Defences for failure to comply with direction to rectify or remedy) contains provisions which outline defences for the failure to comply with a direction to rectify.

*Clause 38* inserts a new heading Part 6A (Disciplinary proceedings).

New section 74A (Commission may investigate grounds for taking disciplinary action) provides that the commission may investigate whether proper grounds exist for taking disciplinary action against a person under this part.

New section 74B (Proper grounds for disciplinary action against a licensee and former licensees) contains provisions which define the proper grounds for disciplinary action against a licensee and former licensees.

New section 74C (Proper grounds for disciplinary action against person not a licensee) contains provisions for taking action against an unlicensed person who carries out building work for which a licence is required, has committed an offence involving fraud or has contravened the *Fair Trading Act 1989*.

New section 74D (Types of disciplinary action that may be taken) contains provisions which define the type of disciplinary action that may be taken and this may involve a direction to do



something, or pay the building owner an amount sufficient to rectify the complete work; or impose a penalty on a person. If an individual an amount equivalent to 200 penalty units, or for a corporation an amount equivalent to 1000 penalty units can be payable, or by ordering the person to pay compensation to someone else who has suffered loss or damage because of the act or omission that resulted in the disciplinary action. A licensee may be reprimanded, suspended, have conditions imposed on their licence or have their licence cancelled.

New section 74E (Notice of proposed disciplinary action) contains provisions for the commission if they form a belief that disciplinary action against a person should occur then notice is to be given to that person, consisting of the grounds for the disciplinary action, the type of disciplinary action the person is facing and a time period enabling the person receiving notice to make written submissions to the commission about these matters.

New section 74F (Taking disciplinary action) contains provisions for the commission's responsibility for taking disciplinary action. The commission may decide that no action will be taken, it may take action as listed in section 74D, written notice must be given to the person whom action is being taken as soon as practicable, and if the decision is to take disciplinary action the written notice must comply with section 157(2) of the QCAT Act, and be published by the commission. Any penalty may be recovered as a debt due in a court with a jurisdiction up to the amount of the debt. A person may also not comply with disciplinary action if a review of the decision is started in the tribunal and the tribunal orders a stay of the decision.

New section 74G (When disciplinary action takes effect) contains provisions to specify when the disciplinary action for which a decision was made under section 74F takes effect. The situations when the disciplinary may be stayed are provided.

New section 74H provides that the commission may prepare and file a certificate as a judgement for a debt. The certificate may be enforced in a court of competent jurisdiction.

*Clause 39* inserts section 77(1A) under section 77(1). This section states that a person may not apply to the tribunal unless the person has complied with a process 'established by the commission' to attempt to resolve the dispute.

*Clause 40* inserts a new section 83 (Proceeding in tribunal does not affect action by commission) enabling the commission to take action in relation to a building dispute even though the dispute has started or is removed from a court to a tribunal. The commission may decide that it can allow or disallow a claim under the statutory insurance scheme.

*Clause 41* omits section 84 because of the amendments made to section 83 removing the need for the commission to apply to the tribunal for an order for work to be undertaken.

*Clause 42* omits and inserts a new section 86(1)(e) and (f) and removes the term 'tribunal work' because of the amendments to section 83. Section 86(1)(r) is inserted which enables the tribunal to review a decision by the commission to take disciplinary action against a person.

*Clause 43* updates section 86F, which is to be introduced into the Act by the Professional Engineers and Other Legislation Amendment Bill 2014 to ensure consistency with the amendments made by this Bill.

*Clause 44* inserts a new section 87A (No stay by QCAT of particular decisions of commission). The insertion obliges the QCAT not to grant a stay of the decision if a person applies under section 87 to the tribunal for a review. The decisions this applies to include a direction for rectification or completion of building work, rectification of consequential damage, whether the work is of a satisfactory standard and other decisions mentioned in the section.

*Clause 45* omits part 7, division 4, this consists of section 88 to section 91.

*Clause 46* omits from section 97B(1) ‘this Act’ and inserts ‘a prescribed provision’. Also section 97B(6) is inserted and inserts a definition of ‘prescribed provision’, which includes a provision of the *Queensland Building and Construction Commission Act 1991*, the *Building Act 1975* and the Building Code of Australia.

