



Queensland

Building and Other Legislation Amendment Act 2010

Act No. 21 of 2010



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Queensland

Building and Other Legislation Amendment Act 2010

Act No. 21 of 2010

An Act to amend the Building Act 1975, the Land Title Act 1994, the Royal National Agricultural and Industrial Association of Queensland Act 1971 and the Urban Land Development Authority Act 2007 for particular purposes

[Assented to 23 May 2010]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Building and Other Legislation Amendment Act 2010*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- sections 3 and 11 to 13
- parts 3, 4 and 5
- the schedule, items 1 to 3 and 7.

Part 2 Amendment of Building Act 1975

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Building Act 1975*.

4 Amendment of long title

Long title, from ‘and building certifiers’ to ‘sustainable’—
omit, insert—

‘, building certifiers and pool safety inspectors, and to provide for particular matters about swimming pool safety and sustainable’.

5 Amendment of s 3 (Simplified outline of main provisions of Act)

Section 3(7)—

omit, insert—

- ‘(7) Chapter 8 provides for matters about swimming pool safety, including the establishment of the Pool Safety Council and the regulation of swimming pool fencing.’.

6 Amendment of s 17 (Reference in Act to local government)

Section 17—

insert—

- ‘(d) a regulated pool—the area in which the pool is situated.’.

7 Amendment of s 174 (Notice of particular events to interstate licensing authorities and other entities)

- (1) Section 174(3)(c)—

renumber as section 174(3)(d).

- (2) Section 174(3)(c)—

omit, insert—

- ‘(c) if the building certifier is a pool safety inspector—PSC;’.

8 Replacement of ch 8 hdg (Swimming pool fencing)

Chapter 8, heading and note—

omit, insert—

‘Chapter 8 Swimming pool safety’.

[s 9]

9 Insertion of new ch 8, pt 1 and pt 2 hdg

Before section 232—

insert—

‘Part 1 Interpretation

‘231A Definitions for ch 8

‘In this chapter—

complying pool means a regulated pool that complies with the pool safety standard.

pool safety inspection function see section 231C.

pool safety standard see section 231D.

regulated land—

1 *Regulated land* is land on which any of the following is constructed or is to be constructed—

- (a) a class 1, 2, 3 or 4 building;
- (b) a moveable dwelling park under the *Residential Tenancies and Rooming Accommodation Act 2008*;
- (c) a residential park under the *Manufactured Homes (Residential Parks) Act 2003*.

2 The term includes land adjacent to the land and—

- (a) in the same ownership as the land; or
- (b) used in association with the land.

regulated pool see section 231B.

shared pool—

1 If the residents of 2 or more dwellings constructed, or to be constructed, on regulated land have, or will have, a right to use a regulated pool situated on the land, the pool is a *shared pool*.

2 For paragraph 1—

- (a) the resident of a dwelling is the person who is the owner or occupier of the dwelling or has a right to use the dwelling; and
 - (b) a dwelling includes—
 - (i) a moveable dwelling in a dwelling park under the *Residential Tenancies and Rooming Accommodation Act 2008*; and
 - (ii) a manufactured home on a site in a residential park under the *Manufactured Homes (Residential Parks) Act 2003*.
- 3 The term includes a regulated pool situated on land on which a class 3 building is, or is to be, constructed.

‘231B What is a *regulated pool*

‘(1) A *regulated pool*—

- (a) is a swimming pool situated on regulated land; and
- (b) includes the barriers for the pool.

‘(2) The barriers for the pool include any of the following—

- (a) the fencing for the pool;
- (b) the walls of a building enclosing the pool;
- (c) another form of barrier mentioned or provided for in the pool safety standard.

Example—

Under QDC, part MP3.4, a canal, lake, river, creek, stream, pond, ocean or dam may, in particular circumstances, form part of a barrier.

‘231C What is a *pool safety inspection function*

‘A *pool safety inspection function* is doing any of the following—

- (a) inspecting a regulated pool to decide whether to give a certificate (a *pool safety certificate*) that states the pool

[s 10]

- is a complying pool;
- (b) carrying out minor repairs relating to a regulated pool arising from an inspection of the pool under paragraph (a);
- (c) the giving of a pool safety certificate for a regulated pool;
- (d) the giving of a nonconformity notice for a regulated pool.

‘231D What is the *pool safety standard*

- ‘(1) The *pool safety standard* is—
 - (a) QDC, part MP3.4; and
 - (b) any other standard prescribed under a regulation for ensuring the safety of persons using a regulated pool.
- ‘(2) Without limiting subsection (1), a prescribed standard may provide for both or either of the following for the pool—
 - (a) the form of a resuscitation sign and the way it must be displayed;
 - (b) the requirements for devices used for recirculation of water in the pool.

‘Part 2 Swimming pool fencing

‘Note—

For appeals relating to this part, see the Planning Act, section 532.’.

10 Insertion of new ch 8, pts 3–9

Chapter 8—

insert—

‘Part 3 Inspections of regulated pools and the giving of pool safety certificates

‘Division 1 Inspections of regulated pools by pool safety inspectors

‘246AA Obligation to give pool safety certificate on inspection in particular circumstances

- ‘(1) This section applies if a pool safety inspector inspects a regulated pool and the inspector is reasonably satisfied the pool is a complying pool.
- ‘(2) The pool safety inspector must, within 2 business days after the inspection, give the owner of the pool a pool safety certificate for the pool.
- ‘(3) The pool safety inspector must not refuse to give a pool safety certificate for the pool only on the ground that—
 - (a) there is no development approval to carry out building work that is the construction of, or alteration to, the pool (the *pool work*); or
 - (b) the pool work does not comply with the development approval for the pool work.

‘246AB Nonconformity notice

- ‘(1) This section applies if a pool safety inspector inspects a regulated pool (an *initial inspection*) and the inspector is not satisfied the pool is a complying pool.

Note—

Under section 246BE, if a pool safety inspector inspects a regulated pool that is not a complying pool, the inspector may, in particular circumstances, carry out minor repairs relating to the pool before giving a pool safety certificate for the pool.

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- ‘(2) Subject to subsections (3) and (4), the pool safety inspector must, within 2 business days after the inspection, give the owner of the pool a notice (a ***nonconformity notice***) stating—
- (a) the pool is not a complying pool; and
 - (b) how the pool is not a complying pool; and
 - (c) what must be done to make the pool a complying pool; and
 - (d) that the owner may ask the pool safety inspector to reinspect the pool within 3 months after the giving of the nonconformity notice (the ***reinspection period***); and
 - (e) that it is an offence for the owner to ask, in the reinspection period, a person other than the following to inspect the pool for the giving of a pool safety certificate for the pool—
 - (i) if the owner initially asked the local government to inspect the pool—the local government;
 - (ii) if the owner initially asked the pool safety inspector to inspect the pool—the safety pool inspector; and
 - (f) that the pool safety inspector must notify the local government if the owner does not ask the pool safety inspector to reinspect the pool within the reinspection period.
- ‘(3) The pool safety inspector is not required to give the owner of the pool a nonconformity notice if, within 2 business days after the initial inspection—
- (a) the pool safety inspector reinspects the pool and is reasonably satisfied the pool is a complying pool; or
 - (b) the owner and the pool safety inspector agree that the inspector will carry out particular minor repairs to make the pool a complying pool and, within 20 business days after the making of the agreement—
 - (i) the inspector carries out the minor repairs; and

- (ii) on reinspection of the pool, the inspector is reasonably satisfied the pool is a complying pool.
- ‘(4) If, within 2 business days after the initial inspection—
 - (a) the owner of the pool and the pool safety inspector agree that the inspector will carry out particular minor repairs to make the pool a complying pool; and
 - (b) within 20 business days after the making of the agreement—
 - (i) the pool safety inspector has not carried out the repairs; or
 - (ii) on reinspection of the pool, the inspector is not reasonably satisfied the pool is a complying pool;the pool safety inspector must, within a further 2 business days, give the owner a nonconformity notice for the pool.
- ‘(5) A nonconformity notice must include an information notice about the decision.

‘246AC Steps after nonconformity notice

- ‘(1) This section applies if a pool safety inspector gives the owner of a regulated pool a nonconformity notice for the pool.
- ‘(2) If, within the reinspection period, the owner asks the pool safety inspector to reinspect the pool, the pool safety inspector must reinspect the pool within 5 business days after the request or the longer period that the owner and inspector agree.
- ‘(3) Sections 246AA and 246AB apply to the reinspection of the pool.
- ‘(4) If the owner fails to ask the pool safety inspector to reinspect the pool within the reinspection period, the inspector must, within 5 business days after the end of the reinspection period—
 - (a) notify the local government of the failure; and

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- (b) give the local government a copy of the nonconformity notice.

Note—

See also section 246BD (*Effect of pool safety inspector not complying with Act if no penalty provided*).

- ‘(5) The owner of the pool may, in the reinspection period, ask only the following person to inspect the pool for the giving of a pool safety certificate for the pool—
 - (a) if the owner initially asked the local government to inspect the pool—the local government;
 - (b) if the owner initially asked the pool safety inspector to inspect the pool—the pool safety inspector.

Maximum penalty—50 penalty units.

- ‘(6) Subsection (5) does not apply if—
 - (a) the owner of the pool, by written request to PSC, asks PSC to allow a person other than the person mentioned in subsection (5) to reinspect the pool for the giving of a pool safety certificate for the pool; and
 - (b) PSC gives the owner of the pool a notice agreeing to the request.

‘246AD Record-keeping requirements for inspections

- ‘(1) This section applies if a pool safety inspector inspects a regulated pool under this part.
- ‘(2) The pool safety inspector must, for at least 5 years from the day the pool is inspected, keep a record of the inspection, including any pool safety certificate and nonconformity notice given, unless the inspector has a reasonable excuse.

Maximum penalty—20 penalty units.

‘Division 2 Functions of local government for inspections of regulated pools

‘246AE Power of local government to inspect regulated pool

- ‘(1) This section applies if a pool safety inspector notifies the local government under section 246AC.
- ‘(2) An employee or agent of the local government may enter land on which the regulated pool is situated (the *pool site*) to inspect the pool.
- ‘(3) If the owner, or an occupier, of the land is present at the pool site, the employee or agent must do, or make a reasonable attempt to do, the following things before entering the pool site—
 - (a) identify himself or herself to the person, by—
 - (i) producing his or her identity card for the person’s inspection before exercising the power; or
 - (ii) having the identity card displayed so it is clearly visible to the person when exercising the power;
 - (b) tell the person the purpose of the entry;
 - (c) seek the consent of the person to the entry;
 - (d) tell the person the officer is permitted under this Act to enter the place without the person’s consent.
- ‘(4) However, if it is not practicable to comply with subsection (3)(a), the employee or agent must produce the identity card for the person’s inspection at the first reasonable opportunity.
- ‘(5) If the person is not present, the employee or agent must take reasonable steps to advise the person of the employee’s or agent’s intention to enter the place.
- ‘(6) Subsections (3) and (4) do not require the employee or agent to take a step that the employee or agent reasonably believes may frustrate or otherwise hinder the purposes of the entry.
- ‘(7) Subsection (2) does not apply to the entry of a dwelling.

[s 10]

‘246AF Cancellation of pool safety certificate after inspection

- ‘(1) This section applies if the local government—
 - (a) inspects a regulated pool that has a pool safety certificate; and
 - (b) reasonably believes the pool is not a complying pool.
- ‘(2) The local government may, after complying with section 246AG, cancel the pool safety certificate for the pool.
- ‘(3) If the local government cancels the pool safety certificate under subsection (2), it must, within 10 business days after the cancellation, give the chief executive notice of the cancellation.
- ‘(4) The chief executive must record in the regulated pools register the cancellation of the pool safety certificate for the pool.
- ‘(5) Subsection (2) does not limit the power of the local government under sections 248 and 249.

‘246AG Show cause notice procedure and decision

- ‘(1) The local government must, before cancelling the pool safety certificate under section 246AF(2) give the owner of the regulated pool a notice (a *show cause notice*).
- ‘(2) The show cause notice must state each of the following—
 - (a) that the local government proposes cancelling the pool safety certificate for the pool;
 - (b) the grounds for cancelling the pool safety certificate;
 - (c) the facts and circumstances forming the basis for the grounds;
 - (d) that the owner of the pool may, within a stated period (the *show cause period*), make submissions about why the pool safety certificate should not be cancelled.
- ‘(3) The show cause period must end at least 10 business days after the owner is given the show cause notice.

