

NEW SOUTH WALES

DRAFT GOVERNMENT BILL

Building Bill 2022

Explanatory note

Overview of Bill

The object of this Bill txt

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Miscellaneous

Clause 4 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts

Schedule 2 amends the Acts specified in the Schedule.

NEW SOUTH WALES

DRAFT GOVERNMENT BILL

Building Bill 2022

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NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Building Bill 2022

No , 2021

A Bill for

An Act relating to the building and construction industry and certain specialist work; to repeal the *Home Building Act 1989*; and for other purposes.

The Legislature of New South Wales enacts—

Chapter 1 Preliminary

1 Name of Act

This Act is the *Building Act 2022*.

Note— This Act is part of the building enforcement legislation for the purposes of the *Building Compliance and Enforcement Act 2022*. That Act contains compliance and enforcement provisions that apply in relation to this Act, including investigation powers.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

- (1) The Dictionary defines words used in this Act.

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Words used in this Act have the same meaning as in the Standard Instrument, unless otherwise defined in this Act.

4 Objects of Act

The objects of this Act are as follows—

- (a) to ensure competent people use compliant products and processes to create safe, resilient and trustworthy buildings,
- (b) to establish a customer-focused regulatory framework that protects owners, tenants and other businesses,
- (c) to implement end-to-end accountability for building work in NSW,
- (d) to enable the NSW building regulator and industry participants to adapt to new and emerging trends in construction.

5 Building work

- (1) In this Act—

building work means the following—

- (a) work, including coordinating or supervising work, involved in 1 or more of the following—
 - (i) the construction of a building,
 - (ii) the making of alterations or additions to a building,
 - (iii) the repair, maintenance, renovation or protective treatment of a building,
- (b) work prescribed by the regulations.

- (2) The regulations may exclude work from being building work.

6 Close associate

- (1) In this Act, a person is a **close associate** of another person if the person—

- (a) is a business partner of the other person, or
- (b) is an employee or agent of the other person, or

- (c) is a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the other person or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or
 - (d) is a person who has a relationship of a kind prescribed by the regulations with the other person, or
 - (e) is a corporation that is a subsidiary, within the meaning of the Corporations Act, of the other person, or
 - (f) holds or is entitled to exercise, in relation to the other person or the business of the other person, another relevant financial interest, relevant position or relevant power, or
 - (g) exercises a significant influence over the other person or the operation or management of the person's business, or
 - (h) is a person prescribed by the regulations.
- (2) In subsection (1)(f)—
- relevant financial interest** means—
- (a) a share in the capital of the business, or
 - (b) an entitlement to receive income derived from the business, whether the entitlement arises at law, in equity or otherwise.
- relevant position** means the position of director, manager and other executive positions and secretary, however described.
- relevant power** means a power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others, to—
- (a) participate in a directorial, managerial or an executive decision, or
 - (b) elect or appoint a person to a relevant position.

7 Functions of Secretary under Act (HBA, s 106)

- (1) The Secretary has the following functions under this Act—
 - (a) to promote and protect the interests of owners and purchasers of homes and users of essential services,
 - (b) to set, assess and maintain standards of competence of persons carrying out building work or specialist work,
 - (c) to complement the work of industry organisations, public authorities and educational institutions in promoting standards,
 - (d) to give general advice and guidance to the public,
 - (e) to monitor the operation of insurance provided for the purposes of this Act.
- (2) The Secretary may establish an industry advisory panel for the following purposes—
 - (a) to support the oversight and capability of the industry in the State,
 - (b) to support reviews of legislation, reports, advice and other matters relevant to the industry,
 - (c) to respond to unforeseen consequences from the enactment of this Act,
 - (d) to carry out other functions prescribed by the regulations.
- (3) The Secretary may establish more than 1 panel to carry out specified functions.
- (4) The Secretary may make payments out of the Building Administration Fund towards the following—
 - (a) assisting education or research relating to—
 - (i) consumer-related issues in the building industry, and

- (ii) the building industry and trades subject to licensing under this Act,
- (b) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act, and
- (c) assisting a public purpose connected with the building industry and trades subject to licensing under this Act.

DRAFT

Chapter 2 Licensing for regulated work

Part 1 Preliminary

8 Definitions

- (1) In this Chapter—

approved professional body means a professional body holding a current approval from the Secretary under section 21.

building includes a class 10 building recognised by the National Construction Code.

class of licence means a class of licence prescribed under section 13(3).

equivalent authorisation means a licence, accreditation, registration or other authorisation or qualification—

- (a) issued or conferred under the laws of another jurisdiction, and
- (b) that authorises the holder to carry out work that is similar to regulated work.

grant a licence includes grant a renewal or restoration of a licence.

licence—

- (a) means a licence granted under this Chapter and in force, and
- (b) includes a provisional licence.

licence holder means a person—

- (a) who is licensed under this Chapter, and
- (b) whose licence is in force.

licensed corporation means a corporation that is a licence holder.

licensed individual means an individual who is licensed.

regulated work—see section 9(1).

relevant offence means the following offences, whether committed in this or another Australian jurisdiction—

- (a) an offence against the following Acts or provisions of Acts and the regulations under the Acts or provisions—
 - (i) this Act,
 - (ii) the *Building and Development Certifiers Act 2018*,
 - (iii) the *Building Compliance and Enforcement Act 2022*,
 - (iv) the *Design and Building Practitioners Act 2020*,
 - (v) the *Environmental Planning and Assessment Act 1979*,
 - (vi) the *Strata Schemes Development Act 2015*, Part 4,
 - (vii) an Act, or provision of an Act, prescribed by the regulations,
- (b) an offence relating to the carrying out of regulated work or work authorised to be carried out under an equivalent authorisation,
- (c) an offence relating to a failure to comply with a condition of a licence or an equivalent authorisation,
- (d) an offence involving fraud or dishonesty,
- (e) an offence prescribed by the regulations.

skills recognition—see section 20(1).