*Clause 47(1)* omits section 99(2)(d) and inserts a provision that any disciplinary action taken against the licensee that has taken effect under section 74G is not subject to an internal review or review by the tribunal is to be recorded in the licensee register with any particulars required by regulation.

*Clause 47(2)* amends section 99(3)(a) by inserting the words ‘or to remedy consequential damage’.

*Clause 47(4)* omits the words ‘or the *Domestic Building Contracts Act 2000* and the provision of the Act’ and the following words are inserted ‘and the provision of this Act’.

*Clause 47(5)* also omits the reference to the *Domestic Building Contracts Act 2000*.

*Clause 47(6)* inserts in section 99(3)(j) which adds to the list of notes the register must contain against each licensee to include the number and cost of claims approved under the statutory insurance scheme that relate to residential construction work.

*Clause 48* inserts after section 101(1) the following words ‘maximum penalty - 20 penalty units’.

*Clause 49* updates the reference to the commission’s website in section 103E.

*Clause 50* inserts subsection (4) into section 105. The new provision relates to the powers of an inspector under the Act and that this section does not apply to an inspector exercising a power under section 106A. Section 106A concerns the inspector’s power to require the production of documents.

*Clause 51* inserts a new section 106(1) enabling an inspector who suspects on reasonable grounds that a person has committed an offence against a relevant Act may require the person to state that person’s name and address and that person’s place and date of birth.

*Clause 51(2)* omits the words ‘the person’s name and address’ from section 106(2) and inserts ‘identifying information’.

*Clause 51(3)* omits the words ‘a false name or address’ from section 106(2)(b) and inserts ‘false identifying information’.

*Clause 51(4)* omits from section 106(3) the number ‘(1)’ and inserts the number ‘(2)’.

*Clause 51(5)* omits the words ‘a name or address’ from section 106(3) and inserts the words ‘identifying information’.

*Clause 51(6)* omits ‘subsection (1)’ and inserts ‘this section’ from section 106(4).

*Clause 51(7)* renumbers ‘section 106(1A) to (4)’ as ‘section 106(2) to (5)’.

*Clause 51(8)* inserts section 106(6) which defines ‘relevant Act’ as meaning the *Queensland Building and Construction Commission Act 1991*, the *Building Act 1975*, the *Building and Construction Industry Payments Act 2004* or the *Subcontractors’ Charges Act 1974*.

*Clause 52* inserts a new section 106A(1) which enables an inspector who suspects on reasonable grounds that a person has access to a document relevant to the commission of an offence against a relevant Act, to make that document available or produce it for inspection by the inspector at a reasonable time and place nominated by the inspector.

*Clause 53* inserts, after section 108AC, a new heading ‘Part 9B Injunctions’. New sections 108AD to 108AH are inserted.

New section 108AD (Grounds for injunction) defines the grounds for an injunction.

New section 108AE (Commissioner may apply for injunction) states that an injunction is obtained by the commissioner applying to the Supreme Court for an injunction.

New section 108AF (When injunction may be granted) states the Supreme Court may grant an injunction against a respondent at any time.

New section 108AG (Court’s powers for injunctions) states the Supreme Courts powers to grant an injunction. These powers being very broad and include the granting of an interim injunction and the power to rescind or vary an injunction at any time.

New section 108AH (Terms of injunction) states the terms of an injunction. The terms of an injunction may be what the Supreme Court considers appropriate.

*Clause 54* inserts new sections 108D(2) to (5) which clarify that a domestic building contract is void if it is contrary to the Act or purports to vary a provision of the Act.

*Clause 55* inserts in section 109A(3) defining the word ‘address’ as including a postal address.

*Clause 56* inserts a new subsection 111(4) which provides that subsection 111(1) does not limit section 32 of the *State Penalties Enforcement Act 1999*.

*Clause 57* omits and inserts new sections 111C(2)(a) and (b).

*Clause 58* inserts subsections 116(2) (d) and (e) stating that in the case of section 116(2)(d) that the Governor may make regulations about the nature and extent of continuing professional

development to be undertaken by a building contractor and in section 116(2)(e) the number of demerit points for demerit offences.

*Clause 59* inserts a new ‘schedule 1, part 11’ (Transitional provisions for the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2014*).

New section 53 (Definitions for pt11) provides for new definitions for ‘Amendment Act’, ‘commencement’ and ‘former’.