-
- ‘(4) The owner may, within the show cause period, make submissions to the local government about the show cause notice.
 - ‘(5) The local government must—
 - (a) consider the submissions; and
 - (b) decide whether to cancel the pool safety certificate for the pool.
 - ‘(6) If the local government decides not to cancel the pool safety certificate, it must give the owner notice of the decision.
 - ‘(7) If the local government decides to cancel the pool safety certificate, it must give the owner an information notice about the decision.
 - ‘(8) A decision to cancel the pool safety certificate takes effect at the end of 10 business after the information notice is given unless the owner sooner appeals the decision.

‘246AH Request for inspection of regulated pool

- ‘(1) This section applies if the owner of a regulated pool asks the local government to inspect the pool for the giving of a pool safety certificate for the pool.
- ‘(2) The local government must appoint or employ a pool safety inspector to conduct the inspection of the pool.

‘246AI Pool safety certificate does not limit power of local government to enter land for particular purposes

‘To remove any doubt, it is declared that the existence of a pool safety certificate for a regulated pool does not limit a person performing functions or exercising powers under this Act or another Act for a local government to enter land on which the pool is situated.

Examples of provisions giving power to enter land for a local government—

- *Local Government Act 2009*, chapter 5, part 2, division 2 (Powers of other persons)

[s 10]

- *Local Government Act 2009*, section 133 (Entering property under an inspection program)

‘Division 3 Pool safety certificates

‘246AJ Identification number for pool safety certificate

- ‘(1) PSC must make available for purchase by pool safety inspectors identifying numbers for pool safety certificates that are unique to each certificate.
- ‘(2) The identifying number for a pool safety certificate is called its *identification number*.
- ‘(3) The fee for an identification number for a pool safety certificate is the fee prescribed under a regulation.
- ‘(4) A pool safety inspector must, when giving a pool safety certificate, assign to the certificate an identification number.

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

‘246AK Form of pool safety certificate

‘A pool safety certificate for a regulated pool must—

- (a) be in the approved form; and
- (b) have an identification number; and
- (c) be signed by the pool safety inspector giving the certificate.

‘246AL Term of pool safety certificate

- ‘(1) A pool safety certificate for a regulated pool expires at the end of the relevant period unless it is sooner cancelled under section 246AF.
- ‘(2) In this section—
relevant period means—

- (a) for a pool that is a shared pool—1 year after the pool safety certificate is given; or
- (b) otherwise—2 years after the pool safety certificate is given.

‘246AM Pool safety inspector’s obligation to give notice of pool safety certificates

- ‘(1) This section applies if a pool safety inspector gives a pool safety certificate for a regulated pool.
- ‘(2) The pool safety inspector must, within 5 business days after giving the certificate, give the chief executive details of the certificate in the way approved by the chief executive.

‘246AN Final inspection certificate or certificate of classification instead of pool safety certificate

- ‘(1) This section applies to the following (each a *building certificate*)—
 - (a) a final inspection certificate given for building work that is, or includes, the construction of, or alteration to, a regulated pool;
 - (b) a certificate of classification given for—
 - (i) a building that includes a regulated pool; or
 - (ii) a building on land on which a regulated pool is situated.
- ‘(2) To the extent the building certificate applies to the pool, the building certificate may be used instead of a pool safety certificate for the pool for the relevant period.
- ‘(3) In this section—

relevant period means—

 - (a) for a pool that is a shared pool—1 year after the building certificate is given; or

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- (b) otherwise—2 years after the building certificate is given.

‘Division 4 Miscellaneous provision

‘246AO Appeals to building and development committee of decisions under pt 3

- ‘(1) This section applies if the owner of a regulated pool is given, or is entitled to be given, under this part an information notice about a decision of a pool safety inspector or the local government.
- ‘(2) The owner of the pool may, within the appeal period, appeal the decision to a building and development committee under the Planning Act.

Note—

See the Planning Act, section 508(c) (Jurisdiction of committees)

- ‘(3) In this section—

appeal period means—

- (a) for a decision of a pool safety inspector—20 business days after the information notice is given or taken to be given; or
- (b) for a decision of the local government—10 business days after the information notice is given or taken to be given.

‘Part 4 General provisions about regulated pools

‘Division 1 Obligations to give notice of regulated pools

‘246AP Building certifier’s obligation to give notice of regulated pool

- ‘(1) This section applies to a building certifier who gives either of the following (each a *building certificate*)—
- (a) a final inspection certificate for building work that is, or includes, the construction of, or alteration to, a regulated pool;
 - (b) a certificate of classification for—
 - (i) a building that includes a regulated pool; or
 - (ii) a building on land on which a regulated pool is situated.
- ‘(2) The building certifier must, within 5 business days after giving the building certificate, give the chief executive details of the certificate in the way approved by the chief executive.
- Maximum penalty—20 penalty units.

‘246AQ Local government’s obligation to give notice of existing regulated pool

- ‘(1) A local government must, within 3 months after the commencement of this section and in the way approved by the chief executive, give the chief executive details of each existing regulated pool in its local government area of which the local government has a record.
- ‘(2) In this section—
- existing regulated pool* means a regulated pool in existence on the commencement of this section.

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‘246AR Owner’s obligation to give notice of existing regulated pool

- ‘(1) This section applies to an existing regulated pool that is not recorded in the regulated pools register at the end of 3 months after the commencement of this section.
- ‘(2) The owner of the pool must, within 6 months after the commencement, give the chief executive details of the pool in the way approved by the chief executive, unless the owner has a reasonable excuse.

Maximum penalty—20 penalty units.

- ‘(3) This section does not apply to an existing regulated pool that is demolished or removed before 6 months after the commencement.
- ‘(4) In this section—

existing regulated pool means a regulated pool in existence on the commencement.

‘Division 2 Register of regulated pools

‘246AS Regulated pools register

- ‘(1) The chief executive must keep a register of regulated pools (the *regulated pools register*).
- ‘(2) The regulated pools register may be kept in the way the chief executive considers appropriate, including, for example, in an electronic form.
- ‘(3) The regulated pools register must contain the following particulars for each regulated pool—
 - (a) the address, and real property description, of the land on which the pool is situated;
 - (b) the following information about any pool safety certificate for the pool—
 - (i) the day the certificate was given and the period for which it is stated to remain in force;

- (ii) the certificate's identification number;
- (c) any other matter prescribed under a regulation.

'246AT Access to regulated pools register

- '(1) The chief executive must—
 - (a) on payment of the fee prescribed under a regulation, make the regulated pools register available for inspection by anyone at—
 - (i) the department's head office; and
 - (ii) other places the chief executive considers appropriate; and
 - (b) on application by a person and payment of the fee prescribed under a regulation, give the person a copy of all or part of the information held in the register.
- '(2) The chief executive may publish a copy of the regulated pools register on the department's website.
- '(3) A person or entity, or class of persons or entities, prescribed under a regulation may inspect the register without payment of the fee.

'Part 5 General provisions about pool safety inspectors

'Division 1 Regulation of the performance of pool safety inspection functions

'246AU Person must not perform pool safety inspection functions without licence

- 'A person who is not a pool safety inspector must not perform a pool safety inspection function unless—

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- (a) the function is carrying out minor repairs mentioned in section 231C(b); or
- (b) the person is—
 - (i) an employee or agent of the local government; and
 - (ii) authorised by the local government to inspect a regulated pool to decide whether it is a complying pool.

Maximum penalty—165 penalty units.

‘246AV Person must not perform pool safety inspection functions without prescribed professional indemnity insurance

‘A pool safety inspector must not perform a pool safety inspection function unless the pool safety inspector has the prescribed professional indemnity insurance.

Maximum penalty—100 penalty units.

‘246AW Giving pool safety certificates and nonconformity notices

‘(1) A pool safety inspector may give a pool safety certificate for a regulated pool only if the pool safety inspector—

- (a) has inspected the pool; and
- (b) is reasonably satisfied the pool is a complying pool.

Maximum penalty—165 penalty units.

‘(2) A pool safety inspector may give a nonconformity notice for a regulated pool only if the pool safety inspector—

- (a) has inspected the pool; and
- (b) is reasonably satisfied the pool is not a complying pool.

Maximum penalty—165 penalty units.

**‘246AX Pool safety inspector’s duty to act in public interest
in performing pool safety inspection function**

- ‘(1) A pool safety inspector must, in performing pool safety inspection functions, always act in the public interest.

Note—

See also section 246BD (*Effect of pool safety inspector not complying with Act if no penalty provided*).

- ‘(2) For subsection (1), the occasions when a pool safety inspector does not act in the public interest in performing pool safety inspection functions include, but are not limited to, when the inspector—
- (a) seeks, accepts or agrees to accept a benefit (whether for the inspector’s benefit or someone else) as a reward or inducement to act other than under this Act;
 - (b) acts in a way contrary to a function of the inspector under this Act;
 - (c) acts outside the scope of the inspector’s powers under this Act;
 - (d) contravenes the code of conduct for pool safety inspectors;
 - (e) acts in a way, in relation to the inspector’s practice, that is grossly negligent or grossly incompetent.

**‘246AY Pool safety inspector must not perform pool safety
inspection function if there is a conflict of interest**

- ‘(1) A pool safety inspector must not perform a pool safety inspection function if, in performing the function, the inspector has a conflict of interest.

Note—

See also section 246BD (*Effect of pool safety inspector not complying with Act if no penalty provided*).

- ‘(2) For subsection (1), the occasions when a pool safety inspector has a conflict of interest include, but are not limited to, when the inspector—

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- (a) has carried out building work to which the pool safety standard applies, other than minor repairs, for the regulated pool; or
- (b) is the owner or a lessee of, or the owner of a lot in, the building on the subject land; or
- (c) has a direct or indirect pecuniary interest in the building on the subject land.

‘(3) In this section—

subject land means land on which the regulated pool the subject of the pool safety inspection function is situated.

‘Division 2 Code of conduct for pool safety inspectors

‘246AZ Making code of conduct for pool safety inspectors

- ‘(1) The chief executive may make a code of conduct for pool safety inspectors for performing pool safety inspection functions (the *code of conduct for pool safety inspectors*).
- ‘(2) The Minister must, within 14 sitting days after the code of conduct for pool safety inspectors takes effect, table a copy of the code in the Legislative Assembly.

‘246BA When code of conduct for pool safety inspectors takes effect

- ‘(1) The code of conduct for pool safety inspectors, or an amendment or replacement of the code, does not take effect until it has been approved under a regulation.
- ‘(2) A reference to the code of conduct for pool safety inspectors is taken to include any amendment or replacement under subsection (1) that has taken effect.

‘246BB Tabling and inspection of amendment or replacement not part of or attached to regulation

- ‘(1) This section applies if—
- (a) a regulation made under section 246BA approves an amendment or replacement of the code of conduct for pool safety inspectors; and
 - (b) the amendment or replacement is not part of, or attached to, the regulation.
- ‘(2) The Minister must, within 14 sitting days after the regulation is notified in the gazette, table a copy of the amendment or replacement in the Legislative Assembly.
- ‘(3) A failure to comply with subsection (2) does not invalidate or otherwise affect the regulation.

‘246BC Access to code of conduct for pool safety inspectors

‘The chief executive must make the code of conduct for pool safety inspectors available for inspection as if it were a document that, under the Planning Act, chapter 9, part 6, the chief executive must make available for inspection.

‘Division 3 Miscellaneous provisions

‘246BD Effect of pool safety inspector not complying with Act if no penalty provided

- ‘(1) This section applies if a pool safety inspector does not comply with—
- (a) a provision of this Act about pool safety inspection functions or section 246CV; and
 - (b) no penalty is stated for the failure to comply.

Examples of provisions mentioned in subsection (1)—

sections 246AC, 246AX and 246AY

- ‘(2) The failure to comply is not an offence.

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- ‘(3) For the definition of *ground for disciplinary action*, the failure is taken to be conduct that is contrary to a function under this Act.

‘246BE Pool safety inspector may carry out minor repairs in particular circumstances

- ‘(1) A pool safety inspector may, in particular circumstances, carry out the repairs, or other works, prescribed under a regulation (*minor repairs*) for a regulated pool before giving a pool safety certificate for the pool.
- ‘(2) The particular circumstances for subsection (1) are—
- (a) the pool safety inspector inspects a regulated pool to decide whether the pool is a complying pool; and
 - (b) the pool would be a complying pool only if particular minor repairs were carried out; and
 - (c) the owner of the pool agrees that the pool safety inspector may carry out the minor repairs.

Note—

See also section 246AB.

- ‘(3) The pool safety inspector may charge the owner the reasonable cost of carrying out the minor repairs.

‘246BF Pool safety inspector to have regard to particular guidelines

‘In performing a pool safety inspection function, a pool safety inspector must have regard to the guidelines made under section 258 that are relevant to performing the function.

‘Part 6 Licensing of pool safety inspectors

‘Division 1 Role

‘246BG Role of pool safety inspector

‘A pool safety inspector may perform pool safety inspection functions for regulated pools.

‘Division 2 Applying for and obtaining licence

‘246BH Who may apply

‘An individual may apply to PSC for a licence only if the individual—

- (a) holds a certificate of competency, issued by an eligible course provider, for an approved training course; and
- (b) if the chief executive approves a test about pool safety and pool safety inspection functions (a *pool safety inspector test*)—has passed the test.

‘246BI Requirements for application

‘(1) An application for a licence must be—

- (a) made to PSC; and
- (b) in the approved form; and
- (c) accompanied by each of the following—
 - (i) the application fee prescribed under a regulation;
 - (ii) the licence fee for the licence prescribed under a regulation;
 - (iii) evidence of the applicant’s identity;

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- (iv) a copy of the applicant's certificate of competency for an approved training course;
 - (v) if the chief executive has approved a pool safety inspector test—evidence that the applicant has passed the test;
 - (vi) evidence that the applicant has the prescribed professional indemnity insurance.
- '(2) Information in the application must, if the approved form requires, be verified by a statutory declaration.

'246BJ Decision on licence application

- '(1) Subject to section 246CH, PSC must consider the application and decide to—
 - (a) license the applicant; or
 - (b) refuse to license the applicant.
- '(2) However, PSC may decide to license the applicant only if it is satisfied the applicant is a suitable person to hold a licence.
- '(3) PSC may impose conditions on the licence.
- '(4) PSC is taken to have refused to license the applicant if PSC does not decide the application within the decision period.
- '(5) If the application is refused under subsection (4), the applicant is entitled to be given by PSC an information notice about the decision.

'246BK Steps after making decision

- '(1) If PSC decides to license the applicant, it must issue the licence to the applicant.
- '(2) If PSC decides to refuse to license the applicant or to impose conditions on any licence issued to the applicant, it must give the applicant an information notice about the decision.

‘246BL Duration of licence

‘Subject to section 246BO, a licence remains in force for 1 year, unless it is earlier cancelled, suspended or surrendered under this Act.

‘Division 3 Renewal and restoration of licences

‘Subdivision 1 Notice of expiry

‘246BM Notice of expiry of licence

- ‘(1) PSC must, at least 20 business days before each pool safety inspector’s licence expires, give the inspector notice of the expiry.
- ‘(2) The notice must state—
 - (a) the day the licence will expire; and
 - (b) that, if the pool safety inspector wishes to renew the licence, the inspector must, on or before the expiry day—
 - (i) apply to renew the licence; and
 - (ii) pay the renewal fee, and licence fee, prescribed under a regulation for the period of the renewed licence; and
 - (c) how to apply to renew the licence.

‘Subdivision 2 Renewals

‘246BN Applying for renewal

- ‘(1) A pool safety inspector may apply to PSC to renew the inspector’s licence.
- ‘(2) However, the application can not be made—

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- (a) after the licence expires; or
 - (b) if the pool safety inspector is, under section 246BH, not qualified to apply for a licence.
- ‘(3) The application must be in the approved form and accompanied by—
 - (a) the renewal fee prescribed under a regulation; and
 - (b) the licence fee prescribed under a regulation; and
 - (c) evidence of the applicant’s identity; and
 - (d) evidence that the applicant has the prescribed professional indemnity insurance; and
 - (e) evidence that the applicant has undertaken in the previous 12 month period the continuing professional development prescribed under a regulation.

‘246BO Existing licence taken to be in force while application is being considered

- ‘(1) If an application is made under section 246BN to renew a licence, the licence is taken to continue in force from the day it would, apart from this section, have expired until the application is decided.
- ‘(2) Subsection (1) does not apply if the licence is earlier cancelled, suspended or surrendered under this Act.

‘246BP Decision on renewal application

- ‘(1) Subject to section 246CH, PSC must consider the application and decide to—
 - (a) renew the licence; or
 - (b) refuse to renew the licence.
- ‘(2) However, PSC may decide to renew the licence only if it is satisfied the applicant is still a suitable person to hold a licence.

- ‘(3) PSC is taken to have refused to renew the licence if PSC does not decide the application within the decision period.
- ‘(4) If the application is refused under subsection (3), the applicant is entitled to be given by PSC an information notice about the decision.

‘246BQ Steps after making decision

- ‘(1) If PSC decides to renew the licence, it must issue the renewed licence to the applicant.
- ‘(2) If PSC refuses to renew the licence or imposes conditions on the licence, it must give the applicant an information notice about the decision.

‘Subdivision 3 Restoration

‘246BR Applying for restoration

- ‘(1) If a pool safety inspector’s licence expires, the person may apply for restoration of the licence.
- ‘(2) The application must—
 - (a) be made within 3 months after the expiry; and
 - (b) be made to PSC in the approved form; and
 - (c) be accompanied by—
 - (i) the restoration fee prescribed under a regulation; and
 - (ii) the licence fee prescribed under a regulation; and
 - (iii) evidence of the applicant’s identity; and
 - (iv) evidence that the applicant has the prescribed professional indemnity insurance; and
 - (v) evidence that the applicant has undertaken in the previous 12 months the continuing professional development prescribed under a regulation.

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‘246BS Existing licence taken to be in force while application is being considered

- ‘(1) If an application is made under section 246BR to restore a licence, the licence is taken to continue in force from the day it would, apart from this section, have expired until the application is decided.
- ‘(2) Subsection (1) does not apply if the licence is earlier cancelled, suspended or surrendered under this Act.

‘246BT Decision on restoration application

- ‘(1) Subject to section 246CH, PSC must consider the application and decide to—
 - (a) restore the licence; or
 - (b) refuse to restore the licence.
- ‘(2) However, PSC may decide to restore the licence only if it is satisfied the applicant is still a suitable person to hold a licence.
- ‘(3) PSC is taken to have refused to restore the licence if PSC does not decide the application within the decision period.
- ‘(4) If the application is refused under subsection (3), the applicant is entitled to be given by PSC an information notice about the decision.

‘246BU Steps after making decision

- ‘(1) If PSC decides to restore the licence, it must issue the restored licence to the applicant.
- ‘(2) If PSC refuses to restore the licence or imposes conditions on the licence, it must give the applicant an information notice about the decision.

‘Division 4 Cancellation and suspension of, and other changes to, licences

‘Subdivision 1 PSC’s powers

‘246BV Power to amend, cancel or suspend licence

- ‘(1) PSC may, on the ground that a pool safety inspector is not a suitable person to hold a licence, do either of the following to the inspector’s licence—
 - (a) amend it to impose or remove a condition;
 - (b) cancel or suspend it.
- ‘(2) The power under subsection (1) may be exercised at any time after PSC has complied with subdivision 2.
- ‘(3) To remove any doubt, it is declared that PSC can not, under subsection (1), amend, cancel or suspend the pool safety inspector’s licence if PSC considers the inspector is not a suitable person to hold a licence only because a ground for disciplinary action is established.

Note—

The power of PSC under this section does not limit the power of the PSC to take disciplinary action under part 7 (Complaints, investigations and disciplinary proceedings relating to pool safety inspectors).

‘246BW Notice of particular events to interstate licensing authorities and other entities

- ‘(1) This section applies if any of the following (the *event*) happens to a pool safety inspector’s licence—
 - (a) it is cancelled or suspended;
 - (b) it is amended under this subdivision.
- ‘(2) As soon as practicable after the happening of the event, PSC must give notice of the event to the authority in any other State or New Zealand of which it is aware the pool safety

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inspector has a licence (however called) that is the same, or substantially the same, as a licence under this part.

- ‘(3) Also, PSC may give notice of the event to all or any of the following—
- (a) any employer of the pool safety inspector;
 - (b) if the pool safety inspector is a building certifier—BSA;
 - (c) another entity PSC reasonably believes needs to know about the event.
- ‘(4) A notice under this section may include the information PSC considers appropriate in the circumstances.

‘Subdivision 2 **Show cause notice procedure**

‘246BX **Show cause notice**

- ‘(1) If PSC believes grounds exist to act under subdivision 1, it must, before taking the action, give the relevant pool safety inspector a notice (a ***show cause notice***).
- ‘(2) The show cause notice must state each of the following—
- (a) the proposed action;
 - (b) the grounds for taking the proposed action;
 - (c) the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is to amend the licence—the proposed amendment;
 - (e) if the proposed action is to suspend—the proposed suspension period;
 - (f) that the pool safety inspector may, within a stated period (the ***show cause period***), make submissions about why the proposed action should not be taken.
- ‘(3) The show cause period must end at least 20 business days after the pool safety inspector is given the show cause notice.

- ‘(4) The proposed suspension period may be fixed by reference to the happening of a stated event.

‘246BY Submissions about show cause notice

- ‘(1) The pool safety inspector may, within the show cause period, make submissions to PSC about the show cause notice.
- ‘(2) PSC must consider the submissions.

‘246BZ Decision on proposed action

- ‘(1) After considering the submissions for the show cause notice, PSC must decide whether to take the proposed action.
- ‘(2) If the proposed action is to cancel the pool safety inspector’s licence, PSC may instead decide to suspend it for a stated period.

‘246CA Notice and taking effect of decision

- ‘(1) If PSC decides not to take the proposed action, it must give the pool safety inspector notice of the decision.
- ‘(2) If PSC decides to take the proposed action, it must give the pool safety inspector an information notice about the decision.
- ‘(3) A decision to take the proposed action takes effect when the information notice is given.
- ‘(4) In this section—
proposed action includes a decision under section 246BZ(2) to suspend the pool safety inspector’s licence for a stated period.

‘Division 5 General provisions about licences

‘246CB Register of pool safety inspectors

- ‘(1) PSC must keep a register of pool safety inspectors (the *pool safety inspectors register*).
- ‘(2) The pool safety inspectors register may be kept in the way PSC considers appropriate, including, for example, in an electronic form.
- ‘(3) The pool safety inspectors register must contain the following particulars for each pool safety inspector—
 - (a) their name, licence number and business contact details;
 - (b) the following information about their licence—
 - (i) its day of issue and expiry;
 - (ii) if conditions are imposed on the licence—the conditions;
 - (c) details of their eligibility for licensing as a pool safety inspector;
 - (d) if, under section 246CY(1), PSC decides whether or not a ground for disciplinary action against the pool safety inspector is established—
 - (i) details of the decision; and
 - (ii) if the decision was that a ground for disciplinary action against the pool safety inspector is established—details of the further decision required under section 246CY(4);
 - (e) if the tribunal makes an order about the pool safety inspector—details of the order, other than any details identified in the order as details not to be included in the register.
- ‘(4) Particulars recorded under subsection (3)(d) must be removed from the pool safety inspectors register 5 years after they were recorded in the register.

- ‘(5) Particulars recorded under subsection (3)(e) must be removed from the pool safety inspectors register at the end of the period during which the order states the details are to be included in the register.

‘246CC Access to pool safety inspectors register

- ‘(1) PSC must—
- (a) make the pool safety inspectors register available for inspection by anyone while its office is open for business; and
 - (b) give, on payment of any reasonable fee requested by it, anyone who asks for it a copy of all or part of the information held in the register.
- ‘(2) The chief executive may make the pool safety inspectors register available for inspection on the department’s website.