New section 54 (Continuation of particular reviews) provides for continuity of a review of a decision which may have been made to a tribunal or the commission prior to the commencement date. The decision in this case include: decision to direct or not direct rectification or completion work, decision that tribunal work undertaken at the direction of the commission is or is not satisfactory and a decision to categorise an individual as a permitted individual. If a person had not applied prior to the commencement they may make an application in accordance with part 7, division 3.

New section 55 (Existing disciplinary proceedings) provides for the tribunal to start, continue and complete a disciplinary proceeding if the commission had applied to the tribunal however the tribunal had not started the proceeding.

New section 56 (Allocation of demerit points) provides for the commission to allocate demerit points under the former part 3E, if they had an obligation to allocate the points before the commencement of this section but had not.

New section 57 (Categorisation as excluded individuals or permanently excluded individual continues) provides that an individual who immediately before the commencement was an excluded individual for a relevant bankruptcy or company event continues to be an excluded individual under the former section 56AC as if that section was not amended.

New section 58 (Becoming a permitted individual after the commencement) provides that if the commission had given an individual a written notice that they were an excluded individual (former section 56AF(2) before the commencement and at the commencement 28 days had not elapsed the person may apply to the commission for a decision under the former section 56AD.

New section 59 (Categorisation as permitted individual continues) provides that a permitted individual for a relevant event continues is not to be considered an excluded individual for that relevant event. The section also includes the definition of ‘permitted individual’.

New section 60 (Outstanding applications for rectification of building work that is defective or incomplete) provides that after the commencement, the commission may deal with an application by a consumer under the former section 71A (to rectify building work that was defective or incomplete) despite the repeal of that section.

New section 61 (Outstanding directions to rectify building work that is defective or incomplete) provides that if the commission has directed a person to rectify building work that was defective or incomplete prior to commencement under former section 72 and the direction has not been complied with, the direction is considered still to apply to that person.

New section 62 (Domestic building contracts entered into before repeal) provides that the

*Domestic Building Contracts Act 2000* continues to apply for any domestic building contract and to any parties to the contract after the commencement. The definition of the ‘domestic building contract’ is also included.

New section 63 (Continued reference to conduct under the repealed *Domestic Building Contracts Act 2000*) provides that the repeal of the *Domestic Building Contracts Act 2000* does not cause or require the licensee register kept under the Act to be: amended or remove notes relating to the repealed Act or cancel any demerit points relating to the repealed Act. Also it does not prevent the consideration of an individual’s past enforcement provisions of the repealed Act.

New section 64 (Past contraventions of repealed Act) provides that for a person alleged to have committed an offence against the repealed *Domestic Building Contracts Act 2000*, the proceedings for an offence may be started, continued or completed as if the repealed Act had not been repealed.

New section 65 (Continuation and finalisation of matters under former part 5) provides that if a right, privilege or liability was acquired, accrued or incurred by the commission or a person under former part 5 of the Act and the right or privilege had not been exhausted or the liability released, they may be exercised or enforced despite the replacement of that part by the Amendment Act.

New section 66 (Existing policies of insurance) provides that a policy of insurance that came into effect under the former part 5 continues in force on the terms stated in the board’s policies for that purpose. The definition of ‘board policies’ has been included and means the policies of the board made for the purpose of section 19 and relating to the statutory insurance scheme.

New section 67 (Repeal of board’s policies about statutory insurance scheme) provides that on commencement all policies of the board made for the purposes of section 19 about the terms of cover under the statutory insurance scheme are repealed.

New section 68 (Transitional regulation-making power) allows a regulation to make provision of a saving or transitional nature that is necessary to allow or facilitate the implementation of the reforms in the Bill. This provision expires 1 year after the day of the commencement of the new section.

*Clause 60* inserts a new Schedule 1B (Domestic building contracts) which contains new sections 1 to 46.

New section 1 (Definitions for sch 1B) provides definitions for the new Schedule 1B.

New section 2 (Meaning of contract price) provides a new definition of contract price specifically for the new Schedule 1B.

New section 3 (Meaning of domestic building contract) provides the key definition of domestic building contract. It is primarily a contract to carry out domestic building work, or a construction management contract for the provision of building work services for domestic building work or another contract to manage the carrying out of domestic building work. However, the definition also provides circumstances where a contract is not a domestic building contract.