‘246CD Surrendering licence

- ‘(1) A pool safety inspector may surrender the pool safety inspector’s licence by notice to PSC.
- ‘(2) The surrender takes effect—
- (a) on the day the notice is given to PSC; or
 - (b) if a later day of effect is stated in the notice—on the later day.
- ‘(3) The pool safety inspector must, unless the pool safety inspector has a reasonable excuse, return the licence to PSC within 10 business days after the day the surrender takes effect.

Maximum penalty for subsection (3)—10 penalty units.

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‘246CE Obtaining replacement licence

- ‘(1) A pool safety inspector may apply to PSC in the approved form for the replacement of the pool safety inspector’s licence if it has been damaged, destroyed, lost or stolen.
- ‘(2) If PSC is satisfied the licence has been damaged, destroyed, lost or stolen, PSC must—
 - (a) replace it with another licence; and
 - (b) on payment of the fee prescribed under a regulation, give the applicant the replacement licence.

‘246CF Obligation of pool safety inspector to give notice of change in particular circumstances

- ‘(1) This section applies if a pool safety inspector—
 - (a) changes address; or
 - (b) holds, in another State or New Zealand, a licence (however called) that is the same, or substantially the same, as a licence under this part and the licence is cancelled or suspended; or
 - (c) is, after the issuing of the pool safety inspector’s licence under this part, convicted of a relevant offence.
- ‘(2) The pool safety inspector must give PSC notice of the change, cancellation, suspension or conviction within 20 business days after it happened.

Maximum penalty—

- (a) if the offence relates to subsection (1)(a)—1 penalty unit; or
- (b) if the offence relates to subsection (1)(b) or (c)—40 penalty units.

‘Division 6 Miscellaneous provisions

‘246CG Criteria for deciding suitability of applicants and licensees

- ‘(1) This section applies if, under this part, PSC is considering whether an applicant for, or for the renewal of, a licence or a licence holder is a suitable person to hold a licence.
- ‘(2) PSC must consider each of the following—
 - (a) whether the applicant or holder has been convicted of a relevant offence;
 - (b) whether the applicant or holder has previously been refused a licence, or has had a licence suspended or cancelled, under this Act or another relevant Act;
 - (c) whether the applicant or holder has, under another relevant Act, been disqualified from holding a licence under that Act;
 - (d) whether the demerit points prescribed under a regulation for this section have been accumulated by the applicant or holder;
 - (e) dealings in which the applicant or holder has been involved and the standard of honesty and integrity demonstrated in the dealings;
 - (f) whether the applicant or holder has the prescribed professional indemnity insurance;
 - (g) any other relevant circumstance.

‘246CH PSC may seek information from applicants about suitability and other matters

- ‘(1) This section applies to an application for, or to renew or restore, a licence.
- ‘(2) PSC may, by notice to the applicant, require the applicant to give it, within a stated reasonable period, documents or information PSC reasonably considers is needed—

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- (a) to establish the applicant is a suitable person to hold a licence; or
 - (b) to decide the application.
- ‘(3) The applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

‘246CI Refund of particular licence fees accompanying applications

‘If an application for, or to renew or restore, a licence is refused or withdrawn, PSC must refund the applicant the licence fee that accompanied the application.

‘246CJ Reviews by tribunal of decisions under pt 6

- ‘(1) This section applies if a person is given, or is entitled to be given, an information notice about a decision of PSC under this part.
- ‘(2) The person may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.

‘Part 7 Complaints, investigations and disciplinary proceedings relating to pool safety inspectors

‘Division 1 Complaints

‘246CK Making a complaint against a pool safety inspector

- ‘(1) A person may make a complaint to PSC about a pool safety inspector if the person believes there is a ground for disciplinary action against the pool safety inspector.

- ‘(2) A complaint must—
 - (a) be in writing; and
 - (b) contain particulars of the allegations on which it is founded; and
 - (c) be verified by statutory declaration.
- ‘(3) PSC may require the complainant to give further particulars of the complaint if PSC reasonably considers the further particulars are necessary for investigating the complaint.
- ‘(4) PSC may dismiss any complaint without taking further action under this division if the further particulars are not given or if the complaint or the further particulars are not verified by statutory declaration.
- ‘(5) PSC must not disclose to another person complaints against a pool safety inspector that have not been proved to PSC’s satisfaction.

‘246CL Pool safety inspector must be advised of complaint

- ‘(1) After receiving the complaint, PSC must, by notice—
 - (a) inform the pool safety inspector of the nature of the complaint; and
 - (b) invite the pool safety inspector to make, within the time stated in the notice, representations to PSC about the complaint.
- ‘(2) The time stated in the notice must be at least 5 business days after the notice is given.
- ‘(3) If PSC makes a decision about the complaint under section 246CY, PSC must have regard to the representations when making the decision.

‘246CM PSC may recommend mediation to resolve complaint

- ‘(1) If PSC considers a complaint about a pool safety inspector is capable of resolution by mediation, PSC must give the complainant and the pool safety inspector a notice stating—

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- (a) that PSC considers the complaint is capable of resolution by mediation; and
 - (b) attendance at, and participation in, mediation is voluntary; and
 - (c) that either party may withdraw from the mediation at any time; and
 - (d) when the mediation ends; and
 - (e) the effect of giving PSC a certificate about the mediation.
- ‘(2) PSC may recommend the complainant and the pool safety inspector enter into a process of mediation to resolve the complaint as soon as practicable and before PSC investigates the complaint.

‘246CN Mediation process

- ‘(1) If, at mediation, the parties agree to a resolution to the complaint, the agreement must be signed by, or for, each party and by the mediator (the *mediation agreement*).
- ‘(2) Mediation ends on the earlier of the following—
- (a) if a party withdraws from mediation—the day the party withdraws;
 - (b) if the parties agree the mediation has ended—the day the parties agree mediation has ended;
 - (c) if there is a mediation agreement—the day the agreement is signed;
 - (d) unless PSC extends the period and advises parties in writing of the extension—20 business days after notice is given under section 246CM.
- ‘(3) As soon as practicable after mediation has ended, the mediator must give PSC a certificate about the mediation in the approved form.
- ‘(4) If the parties sign an agreement, the complaint is taken to be withdrawn.

‘246CO Investigation of complaint

- ‘(1) This section applies if—
 - (a) PSC does not recommend the complainant and the pool safety inspector enter into mediation; or
 - (b) PSC recommends the complainant and the pool safety inspector enter into mediation and the complaint is not resolved when the mediation ends.
- ‘(2) PSC must conduct an investigation into the complaint as soon as practicable.
- ‘(3) PSC may deal with 1 or more complaints about a pool safety inspector in the same investigation.
- ‘(4) If during an investigation PSC is satisfied there is a matter about which another complaint could have been made against the pool safety inspector, PSC may deal with the matter in its investigation as if a complaint had been made about the matter.

‘Division 2 Investigations

‘246CP PSC may require documents to be produced

- ‘(1) For investigating a complaint or conducting an audit, PSC may, by notice given to a pool safety inspector, require the pool safety inspector to produce a document to PSC or a person authorised by PSC (an *investigator*).
- ‘(2) The notice may also state—
 - (a) a time and place by which the document must be produced; or
 - (b) that the document must be verified by statutory declaration.
- ‘(3) The time for compliance stated in the notice must be a reasonable time.

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- ‘(4) The pool safety inspector must comply with the notice, unless the pool safety inspector has a reasonable excuse.

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

‘246CQ Issue of identity card to investigator

- ‘(1) PSC must issue an identity card to each investigator.
- ‘(2) The identity card must—
- (a) contain a recent photo of the investigator; and
 - (b) contain a copy of the investigator’s signature; and
 - (c) identify the person as an approved investigator under this Act; and
 - (d) state an expiry date for the card.
- ‘(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

‘246CR Production or display of identity card

- ‘(1) In exercising a power under this Act in relation to another person, an investigator must—
- (a) produce his or her identity card for the person’s inspection before exercising the power; or
 - (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- ‘(2) However, if it is not practicable to comply with subsection (1), the investigator must produce the identity card for the person’s inspection at the first reasonable opportunity.

‘246CS Inspection of documents

‘An investigator may inspect any document produced to PSC under section 246DS and copy it or any part of it.

‘246CT Power to enter and inspect pool site relating to complaint or audit

- ‘(1) For investigating a complaint or conducting an audit, an investigator may enter and inspect a pool site to which the complaint or audit relates.
- ‘(2) The entry and inspection must be—
 - (a) made with the consent of the person in control, or who appears to the investigator to be in control, of the pool site; or
 - (b) authorised by warrant of a magistrate.
- ‘(3) For the purpose of asking the person in control of the pool site for consent to enter, the investigator may, without the person’s consent or a warrant enter the pool site to the extent that is reasonable to contact the person.
- ‘(4) An investigator may apply to a magistrate for a warrant under this section for a particular pool site.
- ‘(5) The application must be sworn and state the grounds on which it is sought.
- ‘(6) If the magistrate requires further information about the grounds on which the warrant is sought, the magistrate must not issue the warrant unless the investigator or some other person has given the information to the magistrate in the form (either orally or by affidavit) that the magistrate requires.
- ‘(7) The magistrate may issue the warrant only if the magistrate is satisfied there is a proper reason for entering and inspecting the pool site.
- ‘(8) The warrant must state—
 - (a) that the investigator may, with necessary and reasonable help and force, enter and inspect the pool site; and
 - (b) the hours of the day when entry may be made; and
 - (c) the day that is not more than 14 days after the issue of the warrant on which the warrant ceases to have effect.

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‘246CU Procedure before entry

- ‘(1) This section applies if an investigator is, under section 246CT, intending to enter a pool site, other than to the extent mentioned in section 246CT(3).
- ‘(2) Before entering the pool site, the investigator must do or make a reasonable attempt to do each of the following things—
 - (a) identify himself or herself to a person present at the pool site who is an occupier of the pool site, in the way stated in section 246CR;
 - (b) if the entry is being made under a warrant—give the person a copy of the warrant;
 - (c) tell the person the investigator is, under section 246CT, permitted to enter the pool site;
 - (d) give the person an opportunity to allow the investigator immediate entry to the pool site without using force.
- ‘(3) However, the investigator need not comply with subsection (2) if the investigator believes on reasonable grounds that complying with the subsection may frustrate or otherwise prevent the investigation of the complaint or the conduct of the audit.

‘246CV Cooperating with investigation or audit

- ‘(1) A pool safety inspector who is being investigated or audited by PSC must assist in and cooperate with the investigation or audit.
- ‘(2) A ground for disciplinary action against the pool safety inspector is established if the pool safety inspector, without reasonable excuse—
 - (a) fails to comply with subsection (1) or section 246CP; or
 - (b) misleads or obstructs PSC in the exercise of any function under this division.

‘246CW False or misleading statements

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

Maximum penalty—165 penalty units.

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

‘246CX False or misleading documents

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

Maximum penalty—165 penalty units.

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

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

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

‘246CY Decision after investigation or audit completed

- ‘(1) After investigating a complaint or conducting an audit, PSC must decide whether or not a ground for disciplinary action against the pool safety inspector is established.
- ‘(2) PSC must give the pool safety inspector and the complainant (if any) an information notice about the decision taken under subsection (1).