New section 4 (Meaning of domestic building work) provides an extensive definition of domestic building work. It primarily provides that it is for:

- the erection or construction of a detached dwelling;
- the renovation, alteration, extension, improvement or repair of a home;
- removal or resiting work for a detached dwelling;
- the installation of a kit home at a building site.

There are also inclusions and exclusions to this definition.

New section 5 (Meaning of regulated contract) provides clarification on what is a regulated contract. These contracts include a domestic building contract for which the contract price is more than the regulated amount, a cost plus contract with the total contract amount estimated to be more than the regulated amount and a mixed-purpose contract under which the amount referable to the contracted services is more than the regulated amount. Definitions are also included for ‘additional services’ and ‘amount referable to contracted services’.

New section 6 sets out the meaning of the term level 1 regulated contract.

New section 7 sets out the meaning of the term level 2 regulated contract.

New section 8 (Meaning of foundations data) provides that foundation data is the information about a building site that a building contractor exercising reasonable care and skill would need to have available to prepare an appropriate footings design for a site including the design for a concrete slab. This also includes an adequate estimate of the cost of construction of the footings/slab.

New section 9 (Meaning of home) provides that a home is a building or part of a building that is designed, constructed or adapted for use as a residence. Examples of these buildings are given which include: detached or semi-detached dwelling, transportable house, terrace or townhouse or the like. A regulation can declare types of building which are not homes.

New section 10 (Meaning of provisional sum) provides that the provisional sum for a domestic building contract is an amount that is an estimate of the cost of providing particular contracted services. This amount includes the cost of supplying material needed for the subject work.

New section 11 (Multiple contracts for the same domestic building work) provides if a building contractor and building owner enters into 2 or more separate contracts which could be the subject of a single contract and if they were, they would be a contract for carrying out domestic building work, the separate contracts are taken to be a single contract.

New section 12 (References to particular terms) provides that in schedule 1B references to a building contractor, owner, contracted services, subject work or building site in association with a reference to a domestic building contract is a reference to these terms under the contract.

New section 13 (Requirements for contract – level 1 regulated contract) sets out the requirements for a level 1 regulated contract. The minimum details required include name of the parties, building contractors licence number, description of the work, plans and

specifications, contract price, cooling-off period notice and other matters listed in the section.

New section 14 (Requirements for contract – level 2 regulated contract) sets out the requirements for a level 2 regulated contract. The minimum details required include name of the parties, building contractors licence number, description of the work, plans and specifications, contract price, cooling-off period notice and other matters listed in the section. Also included are the requirements if the building contractor is responsible for engaging the building certifier. In addition any payment claim for the completion of any stated stage of the subject work cannot be made unless the contractor has given the owner all certificates of inspection for the relevant stage.

New section 15 (Copy of contract for building owner) provides that the building contractor must give the building owner a readily legible signed copy of the contract, including any plans and specifications for the subject work within 5 business days after entering into a regulated contract. A maximum penalty of 60 penalty units applies for failure to comply.

New section 16 (Copy of commencement notice) provides that the building contractor must give the building owner for a level 2 regulated contract, a commencement notice stating the date the subject work started at the building site and the date for practical completion within 10 business days of starting the subject work. A maximum penalty of 40 penalty units applies for failure to comply.

New section 17 (Copies of certificate of inspection) provides that the if the building contractor under a regulated contract is responsible for engaging the building certifier for the subject work (whether personally or as the agent for the owner), they must give the building owner a copy of each certificate for the subject work as soon as practicable after receiving it. A maximum penalty of 20 penalty units applies for failure to comply.

New section 18 (Copy of consumer building guide) provides that for a level 2 regulated contract, the building contractor must give the building owner a copy of the consumer building guide before the owner signs the contract. A maximum penalty of 20 penalty units applies for failure to comply.

New section 19 (Implied warranties) provides that the warranties in division 2 are part of every regulated contract and that a warranty mentioned in a section of division 3 is part of each regulated contract that is a contract of the type to which the section applies.

New section 20 (Suitability of materials) provides that the building contractor is to supply materials to the project that are new (unless stated in the contract) and will be good and suitable for the purpose for which they are used. This warrant only applies to materials that are supplied by the responsible person for the contract and some materials may be excluded dependant on who nominates the use. Definitions are included for ‘relevant criteria’ and ‘responsible person’.

New section 21 (Compliance with legal requirements) provides that the building contractor warrants that the subject work will comply with all relevant laws, legislation and legal requirements.