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- ‘(3) If PSC is aware that the pool safety inspector is employed by someone else to perform pool safety inspection functions, it must give the employer a copy of the notice.
- ‘(4) If PSC decides a ground for disciplinary action against the pool safety inspector is established, PSC must decide to do 1 or more of the following—
 - (a) reprimand the pool safety inspector;
 - (b) impose the conditions it considers appropriate on the pool safety inspector’s licence;
 - (c) direct the pool safety inspector to complete to the satisfaction of PSC the educational courses stated by PSC;
 - (d) direct the pool safety inspector to report on his or her practice as a pool safety inspector at the times, in the way and to the persons stated by PSC;
 - (e) require the pool safety inspector to refund some or all of a fee paid for an inspection of a regulated pool;
 - (f) require the pool safety inspector to pay to PSC a stated amount of not more than the equivalent of 60 penalty units;
 - (g) suspend the pool safety inspector’s licence for a period of not more than 1 year;
 - (h) if PSC is satisfied the pool safety inspector is generally competent and diligent—advise the pool safety inspector it does not intend to take any further action.
- ‘(5) However, if PSC is satisfied it would be reasonable in the circumstances to decide to do either of the following, PSC must apply to the tribunal to start a disciplinary proceeding against the pool safety inspector—
 - (a) suspend the pool safety inspector’s licence for more than 1 year;
 - (b) cancel the pool safety inspector’s licence.
- ‘(6) PSC must—

- (a) give an information notice about its decision under subsection (4) to the pool safety inspector; and
 - (b) if the decision is made after investigating a complaint—give the complainant a copy of the notice.
- ‘(7) Subsection (4) does not prevent PSC—
- (a) taking the matter the subject of the investigation into consideration at a later time as part of a pattern of conduct that may result in a disciplinary proceeding against the pool safety inspector; or
 - (b) starting a proceeding to prosecute the pool safety inspector for an offence against this Act.

‘246CZ Review of PSC’s decision

- ‘(1) This section applies if a pool safety inspector or complainant is dissatisfied with PSC’s decision under section 246CY(1) or (4).
- ‘(2) The pool safety inspector or complainant may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.

‘Division 3 Disciplinary proceedings

‘246DA Tribunal may conduct disciplinary proceeding

- ‘(1) The tribunal may, on application by PSC, conduct a disciplinary proceeding to decide whether a ground for taking disciplinary action against a pool safety inspector is established.
- ‘(2) An application under subsection (1) must be made as provided under the QCAT Act.

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‘246DB Constitution of tribunal for disciplinary proceeding

‘(1) For a proceeding under section 246DA, if the president of the tribunal under the QCAT Act considers it appropriate, the president may choose the following persons to constitute the tribunal—

- (a) 1 legally qualified member under the QCAT Act;
- (b) 1 senior member or ordinary member who has special knowledge of pool safety inspection functions and the administration of this Act;
- (c) 1 other senior member or ordinary member.

‘(2) In this section—

ordinary member means an ordinary member under the QCAT Act.

senior member means a senior member under the QCAT Act.

‘246DC Orders relating to current pool safety inspector

‘(1) This section applies if the tribunal decides a ground for disciplinary action against a pool safety inspector who is licensed at the time of the decision is established.

‘(2) The tribunal may make an order—

- (a) reprimanding the pool safety inspector; or
- (b) imposing conditions it considers appropriate on the pool safety inspector’s licence; or
- (c) directing the pool safety inspector to complete the educational courses stated in the order; or
- (d) directing the pool safety inspector to report on his or her practice as a pool safety inspector at the times, in the way and to the persons stated in the order; or
- (e) requiring the pool safety inspector to refund some or all of a fee paid for an inspection of a regulated pool;

- (f) directing the pool safety inspector to pay to PSC a stated amount of not more than the equivalent of 160 penalty units; or
 - (g) suspending the pool safety inspector's licence for the period the tribunal considers appropriate; or
 - (h) cancelling the pool safety inspector's licence; or
 - (i) disqualifying, indefinitely or for a stated period, the pool safety inspector from obtaining a licence as a pool safety inspector from PSC.
- ‘(3) The tribunal may make any other order it considers appropriate.

‘246DD Orders relating to former pool safety inspector

- ‘(1) This section applies if the tribunal decides a ground for disciplinary action against a former pool safety inspector is established.
- ‘(2) The tribunal may make an order that the former pool safety inspector must—
- (a) pay to PSC a stated amount of not more than the equivalent of 160 penalty units; or
 - (b) not be licensed or re-licensed by PSC for the period stated in the order; or
 - (c) never be licensed or re-licensed by PSC.
- ‘(3) The tribunal may make any other order it considers appropriate.

‘246DE Consequences of failure to comply with tribunal's orders and directions

‘The tribunal may, in a disciplinary proceeding against a pool safety inspector, order that the pool safety inspector's licence be suspended or cancelled if the pool safety inspector fails to comply with an order or direction of the tribunal within the period allowed by the tribunal.

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‘246DF Recording details of orders

‘An order may state—

- (a) the period in which the details of the order are to be included in the pool safety inspectors register for the person; and
- (b) the details of the order, if any, that the tribunal decides are not to be included in the register.

‘Part 8 Approved training courses for pool safety inspectors

‘Division 1 Role of eligible course providers

‘246DG Eligible course providers and their functions

‘(1) An *eligible course provider* is—

- (a) a registered training organisation; and
- (b) any other entity prescribed under a regulation to be an eligible course provider.

‘(2) An entity may be prescribed under subsection (1)(b) only if it has identifiable competence and expertise in conducting training courses about performing pool safety inspection functions.

‘(3) The function of an eligible course provider is to issue certificates of competency to individuals proposing to apply to be pool safety inspectors.

‘(4) For subsection (3), an eligible course provider must—

- (a) set educational and experiential standards for a training course that comply with the training course guidelines; and
- (b) conduct approved training courses.

‘Division 2 Applying for and obtaining approval of training course

‘246DH Application to conduct training course

- ‘(1) An eligible course provider may apply to PSC to approve a training course, to be conducted by the course provider, for individuals proposing to apply to be pool safety inspectors.
- ‘(2) The application must—
 - (a) be in the approved form; and
 - (b) contain sufficient details to show the training course complies with the training course guidelines; and
 - (c) be accompanied by—
 - (i) the application fee prescribed under a regulation; and
 - (ii) the approval fee prescribed under a regulation.

‘246DI Decision on application and steps after making decision

- ‘(1) PSC must consider the application and decide to—
 - (a) approve the training course; or
 - (b) refuse to approve the training course.
- ‘(2) PSC may approve the training course only if PSC reasonably considers—
 - (a) the eligible course provider is a suitable entity to conduct the training course; and
 - (b) the training course complies with the training course guidelines.
- ‘(3) If PSC approves the training course, it may impose conditions on the approval, including on the way the eligible course provider conducts the training course.

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- ‘(4) If PSC approves the training course, PSC must give the applicant notice of the decision.
- ‘(5) If PSC refuses to approve the training course or imposes conditions on the approval, PSC must give the applicant an information notice about the decision.
- ‘(6) PSC is taken to have refused to approve the training course if PSC does not decide the application within the decision period.
- ‘(7) If the application is refused under subsection (6), the eligible course provider is entitled to be given by PSC an information notice about the decision.

‘246DJ Duration of approval

‘An approval for a training course remains in force for 2 years, unless it is earlier cancelled under this Act.

‘Division 3 Renewals of approvals

‘246DK Applying for renewal

- ‘(1) An eligible course provider conducting an approved training course may apply to PSC to renew the approval for the training course.
- ‘(2) However, the application can not be made after the approval expires.
- ‘(3) The application must—
 - (a) be in the approved form; and
 - (b) if the training course guidelines have changed since the eligible course provider last applied for approval for the training course—contain sufficient details to show the training course complies with the change to the training course guidelines; and
 - (c) be accompanied by—

- (i) the renewal fee prescribed under a regulation; and
- (ii) the approval fee prescribed under a regulation.

‘246DL Decision on application and steps after making decision

- ‘(1) PSC must consider the application for renewal and decide—
 - (a) to renew the approval for the training course; or
 - (b) to refuse to renew the approval for the training course.
- ‘(2) PSC may renew an approval for the training course only if PSC reasonably considers—
 - (a) the eligible course provider is a suitable entity to conduct the training course; and
 - (b) the training course complies with the training course guidelines.
- ‘(3) If PSC renews the approval, it may impose conditions on the approval, including on the way the eligible course provider conducts the training course.
- ‘(4) If PSC renews the approval of the training course, PSC must give the applicant notice of the decision.
- ‘(5) If PSC refuses to renew the approval of the training course or imposes conditions on the approval, PSC must give the applicant an information notice about the decision.
- ‘(6) PSC is taken to have refused to renew the approval for the training course if PSC does not decide the application within the decision period.
- ‘(7) If the application is refused under subsection (6), the eligible course provider is entitled to be given by PSC an information notice about the decision.

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‘Division 4 Cancellation and amendment of approvals

‘246DM Cancellation or amendment of approval

- ‘(1) PSC may do any of the following to an approved training course—
 - (a) amend the approval to remove a condition;
 - (b) amend the approval to impose a condition;
 - (c) cancel the approval.
- ‘(2) However, PSC may exercise a power under subsection (1)(b) or (c) only if PSC reasonably considers—
 - (a) the eligible course provider conducting the approved training course is not a suitable entity to conduct the course; or
 - (b) the approved training course no longer complies with the training course guidelines.
- ‘(3) The power under subsection (1)(b) or (c) may be exercised at any time after PSC has complied with division 5.
- ‘(4) If PSC amends the approval to impose a condition or cancels the approval, PSC must give the eligible course provider an information notice about the decision.
- ‘(5) If PSC amends the approval to remove a condition, PSC must give the eligible course provider a notice about the decision.

‘Division 5 Show cause notice procedure

‘246DN Show cause notice

- ‘(1) If PSC believes grounds exist to act under section 246DM(1)(b) or (c), it must, before taking the action, give the eligible course provider conducting the approved training course a notice (a *show cause notice*).

- ‘(2) The show cause notice must state each of the following—
 - (a) the proposed action;
 - (b) the grounds for taking the proposed action;
 - (c) the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is to amend the approval—the proposed amendment;
 - (e) that the eligible course provider may, within a stated period (the *show cause period*), make submissions about why the proposed action should not be taken.
- ‘(3) The show cause period must end at least 20 business days after the eligible course provider is given the show cause notice.

‘246DO Submissions about show cause notice

- ‘(1) The eligible course provider may, within the show cause period, make submissions to PSC about the show cause notice.
- ‘(2) PSC must consider the submissions.

‘246DP Decision, notice and taking effect of decision

- ‘(1) After considering the submissions for the show cause notice, PSC must decide whether to take the proposed action.
- ‘(2) If PSC decides not to take the proposed action, it must give the eligible course provider notice of the decision.
- ‘(3) If PSC decides to take the proposed action, it must give the eligible course provider an information notice about the decision.
- ‘(4) A decision to take the proposed action takes effect when the information notice is given.

‘Division 6 Audit powers

‘246DQ Definition for div 6

‘In this division—

compliance audit, of an eligible course provider, means an audit to establish whether—

- (a) the eligible course provider’s approved training course complies with the training course guidelines; and
- (b) if PSC has imposed a condition on approval—the eligible course provider is complying with the condition.

‘246DR Compliance audit of eligible course provider

‘(1) This section applies to—

- (a) an eligible course provider conducting an approved training course; and
- (b) any of the eligible course provider’s activities to the extent the activities relate to the conducting of the approved training course.

‘(2) PSC may at any time conduct a compliance audit of the eligible course provider and its activities.

‘(3) The eligible course provider must assist in and cooperate with the audit.

‘(4) Subsection (2) does not limit the power of PSC to inquire into the activities of an eligible course provider to the extent the activities relate to the course provider conducting an approved training course.

‘246DS PSC may require documents to be produced

‘(1) This section applies if PSC is conducting a compliance audit of an eligible course provider.

- ‘(2) PSC may, by notice given to the eligible course provider, require the eligible course provider to give information or produce a document to PSC.
 - ‘(3) The notice may also state—
 - (a) a time and place by which the document or information must be produced; or
 - (b) that the document or information must be verified by statutory declaration.
 - ‘(4) The time for compliance stated in the notice must be a reasonable time.
 - ‘(5) The eligible course provider must comply with the notice.
- Maximum penalty for subsection (5)—50 penalty units.

‘Division 7 Reviews of decisions

‘246DT Reviews by tribunal of decisions under pt 8

- ‘(1) This section applies if an eligible course provider is given, or is entitled to be given, an information notice about a decision of PSC under this part.
- ‘(2) The eligible course provider may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.
- ‘(3) In deciding an application under this part, the primary consideration for the tribunal is the safety of any person.

‘246DU Assessors to help tribunal

- ‘(1) In conducting a proceeding that is a review of a decision given by PSC under this part, the tribunal must be helped by at least 1 assessor, nominated under section 246DW(2)(b), chosen by the principal registrar from the list mentioned in section 246DW(3).