New section 22 (Standard of work and exercise of care and skill) provides that the building contractor also warrants that the subject work will be carried out in an appropriate and skilful

way with reasonable care and skill.

New section 23 (Adherence to plans and specifications) provides that for a regulated contract, if plans and specifications form part of the contract, the building contractor warrants that the subject work will be carried out in accordance with those plans and specifications.

New section 24 (Suitability of premises for occupation) provides that if the regulated contract for the subject work consists of the erection or construction (including a renovation or alteration) of a detached dwelling to a stage suitable for occupation, the building contractor warrants that the subject work will be suitable for occupation when the work is finished.

New section 25 (Carrying out work with reasonable diligence) provides that when carrying out the subject work, the building contract warrants the work will be carried out with due diligence.

New section 26 (Calculation of provisional sums and prime cost items) provides that for a regulated contract providing for a provisional sum or prime cost item the costs of these items have been calculated by the building contractor with reasonable care and skill have regard to the information available.

New section 27 (Warranties run with building) provides that an associated person for a regulated contract has the same rights regarding warranties as the building owner. Definitions are included for 'associated person' and 'relevant time'.

New section 28 (Protection of rights given by warranties) provides that the rights of a person for a breach of warranty cannot be removed by an agreement or other document which purports to restrict or deny the rights.

New section 29 (Proceedings for breach of warranties) provides that proceedings for a breach of warranty must be started before the end of the relevant warranty period. However if the breach becomes apparent within the last 6 months of the warranty period, proceedings may be started within a further 6 months after the end of the warranty period. The definition of warranty period is provided.

New section 30 (Contracted services must not start before regulated contract complies with requirements) provides that the building contractor for a regulated contract must not start to provide the contracted services before the contract complies with the requirements for that type of contract.

New section 31 (Foundations data) provides that before entering into a regulated contract, if the subject work requires the construction or alteration of footings or a concrete slab for the building, the building contractor must obtain the foundations data that is appropriate for the building site. A maximum penalty of 100 penalty units applies for failure to comply.

New section 32 (Arbitration clauses) provides that including a provision in a regulated contract or other agreement that requires a dispute under the contract to be referred to arbitration is void.

New section 33 (Deposits) provides that the building contractor under a regulated contract must not demand or receive a deposit under the contract before starting to provide the contracted services unless the amount received complies with the requirements stated in this section. A



maximum penalty of 100 penalty units applies for failure to comply. Definitions are included for ‘deposit’ and ‘off-site work’.

New section 34 (Progress payments for regulated contracts) provides that a building contractor cannot demand or receive an amount under a contract (except for the deposit) unless this payment relates directly to and has a proportionate value of the subject work carried out. A maximum penalty of 50 penalty units applies for failure to comply. The definition of ‘building site’ and ‘deposit’ is provided.

New section 35 (Right of building owner to withdraw from contract in cooling-off period) provides the ability for a building owner under a regulated contract to withdraw from the contract within 5 business days after the day on which the owner receives a copy of the signed contract and, for a level 2 regulated contract, a copy of the consumer building guide from the building contractor. For a level 2 regulated contract if the two documents are received on different days, the 5 days commences on the day the second document is received by the owner. The building owner may also withdraw from the contract if 5 business days have elapsed from the date the contract was entered into and the owner has not received from the contractor a copy of the signed contract and, for a level 2 regulated contract, a copy of the consumer building guide. Nothing affects the right of the building owner to withdraw from the contract if the building owner subsequently receives a copy of the signed contract and, for a level 2 regulated contract, the consumer building guide from the building contractor.

New section 36 (Restrictions affecting right of withdrawal in cooling-off period) provides that a building owner may not withdraw from a regulated contract under new section 35 if the building owner and building contractor had previously entered into a regulated contract and the terms of both contracts are substantially the same. The definitions of ‘formal legal advice’ and ‘practising legal practitioner’ are provided.

New section 37 (Withdrawal procedure) provides the building owner the process to withdraw from a regulated contract. The building owner must, within the time allowed, give or serve on the building contractor the withdrawal notice. The definition of ‘withdrawal notice’ is provided.

New section 38 (Rights and obligations of parties following withdrawal in cooling-off period) provides the mechanism, if a building owner withdraws from a regulated contract in the cooling off period, for the retaining of or refunding of monies paid.