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- ‘(2) Despite subsection (1), a proceeding may be conducted without the help of an assessor if the presiding member is satisfied it is necessary because of the urgency of the matter.
- ‘(3) In this section—
presiding member see the QCAT Act, schedule 3.
principal registrar see the QCAT Act, schedule 3.

‘246DV Function and powers of assessors

- ‘(1) The function of an assessor is to help the tribunal decide questions of fact in a proceeding.
- ‘(2) To enable an assessor to perform the assessor’s function, the assessor may, during a proceeding—
 - (a) ask questions of a witness in the proceeding; and
 - (b) discuss a question of fact with a person appearing for a party in the proceeding.

‘246DW Appointment of assessors

- ‘(1) PSC must, for each year, appoint persons as assessors for helping the tribunal in proceedings mentioned in section 246DU(1).
- ‘(2) A person is qualified to be appointed as an assessor only if—
 - (a) PSC is satisfied the person has the knowledge, expertise and experience relevant for helping the tribunal in the proceedings; and
 - (b) the person is nominated by the chief executive.
- ‘(3) PSC must, at the beginning of each year, give the principal registrar a list of the persons appointed as assessors for the year.
- ‘(4) The list must, for each person appointed, state the area in which the person has relevant knowledge, expertise and experience.

‘246DX Disqualification from appointment as assessor

‘A person may not be appointed or continue as an assessor if the person is not qualified, or ceases to be qualified, under section 246DW(2).

‘246DY Tribunal may have regard to assessor’s view

‘In deciding a question of fact in a proceeding, the member or members constituting the tribunal may, to the extent the member or members consider appropriate, have regard to the views of an assessor helping the tribunal.

‘Division 8 Offences

‘246DZ Falsely claiming to be eligible course provider

‘A person who is not an eligible course provider must not claim to be an eligible course provider.

Maximum penalty—80 penalty units.

‘246EA Falsely claiming to be conducting approved training course

‘A person who is not conducting an approved training course must not claim to be conducting an approved training course.

Maximum penalty—80 penalty units.

‘246EB Offences about issuing certificates of competency

‘A person who is not, or is not acting for, an eligible course provider conducting an approved training course must not issue, or claim to be able to issue, a certificate of competency.

Maximum penalty—80 penalty units.

‘Division 9 Miscellaneous provisions

‘246EC Training course guidelines

- ‘(1) The chief executive may issue guidelines (*training course guidelines*) to help eligible course providers apply to PSC for approval of a training course.
- ‘(2) Before issuing the training course guidelines, the chief executive must consult with any entity the chief executive considers appropriate.

‘246ED PSC may seek information from applicants and holders of approvals about suitability and other matters

- ‘(1) This section applies to—
 - (a) an application for, or to renew, an approval for a training course; or
 - (b) the holder of an approval for a training course.
- ‘(2) PSC may, by notice to the applicant or holder, require the applicant or holder to give it, within a stated reasonable period, documents or information PSC reasonably considers is needed—
 - (a) to establish the applicant or holder is a suitable entity to conduct an approved training course; or
 - (b) to decide the application.
- ‘(3) If subsection (1)(a) applies, the applicant is taken to have withdrawn the application if, within the stated period, the applicant does not comply with the requirement.

‘246EE Refund of particular approval fees accompanying applications

‘If an application for, or to renew, an approval for a training course is refused or withdrawn, PSC must refund the applicant the approval fee that accompanied the application.

‘Part 9 Pool Safety Council

‘Division 1 Establishment, functions and powers

‘246EF Establishment of PSC

‘The Pool Safety Council is established.

‘246EG Legal status

‘PSC—

- (a) is not a body corporate; and
- (b) does not represent the State.

‘246EH Functions of PSC

‘(1) PSC has the following functions—

- (a) under part 6, to license individuals as pool safety inspectors;
- (b) to carry out audits of pool safety inspectors, including their performance of pool safety inspection functions;
- (c) under part 7, to investigate written complaints made to it about pool safety inspectors or former pool safety inspectors and decide whether grounds for disciplinary action against the inspector are established;
- (d) to take disciplinary action against pool safety inspectors or former pool safety inspectors if grounds for disciplinary action against the inspectors are established;
- (e) under part 8, to approve training courses, conducted by eligible course providers, for individuals proposing to become pool safety inspectors;

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- (f) to carry out audits of eligible course providers conducting approved training courses;
 - (g) to report to the Minister on any Ministerial direction given to PSC;
 - (h) to give the chief executive, at least annually, a list of pool safety inspectors and a summary of disciplinary action taken against pool safety inspectors;
 - (i) under part 4, division 2, to keep a register of pool safety inspectors;
 - (j) to make available for purchase by pool safety inspectors identification numbers for pool safety certificates;
 - (k) to perform other functions given to PSC under this or another Act.
- ‘(2) In performing its functions, PSC must act independently, impartially and in the public interest.

‘246EI Powers of PSC

- ‘(1) Subject to any Ministerial direction, PSC has the powers—
- (a) necessary or convenient to perform its functions; or
 - (b) incidental to the performance of the functions.
- ‘(2) Without limiting subsection (1), PSC has all the powers of an individual and may, for example—
- (a) enter into contracts; and
 - (b) acquire, hold, dispose of, and deal with property; and
 - (c) employ staff; and
 - (d) appoint agents and attorneys; and
 - (e) engage consultants; and
 - (f) fix charges and other terms for services it supplies; and
 - (g) do anything necessary or convenient to be done in the performance of its functions under this or another Act.
- ‘(3) PSC also has the powers conferred on it under another Act.

‘246EJ Delegation by PSC

- ‘(1) PSC may delegate its powers to—
 - (a) 1 or more members; or
 - (b) the chief executive or other appropriately qualified person in the department.
- ‘(2) However, PSC can not delegate its power under this Act to decide to—
 - (a) refuse to license an applicant; or
 - (b) refuse to renew a licence; or
 - (c) refuse to restore a renewable licence; or
 - (d) cancel or suspend a licence under section 246BV; or
 - (e) take disciplinary action under section 246CY.
- ‘(3) Also, PSC can not delegate its power under this Act to decide to—
 - (a) refuse to approve a training course; or
 - (b) refuse to renew an approval of a training course; or
 - (c) cancel or amend an approval of a training course under section 246DM; or
 - (d) impose a condition on an approval of a training course.

‘Division 2 Membership of PSC

‘246EK Members

- ‘(1) PSC consists of the persons (each a *member*) appointed by the Minister.
- ‘(2) The Minister decides the number of members.
- ‘(3) However, PSC must consist of at least 1 representative of each of the following entities—
 - (a) the department;

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(b) LGAQ.

‘(4) Members, other than a member appointed under subsection (3)(a) or another public service officer appointed by the Minister, are appointed under this Act and not the *Public Service Act 2008*.

‘(5) In this section—

LGAQ means the following under the *Local Government Act 2009*, section 287—

- (a) before 1 July 2010—Local Government Association of Queensland (Incorporated);
- (b) from 1 July 2010—Local Government Association of Queensland Limited.

‘246EL Appointment of deputy members

- ‘(1) The Minister may also appoint a deputy to act for each member, mentioned in section 246EK(3), during the member’s absence.
- ‘(2) In appointing a deputy of a member, the Minister must appoint a person who represents the entity that the member, for whom the deputy is being appointed, represents.
- ‘(3) In the absence of a member, the deputy for the member has the same duties, powers, protection and rights as the member other than for section 246EM.

‘246EM Chairperson and deputy chairperson of PSC

- ‘(1) The Minister must appoint a member to be PSC’s chairperson, and another member to be PSC’s deputy chairperson.
- ‘(2) A person may be appointed as the chairperson or deputy chairperson at the same time the person is appointed as a member.
- ‘(3) The chairperson or deputy chairperson holds office for the term decided by the Minister, unless the member’s term of

office ends sooner than the member's term of office as chairperson or deputy chairperson.

- '(4) A vacancy occurs in the office of chairperson or deputy chairperson if the person holding the office resigns the office by signed notice given to the Minister or ceases to be a member.
- '(5) However, a member resigning the office of chairperson or deputy chairperson may continue to be a member.
- '(6) The deputy chairperson must act as chairperson—
 - (a) during a vacancy in the office of chairperson; and
 - (b) during all periods when the chairperson is absent from duty or, for another reason, can not perform the functions of the office.

'246EN Conditions of appointment to PSC

- '(1) Subject to sections 246EO and 246EQ, a member holds office for the term stated in the member's instrument of appointment.
- '(2) The term stated in the instrument of appointment must not be longer than 4 years.
- '(3) A member is to be paid the remuneration and allowances decided by the Minister.
- '(4) A member holds office on the terms and conditions, not provided for by this Act, that are decided by the Minister.
- '(5) However, a member who is a representative of the department in which this Act is administered is not entitled to any remuneration under this Act for being a member.

'246EO Disqualification from membership

- '(1) A person can not become, or continue as, a member if the person—
 - (a) is convicted of an indictable offence; or

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- (b) is or becomes an insolvent under administration under the Corporations Act, section 9; or
 - (c) is disqualified from managing corporations under the Corporations Act, part 2D.6; or
 - (d) becomes incapable of being a member because of physical or mental incapacity; or
 - (e) is guilty of misconduct of a type that could warrant dismissal from the public service if the member were an officer of the public service; or
 - (f) does not, without reasonable excuse, comply with section 246ES.
- ‘(2) Also, a person can not become, or continue as, a member if the Minister considers under section 246EP the person is not a suitable person to be a member.

‘246EP Criteria for deciding suitability of member

- ‘(1) This section applies if, under section 246EO(2)(b), the Minister is considering whether a person is a suitable person to be a member.
- ‘(2) The Minister must consider each of the following—
- (a) whether the person has previously been refused a licence, or has had a licence suspended or cancelled, under this Act or another relevant Act;
 - (b) whether the person has, under another relevant Act, been disqualified from holding a licence under that Act;
 - (c) dealings in which the person has been involved and the standard of honesty and integrity demonstrated in the dealings;
 - (d) any other relevant circumstance.

‘246EQ When appointed member’s office becomes vacant

‘The office of a member of PSC becomes vacant if the member—

- (a) resigns by signed notice given to the Minister; or
- (b) can not continue as a member under section 246EO; or
- (c) is absent, without the chief executive's leave and without reasonable excuse, from 3 consecutive meetings of PSC.

'246ER Leave of absence

- '(1) The chief executive may approve a leave of absence of more than 3 meetings for a member.
- '(2) Subsection (3) applies if a leave of absence is approved and—
 - (a) a deputy for the member has not been appointed under section 246EM; or
 - (b) a deputy for the member has been appointed under section 246EM but is unable to act in the office of the member during the member's approved leave.
- '(3) The Minister may appoint someone else as an acting member during the member's approved leave of absence.
- '(4) In appointing a person as an acting member, the Minister must have regard to the requirements of this division for the composition of PSC.
- '(5) If a leave of absence is approved for the deputy chairperson, the Minister may appoint another member as the deputy chairperson during the deputy chairperson's approved leave of absence.

'246ES Disclosure of interests

- '(1) This section applies to a member of PSC (the *interested member*) if—
 - (a) the member has an interest in an issue being considered or about to be considered by PSC; and
 - (b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.

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- ‘(2) After the relevant facts come to the interested member’s knowledge, the member must disclose the nature of the interest to a meeting of PSC.
- ‘(3) Unless PSC otherwise directs, the interested member must not—
 - (a) be present when PSC considers the issue; or
 - (b) take part in a decision of PSC about the issue.
- ‘(4) The interested member must not be present when PSC is considering whether to give a direction under subsection (3).
- ‘(5) If there is another person who must under subsection (2) also disclose an interest in the issue, the other person must not—
 - (a) be present when PSC is considering whether to give a direction under subsection (3) about the interested member; or
 - (b) take part in making the decision about giving the direction.
- ‘(6) If—
 - (a) because of this section a member of PSC is not present at a meeting for considering or deciding an issue or for considering or deciding whether to give a direction under subsection (3); and
 - (b) there would be a quorum if the member were present;the remaining members present are a quorum of PSC for considering or deciding the issue or for considering or deciding whether to give the direction at the meeting.
- ‘(7) A disclosure under subsection (2) must be recorded in PSC’s minutes.