New section 39 (Waiving right of withdrawal) provides that a builder owner under a repair contract may waive their right to withdraw from a contract subject to providing the building contractor a waiver notice. The definition of ‘waiver notice’ is provided.

New section 40 (Variations must be in writing) provides that the building contractor must ensure that a variation to the contract is provided in written form to the building owner either 5 business days from the day the parties to the contract agree to a variation or before any domestic building work which is the subject of the variation starts, whichever is the earliest to occur. A maximum penalty of 20 penalty units applies for failure to comply. Also the building contractor must not carry out any domestic building work which is the subject of the variation until the building owner has agreed in writing. A maximum penalty of 20 penalty units applies for failure to comply.

New section 41 (General conditions of document evidencing a variation) provides that the building contractor under a regulated contract must ensure a document evidencing a variation of the contract complies with the formal requirements for a variation. A maximum penalty of 20 penalty units applies for failure to comply.

New section 42 (Extension of time) provides the mechanism for a building contractor to make a claim for an extension of time. A claim can only be made if the delay was not reasonably foreseeable and beyond the reasonable control of the building contractor, caused by the building owner or caused by a variation to the contract. A building contractor cannot rely on an extension of time provision unless the claim has been made in accordance with this provision. A maximum penalty of 20 penalty units applies for failure to comply. Also a building contractor under a regulated contract must give the building owner a signed copy of the claim within 5 business days of the owner approving the claim. A maximum penalty of 20 penalty units applies for failure to comply.

New section 43 (Building contractor does not acquire interest in land of resident owner) provides that a domestic building contract does not give the building contractor an interest in land of the resident owner. It is an offence if a building contractor lodges a caveat claiming an interest in the land of the building owner under a domestic building contract knowing the owner to be a resident owner. A maximum penalty of 100 penalty units applies for failure to comply.

New section 44 (Effect of failure by building contractor to comply with requirement) provides that a contract is still enforceable even when a building contractor fails to comply with a requirement under this Act in relation to a domestic building contract.

New section 45 (Relationship with other Acts) provides instances where both the *Commercial Arbitration Act 2013* and the *Subcontractors' Charges Act 1974* do not apply to domestic building work.

New section 46 (Consumer building guide) provides that the commission must prepare and publish a consumer building guide in a form prescribed by regulation. Details of the type of information to be provided are contained in this section.

*Clause 61* omits from schedule 2 (Dictionary) the definitions that are no longer required as a result of the amendments to the Bill. The clause also inserts new definitions as required.

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

*Clause 62* provides that part 3 amends the *Housing Act 2003*.

*Clause 63* amends the heading of Part 3, division 1 to insert the words 'or funded provider'.

*Clause 64* amends section 17 to extend the statutory obligation on clients when giving and updating housing service information to funded providers.

*Clause 65* amends section 18 to extend the statutory obligation on clients to give notice of changes in housing service information prescribed under a regulation to funded providers.

*Clause 66* inserts new part 8, division 2A 'Confidentiality'.

New section 94A provides definitions for division 2A including ‘approved provider’ and ‘disclose’.

New section 94B deals with immunity for the disclosure of particular confidential information.

Subsection (1) sets out when this section applies to the disclosure of confidential information.

Subsection (2) provides that the chief executive, employee of the department, approved provider or employee of the approved provider is not criminally liable for the disclosure under any law, including, for example, under a confidentiality provision if the disclosure is made for the purpose of providing a housing service.

Subsection (3) provides that the chief executive or employee of the department is not civilly liable if the disclosure is made for the purpose of providing a housing service.

Subsection (4) provides that the approved provider or employee of the approved provider is not civilly liable if the disclosure is made for the purpose of providing a housing service and the disclosure does not contravene a term of the funded provider’s funding agreement or for another approved provider, does not contravene a term of the provider’s contract or agreement with a funded provider.

Subsection (5) provides a definition of ‘confidentiality provision’.

Confidential information disclosed under s 94B which is subject to a confidentiality provision will remain subject to the confidentiality provision or be subject to a corresponding confidentiality requirement in sections 94C, 94D or 94E.

New section 94C provides that the section applies to confidential information if the information is confidential information that must not be disclosed under section 49A of the *Ambulance Services Act 1991*. The approved provider or employee must not disclose the information to anyone else, other than for the purpose of providing a housing service unless the disclosure is to the person to whom the confidential information relates or is required or permitted by law.

New section 94D provides that the section applies to confidential information given to an approved provider or an employee of an approved provider if the information is information or a document that must not be disclosed, or to which access must not be given, under section 188 of the *Child Protection Act 1999*. The approved provider or employee must not disclose the information, or give access to the document, to anyone else, other than for the purpose of providing a housing service. The provision also lists some circumstances in which the approved provider or employee may disclose the information or give access to the document to someone else.

New section 94E provides that the section applies to confidential information given to an approved provider or an employee of an approved provider if the information is confidential information that must not be disclosed under section in section 341 of the *Corrective Services Act 2006*. The approved provider or employee must not disclose the information, or give access to the document, to anyone else, other than for the purpose of providing a housing service. The

provision also lists some circumstances in which the approved provider or employee may disclose the information or give access to the document to someone else.

*Clause 67* amends section 99A(2) to provide that the chief executive may delegate the chief executive's functions or powers under the Act to an appropriately qualified person.

Section 99A(3) provides that a delegation of a function or power may permit the sub delegation and further sub delegation of the function or power to an appropriately qualified person.

*Clause 68* inserts a new section 99B which provides the section applies to an entity, other than an individual, in relation to the performance of a function or exercise of a power under the Act. The *Crime and Corruption Act 2001*, *Judicial Review Act 1991*, the *Ombudsman Act 2001* and *Public Interest Disclosure Act 2010* apply to a delegate in the performance of a function or exercise under the Act.

*Clause 69* amends section 105 to insert a certificate purporting to be signed by an approved provider stating any of the matters as set out in subparagraphs (a) to (d) is evidence of the matter.

*Clause 70* amends Schedule 4 (Dictionary) to omit the definition for 'appropriately qualified' and insert definitions for 'approved provider' and 'disclose'.

#### **Part 4 Amendment of Residential Tenancies and Rooming Accommodation Act 2008**

*Clause 71* provides that part 4 amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

*Clause 72* amends section 457 to insert the definition for 'social housing database'.

*Clause 73* amends section 458 to provide chapter 9 does not apply to a tenancy database kept by an entity for use only by that entity or its employees or agents; or a social housing database.

*Clause 74* amends section 527A to omit and insert new definitions for 'community housing provider tenancy agreement', 'existing State tenancy agreement' and 'replacement lessor'.

*Clause 75* amends schedule 2 (Dictionary) to insert definitions for 'existing State tenancy agreement', 'social housing database' and 'replacement lessor'.

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

*Clause 76* provides that this part amends the *Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Act 2013*.

*Clause 77* amends section 20, inserted section 527C, to provide that this section applies if a replacement lessor gives the State a notice under this section for residential premises that are the subject of an existing State tenancy agreement, and the notice states a day, at least 14 days

after the notice is given, for termination of and replacement of the existing State tenancy agreement.

This section provides for the termination of the existing State tenancy agreement and re-granting of a new residential tenancy agreement (*a community housing provider tenancy agreement*) between the replacement lessor and the tenant on terms prescribed under a regulation.

*Clause 78* amends section 22 (insertion of new chapter 14, part 3).

*Clause 78* (1) amends section 22, inserted section 554(1)(b) and (c) to provide until the action under this Act in relation to the notice or proceeding is finished the notice or proceeding is taken to have been given or started under the community housing provider tenancy agreement and despite section 527C(3), the terms of the community housing provider tenancy agreement are taken to be the terms of the existing State tenancy agreement.

*Clause 78* (2) amends section 22, inserted section 554, to insert subsection (3) which provides that the action continues in relation to the existing State tenancy agreement despite its termination under section 527C(2)(a).

*Clause 78* (3) amends section 22, inserted section 555(1)(b) and (c) to provide the existing State tenancy agreement ends under section 527C and at the time the existing State tenancy agreement ends an action is pending under the notice or proceeding.

*Clause 78* (4) amends section 22, inserted section 555, to insert subsection (4) which provides that the action continues in relation to the existing State tenancy agreement despite its termination under section 527C(2)(a).

## **Part 6 Repeal**

*Clause 79* repeals the *Domestic Building Contracts Act 2000* No.9 of 2000.

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

*Clause 80* provides that Schedule 1 amends the Acts mentioned in it.