‘246ET Protection of members from civil liability

- ‘(1) A member, or a person acting in the office of a member, is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act or a direction or a requirement under this Act.

- ‘(2) If subsection (1) prevents a civil liability attaching to the member or person, the liability attaches instead to the State.

‘Division 3 Meetings and other business of PSC

‘246EU Conduct of business

- ‘(1) A regulation may provide for how PSC must conduct its business, including its meetings.
- ‘(2) Subject to subsection (1) and this division, PSC may conduct its business, including its meetings, in the way it considers appropriate.

‘246EV Times and places of meetings

- ‘(1) PSC meetings are to be held at the times and places the chairperson decides.
- ‘(2) However, the chairperson must call a meeting if asked, in writing, to do so by at least half the members.
- ‘(3) The Minister may call a meeting of PSC at any time.

‘246EW Quorum

‘A quorum for a PSC meeting is more than half of the number of members.

‘246EX Presiding at meetings

‘The chairperson is to preside at all PSC meetings at which the chairperson is present.

‘246EY Conduct of meetings

- ‘(1) PSC may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably

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contemporaneous and continuous communication between persons taking part in the meeting.

- ‘(2) A person who takes part in a PSC meeting under subsection (1) is taken to be present at the meeting.
- ‘(3) A decision at a PSC meeting must be a majority decision of the members present.

‘246EZ Minutes

‘PSC must keep minutes of its proceedings.

‘Division 4 Staff of PSC

‘246FA Officers, employees and agents

- ‘(1) The chief executive may, by gazette notice, appoint a registrar to PSC, and other officers the chief executive considers appropriate, to help PSC perform its functions.
- ‘(2) A public service officer appointed under subsection (1) or assigned by the chief executive to perform duties to help PSC, holds the appointment or performs the duties concurrently with any other appointment the officer holds in the public service.

Note—

The registrar and other officers are employed under the *Public Service Act 2008*.

- ‘(3) The registrar has the powers and must perform the functions of the registrar under this Act.
- ‘(4) The chief executive may, by instrument, appoint other appropriately qualified persons to help PSC perform its functions.
- ‘(5) A person appointed under subsection (4) is employed under this Act and not the *Public Service Act 2008*.

‘Division 5 Pool Safety Fund

‘246FB Establishment of fund

‘The Pool Safety Fund (the *fund*) is established.

‘246FC Purpose and administration of fund

- ‘(1) The purpose of the fund is to record amounts received for, and paid from, the fund to achieve the purposes of this chapter.
- ‘(2) Accounts for the amounts must be kept as part of the departmental accounts of the department.
- ‘(3) However, amounts received for the fund may be deposited in a departmental financial-institution account of the department with other moneys of the department.
- ‘(4) Amounts received for the fund include the following—
 - (a) fees paid to PSC under this Act;
 - (b) amounts payable under section 246CY, 246DC or 246DD;
 - (c) other amounts paid to PSC under this Act.
- ‘(5) In this section—

departmental accounts, of a department, means the accounts of the department kept under the *Financial Accountability Act 2009*, section 69.

departmental financial-institution account, of a department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

other moneys, of the department, means all moneys of the department other than amounts received for the fund.

‘246FD Payments from fund

‘Amounts are payable from the fund only for paying the following—

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- (a) expenses incurred by PSC under this Act;
- (b) an amount authorised by the chief executive as payable from the fund for purposes relating to pool safety;
- (c) other amounts required or permitted by this Act to be paid out of the fund.

‘Division 6 Miscellaneous provisions

‘246FE Criminal history checks

- ‘(1) This section applies to—
 - (a) a member of PSC; or
 - (b) a person who is being considered for appointment as a member (a *prospective member*).
- ‘(2) For considering whether a person is a suitable person for appointment as a member, the Minister may ask the commissioner of the police service for—
 - (a) a written report about the person’s criminal history; and
 - (b) a brief description of the circumstances of a conviction or charge mentioned in the person’s criminal history.
- ‘(3) However, if the request relates to a prospective member, the Minister may make the request only if the person has given the Minister written consent for the request.
- ‘(4) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner’s possession or to which the commissioner has access.
- ‘(5) The Minister must ensure a report given under this section is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

‘246FF Disclosure of changes in criminal history

- ‘(1) If there is a change in the criminal history of a member, the member must, unless the member has a reasonable excuse, immediately disclose the change to the Minister.

Maximum penalty—100 penalty units.

- ‘(2) For a member who does not have a criminal history, there is taken to be a change in the member’s criminal history if the member acquires a criminal history.
- ‘(3) To comply with subsection (1), the information disclosed by the member about a conviction for an offence in the member’s criminal history must include the following—
- (a) the existence of the conviction;
 - (b) when the offence was committed;
 - (c) details adequate to identify the offence;
 - (d) whether or not a conviction was recorded;
 - (e) the sentence, if any, imposed on the member.

‘246FG Ministerial directions to PSC

- ‘(1) The Minister may give PSC a written direction about the performance of its functions (a *Ministerial direction*).
- ‘(2) A Ministerial direction can not be about a decision relating to licensing an individual as a pool safety inspector.

Examples of a decision—

- 1 a decision to refuse to grant a licence
 - 2 a decision to impose conditions on a licence
- ‘(3) PSC must comply with the Ministerial direction.

‘246FH Delegation by registrar

‘The registrar may delegate the registrar’s powers under this Act to an appropriately qualified public service officer or employee.

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‘246FI Authentication of documents

‘A document made by PSC is sufficiently made if it is signed by the registrar.

‘246FJ Annual report

- ‘(1) PSC must prepare and give the chief executive a written report about the performance of its functions each financial year.
- ‘(2) The report must be given as soon as practicable after the end of the financial year, but within 4 months after the year ends.
- ‘(3) Without limiting subsection (1), the report must include—
 - (a) a copy of any Ministerial directions given during the financial year; and
 - (b) information about action taken by PSC in response to each Ministerial direction; and
 - (c) any other matter prescribed under a regulation.
- ‘(4) However, PSC must exclude from the copies mentioned in subsection (3) all information likely to identify a person mentioned in the direction.’.

11 Amendment of s 246O (Prohibitions or requirements that have no force or effect)

- (1) Section 246O(1)(c) to (f)—

omit, insert—

‘(c) requiring—

- (i) a minimum floor area for a class 1a building, but not a minimum frontage unless the requiring of a minimum frontage has the effect of construction of a less energy efficient building; or
- (ii) a minimum number of bathrooms or bedrooms for a class 1a building; or
- (iii) a class 1a building or an enclosed class 10a building attached to a class 1a building to be

orientated on a parcel of land in a particular way, if orientating the building in the particular way would have the effect of construction of a less energy efficient building; or’.

- (2) Section 246O(1)(g)—
renumber as section 246O(1)(d).
- (3) Section 246O(2), ‘subsection (1)(a) to (d)’—
omit, insert—
‘subsection (1)(a) to (c)’.
- (4) Section 246O(3), ‘requirement or prohibition mentioned in subsection (1)(e) to (g)’—
omit, insert—
‘prohibition mentioned in subsection (1)(d)’.

12 Amendment of s 246Q (Restrictions that have no force or effect—other restrictions)

- (1) Section 246Q(1), from ‘effect of’—
omit, insert—
‘effect of restricting the location on the roof or other external surface of a prescribed building where a solar hot water system or photovoltaic cells may be installed.’.
- (2) Section 246Q(2)—
omit.
- (3) Section 246Q(3), ‘subsection (1)(c)’—
omit, insert—
‘subsection (1)’.
- (4) Section 246Q(3), example, ‘*subsection (3)*’—
omit, insert—
‘*subsection (2)*’.

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- (5) Section 246Q(3)—
renumber as section 246Q(2).

13 Amendment of s 246S (When requirement to obtain consent for particular activities can not be withheld—other matters)

- (1) Section 246S(1), from ‘required to’—
omit, insert—
‘required to install a solar hot water system or photovoltaic cells on the roof or other external surface of a prescribed building.’.
- (2) Section 246S(2)—
omit.
- (3) Section 246S(3), ‘subsection (1)(c)’—
omit, insert—
‘subsection (1)’.
- (4) Section 246S(3) and (4)—
renumber as section 246Q(2) and (3).

14 Amendment of s 256 (Prosecution of offences)

- (1) Section 256(2)—
insert—
‘(ba) for an offence against chapter 8, part 5—PSC, a local government or a person authorised by a local government; or’.
‘(bb) for an offence against chapter 8, part 6 or 7—PSC; or’.
- (2) Section 256(2)(ba) to (c)—
renumber as section 256(c) to (e).
- (3) Section 256—
insert—

- ‘(6) All penalties recovered as a result of proceedings for which PSC is the complainant must be paid to PSC.’.

15 Amendment of s 258 (Guidelines)

Section 258(2)—

omit, insert—

- ‘(2) Without limiting subsection (1), the chief executive may make the following guidelines—
- (a) a guideline about ways of complying with the pool safety standard and performing pool safety inspection functions;
 - (b) a guideline to help persons to prepare a sustainability declaration under chapter 8A, part 1, division 2.’.

16 Amendment of s 260 (Evidentiary aids)

- (1) Section 260—

insert—

- ‘(2A) A certificate purporting to be signed by the registrar of PSC stating any of the following matters is evidence of the matter—
- (a) a stated document is a copy of, or an extract from or part of—
 - (i) a licence; or
 - (ii) the pool safety inspectors register; or
 - (iii) the regulated pools register; or
 - (iv) a pool safety certificate; or
 - (v) another document kept or made under chapter 8;
 - (b) on a stated day, or during a stated period, a licence as a pool safety inspector —
 - (i) was, or was not, in force; or
 - (ii) was, or was not, subject to a stated condition; or

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(iii) was, or was not, cancelled or suspended.’.

(2) Section 260(2A) and (3)—

renumber as section 260(3) and (4).

17 Amendment of s 261 (Regulation-making power)

(1) Section 261(2)—

insert—

‘(da) the performance of pool safety inspection functions; and

(db) the licensing of pool safety inspectors; and

(dc) the approval of training courses conducted by eligible course providers; and’.

(2) Section 261(2)(da) to (h)—

renumber as section 261(2)(e) to (k).

18 Insertion of new ch 11, pt 9

Chapter 11—

insert—

‘Part 9 Transitional provisions for Building and Other Legislation Amendment Act 2010

‘288 Term of pool safety certificate in force before the commencement

‘(1) Despite section 246AL, a pool safety certificate for a regulated pool that is in force before the commencement day expires at the end of the relevant period unless it is sooner cancelled under section 246AF.

‘(2) In this section—

commencement day means the day this section commences.

relevant period means—

- (a) for a pool that is a shared pool—1 year after the commencement day; or
- (b) otherwise—2 years after the commencement day.

‘289 Building certifiers taken to be licensed as pool safety inspectors for 1 year

‘A building certifier is taken to be licensed as a pool safety inspector for a period of 1 year from the commencement of this section unless—

- (a) the licence as a pool safety inspector is sooner cancelled, suspended or surrendered under chapter 8, part 6 or 7; or
- (b) the building certifier’s licence is sooner cancelled, suspended or surrendered, or the building certifier’s licence sooner expires, under chapter 6.’.

19 Replacement of sch 1 (The QDC on 26 October 2009)

Schedule 1—

omit, insert—

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'Schedule 1 The QDC on 15 April 2010

section 13

'Part	Description	Former part reference
Siting and amenity—detached housing		
MP 1.1	Design and siting standard for single detached housing on lots under 450m ² , but only— (a) the headings 'application' and 'commencement' and the words under those headings; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c).	11
MP 1.2	Design and siting standard for single detached housing on lots 450m ² and over, but only— (a) the headings 'application' and 'commencement' and the words under those headings; and (b) performance criteria 1, 2, 3 and 6; and (c) the relevant acceptable solutions for the performance criteria; and (d) definitions relevant to the provisions mentioned in paragraphs (a) to (c).	12
MP 1.3	Design and siting standards for duplex housing	—
Fire safety		
MP 2.1	Fire safety in budget accommodation buildings	14
MP 2.2	Fire safety in residential care buildings	14.1
MP 2.4	Buildings in bushfire-prone areas	—

[s 20]

'Part	Description	Former part reference
Special buildings and structures		
MP 3.1	Floating buildings	31
MP 3.2	Tents	28
MP 3.4	Swimming pool barriers	—
Building sustainability		
MP 4.1	Sustainable buildings	29
MP 4.2	Water savings targets	25
MP 4.3	Alternative water sources—commercial buildings	—
General health, safety and amenity		
MP 5.1	Workplaces	1
MP 5.2	Higher risk personal appearance services	15
MP 5.3	Retail meat premises	4
MP 5.4	Child care centres	22
MP 5.5	Private health facilities	7
MP 5.6	Pastoral workers' accommodation	21
MP 5.7	Residential services building standard	20
MP 5.8	Workplaces involving spray painting	2
Maintenance of buildings		
MP 6.1	Maintenance of fire safety installations	—',

20 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *complaint* and *licence*—
omit.

(2) Schedule 2—

insert—

‘approved training course means a training course conducted by an eligible course provider and approved under section 246DI or 246DL.

assessor means a person appointed as an assessor under section 246DW.

certificate of competency means a certificate issued by an eligible course provider to an individual that states the individual has satisfactorily completed an approved training course and is competent to perform pool safety inspection functions.

code of conduct for pool safety inspectors see section 246AZ(1).

complaint means—

- (a) for chapter 6—a complaint made under chapter 6, part 4 about a building certifier or former building certifier; or
- (b) for chapter 8—a complaint made under chapter 8, part 7 about a pool safety inspector or former pool safety inspector.

compliance audit, for chapter 8, part 8, division 6, see section 246DQ.

complying pool, for chapter 8, see section 231A.

criminal history, of a person, means the person’s criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than for a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

decision period, for an application made under chapter 8, means—

- (a) 40 business days after the application is made; or
- (b) if PSC asks for further information or documents to decide the application, the sum of the following days after the application is made—
 - (i) 40 business days;
 - (ii) the number of business days from the day PSC asks for the further information or documents to the day PSC receives the further information or documents.

eligible course provider see section 246DG(1).

former pool safety inspector means an individual who—

- (a) was a pool safety inspector when a pool safety inspection function, the subject of a complaint, was performed; but
- (b) is not licensed as a pool safety inspector when—
 - (i) the complaint, or the decision taken about the complaint under section 246CY(1), is made; or
 - (ii) the tribunal makes an order under section 246DD.

fund see section 246FB.

ground for disciplinary action, against a pool safety inspector or former pool safety inspector, includes the following—

- (a) conduct that shows incompetence, or a lack of adequate knowledge, skill, judgment, integrity, diligence or care in performing pool safety inspection functions;
- (b) conduct that compromises the health or safety of a person;
- (c) conduct that is contrary to a function under this Act, including, for example—
 - (i) disregarding relevant and appropriate matters; and
 - (ii) acting outside the scope of the pool safety inspector's powers; and

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- (iii) acting beyond the scope of the pool safety inspector's competence; and
- (iv) contravening the code of conduct for pool safety inspectors;
- (d) seeking, accepting or agreeing to accept a benefit, whether for the benefit of the pool safety inspector or another person, as a reward or inducement to act in contravention of this Act;
- (e) failing to comply with an order of PSC or the tribunal;
- (f) accumulating the number of demerit points prescribed under a regulation for this provision in the period prescribed under a regulation;
- (g) fraudulent or dishonest behaviour in performing pool safety inspection functions;
- (h) other improper or unethical conduct;
- (i) conduct that is of a lesser standard than the standard that might reasonably be expected of the pool safety inspector by the public or the pool safety inspector's professional peers.

identification number, for a pool safety certificate, see section 246AJ(2).

inspection, of a regulated pool, means an inspection of the pool carried out under best industry practice.

investigator see section 246CP(1).

licence means—

- (a) generally—a licence as a building certifier, issued under chapter 6, part 3; or
- (b) for chapter 8—a licence as a pool safety inspector, issued under chapter 8, part 6.

member, of PSC, see section 246EK(1).

Ministerial direction see section 246FG(1).

minor repairs see section 246BE(1).

pool safety certificate see section 231C(a).

pool safety inspection function, for chapter 8, see section 231C.

pool safety inspector means an individual who, under chapter 8, part 6, is licensed as a pool safety inspector.

pool safety inspectors register see section 246CB(1).

pool safety inspector test means a test of knowledge of pool safety and the performance of pool safety inspection functions, approved by the chief executive.

pool safety standard, for chapter 8, see section 231D.

pool site means a place where a regulated pool is situated.

prescribed professional indemnity insurance means the professional indemnity insurance prescribed under a regulation.

PSC means the Pool Safety Council established under section 246EF.

registered training organisation see the *Vocational Education, Training and Employment Act 2000*, schedule 3.

registrar means the person holding office under an appointment made under section 246FA.

regulated land, for chapter 8, see section 231A.

regulated pool, for chapter 8, see section 231B.

regulated pools register see section 246AS.

reinspection period see section 246AB(2)(d).

shared pool, for chapter 8, see section 231A.

training course guidelines see section 246EC(1).

- (3) Schedule 2, definition *show cause notice*, paragraph (b)—
omit, insert—

‘(b) for chapter 8, part 6, division 4, subdivision 2—see section 246BX(1); or

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- (c) for chapter 8, part 8, division 5—see section 246DN(1);
or
- (d) for chapter 9—see section 247(1).’.
- (4) Schedule 2, definition *show cause period*—
insert—
 - ‘(c) for chapter 8, part 6, division 4, subdivision 2—see
section 246BX(2)(f); or
 - (d) for chapter 8, part 8, division 5—see section
246DN(2)(e).’.

Part 3 Amendment of Land Title Act 1994

21 Act amended

This part amends the *Land Title Act 1994*.

22 Amendment of s 50 (Requirements for registration of plan of subdivision)

- (1) Section 50(3)—
omit, insert—
- ‘(3) Subsection (1)(h) and (i) does not apply to a plan of
subdivision that, other than for this subsection, would have
been required to have been approved by the relevant planning
body if—
 - (a) for a plan that would have required approval by the
Urban Land Development Authority—the plan is not a
plan for which assessment for compliance is required
under the *Urban Land Development Authority Act 2007*,
section 80; or

- (b) for a plan that would have required approval by the relevant local government—the plan does not require compliance assessment under a regulation under the *Sustainable Planning Act 2009*, section 397.’.
- (2) Section 50(4), after ‘2009’—
insert—
‘or that Act as applied under the *Urban Land Development Authority Act 2007*, section 80’.

23 Amendment of s 83 (Registration of easement)

- Section 83(3)—
omit, insert—
- ‘(3) Subsection (2)(a) does not apply to a plan of survey if the plan is not a plan for which assessment for compliance is required under the *Urban Land Development Authority Act 2007*, section 80.
- ‘(4) Subsection (2)(b) does not apply to a plan of survey if the plan does not require compliance assessment under a regulation under the *Sustainable Planning Act 2009*, section 397.’.

Part 4 Amendment of Royal National Agricultural and Industrial Association of Queensland Act 1971

24 Act amended

This part amends the *Royal National Agricultural and Industrial Association of Queensland Act 1971*.

[s 25]

25 Amendment of s 13 (Dealing with Association's land)

(1) Section 13(2)—

omit, insert—

‘(2) The Association may not sell land vested in the Association without the Governor in Council's prior approval.

‘(2A) An approval under subsection (2) may be given on conditions.

‘(2B) A sale of land vested in the Association, other than in accordance with subsection (2), is void.

‘(2C) However, subsection (2) does not prevent the Association from entering into an agreement or other transaction that is conditional on obtaining an approval under subsection (2).’.

(2) Section 13—

insert—

‘(5) In this section—

sell includes—

(a) agree to sell; and

(b) grant an option to purchase; and

(c) enter into a transaction that has, as its object, the grant of a right (not immediately exercisable) to purchase or to be given an option to purchase; and

(d) procure a person to enter into a purchase.’.

Part 5 **Amendment of Urban Land
Development Authority Act
2007**

26 Act amended

This part amends the *Urban Land Development Authority Act 2007*.

27 Replacement of s 56 (Restrictions on granting approval)

Section 56—

omit, insert—

‘56 Restrictions on granting approval

- ‘(1) The authority can not grant the UDA development approval applied for if the relevant development would be inconsistent with the land use plan for the relevant urban development area unless—
- (a) a preliminary approval under the Sustainable Planning Act is in force for the relevant land; and
 - (b) the relevant development would be consistent with the preliminary approval.
- ‘(2) To remove any doubt, it is declared that subsection (1) does not require the authority to grant the UDA development approval only because subsection (1)(a) and (b) apply.’.

28 Replacement of s 80 (Plans of subdivision)

Section 80—

omit, insert—

‘80 Plans of subdivision

- ‘(1) This section applies to a plan of subdivision if—
- (a) under another Act, the plan requires the authority’s approval, in whatever form, before it can be registered or otherwise recorded under that Act; and
 - (b) the plan would, other than for the requirement mentioned in paragraph (a), be required to undergo compliance assessment under the Sustainable Planning Act (*SPA compliance assessment*).
- ‘(2) The plan must undergo SPA compliance assessment as if SPA compliance were required for it.
- ‘(3) For the SPA compliance assessment, the SPA compliance provisions apply—

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- (a) as if a reference in the provisions to a subdivision plan were a reference to the plan; and
- (b) as if a reference in the provisions to the compliance assessor or the local government were a reference to the authority; and
- (c) as if a reference in the provisions to a development permit were a reference to a UDA development approval; and
- (d) as if a reference in the provisions to a condition of a development permit were a reference to a UDA development condition of the UDA development approval; and
- (e) as if a reference in the provisions to rates and charges levied for land included a reference to a special rate or charge; and
- (f) as if a reference in the provisions to assessable development were a reference to UDA assessable development.

‘(4) In this section—

plan of subdivision means a plan or agreement, however, called, for reconfiguring a lot.

SPA compliance provisions means any provisions of a regulation made under the Sustainable Planning Act about compliance assessment under that Act of a plan of subdivision.’

29 Replacement of pt 8 hdg (Transitional provision for Sustainable Planning Act 2009)

Part 8, heading—

omit, insert—

‘Part 8 Transitional provisions

‘Division 1 Transitional provision for Sustainable Planning Act 2009’.

30 Insertion of new pt 8, div 2

Part 8—

insert—

‘Division 2 Transitional provision for Building and Other Legislation Amendment Act 2010

‘148 Application of s 80

‘Section 80, as inserted under the *Building and Other Legislation Amendment Act 2010*, applies to a plan of subdivision under that section given to the authority on or after 18 December 2009.

Note—

The *Sustainable Planning Act 2009* commenced on 18 December 2009.’.

Schedule

Minor and consequential amendments of Building Act 1975

section 3

- 1 Section 158(2), ‘issue’—**
omit, insert—
‘issued’.
- 2 Section 178(3), ‘action,’—**
omit, insert—
‘action’.
- 3 Section 216(3)(i), ‘womens’ ’—**
omit, insert—
‘women’s’.
- 4 Sections 232, heading, ‘ch 8’—**
omit, insert—
‘pt 2’.
- 5 Sections 232, ‘chapter’—**
omit, insert—
‘part’.
- 6 Sections 243(a), ‘chapter’—**
omit, insert—
‘part’.

- 7 **Section 246N(4), definition *prescribed matter*, from ‘section 246O(1)(a) to (f)’—**
 omit, insert—
 ‘section 246O(1)(a) to (c), 246P(1) or 246R(1).’.
- 8 **Sections 259, ‘section 218 or 258’—**
 omit, insert—
 ‘section 218, 246EC or 258’.
- 9 **Schedule 2, definition *construct*, after ‘chapter 8,’—**
 insert—
 ‘part 2.’.
- 10 **Schedule 2, definition *fencing standards*, after ‘chapter 8,’—**
 insert—
 ‘part 2.’.
- 11 **Schedule 2, definition *pool owner*, after ‘chapter 8,’—**
 insert—
 ‘part 2.’.

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