- (2) In this Chapter, a licence includes another type of authorisation that authorises its holder to carry out regulated work.

Example—An accreditation or approval or a permit, registration or recognition.

9 Work to which this Chapter applies

- (1) This Chapter applies to the following work (*regulated work*)—
- (a) building work,
 - (b) fire safety work,
 - (c) general building design work,
 - (d) professional engineering work,
 - (e) specialist work,
 - (f) other work prescribed by the regulations.

- (2) In this section—

fire safety work means work involved in the design, installation, commissioning or maintenance of a fire safety system within the meaning of the *Building Code of Australia*.

general building design work means the following, but does not include work excluded by the regulations—

- (a) work involved in the development of design documentation, specifications and reports relating to the design of—
 - (i) the construction of a building of a type prescribed by the regulations,
 - (ii) the making of alterations or additions to a building of a type prescribed by the regulations,
 - (iii) the repair, maintenance, renovation or protection treatment of a building,
- (b) other work prescribed by the regulations.

10 Professional engineering work (DBP s 31)

- (1) In this Act—

engineering work includes engineering services provided by a person.

professional engineering work means engineering work—

- (a) that requires, or is based on, the application of engineering principles and data to the following in relation to engineering—
 - (i) a design,
 - (ii) a construction, production, operation or maintenance activity, and
 - (b) carried out directly in relation to the design or construction of a building prescribed by the regulations.
- (2) In this section, engineering work is not **professional engineering work** if—
- (a) the work—
 - (i) is only provided in accordance with a document that states the procedure or criteria for carrying out the work, and
 - (ii) the work does not require the application of advanced scientifically based calculations, or
 - (b) the engineering work is excluded by the regulations.

11 Specialist work

- (1) In this Act—

specialist work means the following, whether or not done in connection with building work—

- (a) electrical wiring work within the meaning of the *Gas and Electricity (Consumer Safety) Act 2017*,
 - (b) gasfitting work within the meaning of the *Gas and Electricity (Consumer Safety) Act 2017*,
 - (c) mechanical services and medical gas work,
 - (d) medical gasfitting work within the meaning of the *Gas and Electricity (Consumer Safety) Act 2017*,
 - (e) medical gas technician work within the meaning of the *Gas and Electricity (Consumer Safety) Act 2017*,
 - (f) plumbing and drainage work,
 - (g) refrigeration work or air-conditioning work prescribed by the regulations,
 - (h) waterproofing work,
 - (i) work prescribed by the regulations.
- (2) In this section—
- mechanical services and medical gas work*** means work involved in the following, but does not include work excluded by the regulations—
- (a) the construction, installation, replacement, repair, alteration, maintenance, testing or commissioning of a mechanical heating, cooling or ventilation system in a building, which is associated with the heating, cooling or ventilation of the building,
 - (b) the installation, commissioning and incidental design work, if any, associated with the installation and commissioning of the following parts associated with the heating and cooling of a building—
 - (i) part of a single head split system, or
 - (ii) a ceiling cassette system, or
 - (iii) an add-on condenser unit for a ducted system,
 - (c) work prescribed by the regulations.
- plumbing and drainage work*** means the following, but does not include work excluded by the regulations—
- (a) the construction of, or work on, a plumbing installation that connects, directly or indirectly, with a network utility operator's water supply system, downstream from the point of connection to a network utility operator's water supply system, or
 - (b) the construction of, or work on, a plumbing installation that connects, directly or indirectly, with another water supply system, if the construction or work is home building work, or
 - (c) the construction of, or work on, a sanitary plumbing system, or
 - (d) the construction of, or work on, a sanitary drainage system upstream from its point of connection to—
 - (i) a system for the disposal of sewage, or
 - (ii) a system for the re-use of sewage or other wastewater, or
 - (iii) an on-site wastewater management or treatment system, or
 - (iv) a network utility operator's sewerage system, or
 - (e) other construction or work prescribed by the regulations.
- plumbing installation*** means an installation that conveys, or controls the conveyance of, water but does not include anything connected to, extending or situated beyond the outlet from a fixture, fitting or pressurised line.

sanitary drainage system means an assembly of pipes, fittings and apparatus, ordinarily located below ground level, used to collect and convey the discharge from a sanitary plumbing system, together with discharge from fixtures directly connected to a drain, to a sewer.

sanitary plumbing system means an assembly of pipes, fittings, fixtures and appliances used to collect and convey sewage to a sanitary drainage system.

Part 2 Licensing of persons carrying out regulated work

Division 1 Preliminary

12 Regulated work requires a licence

- (1) A person must not carry out regulated work unless the person is—
 - (a) licensed and the licence authorises the person to carry out the regulated work, or
 - (b) otherwise lawfully authorised to carry out the regulated work.Maximum penalty—
 - (a) for a corporation—3,000 penalty units, and for each day the offence continues, 300 penalty units, or
 - (b) for an individual—600 penalty units, and for each day the offence continues, 60 penalty units.
- (2) An unlicensed person must not, without a reasonable excuse, carry out regulated work unless the unlicensed person is working under the supervision of a licence holder in accordance with this Act.
Maximum penalty—
 - (a) for a corporation—1,500 penalty units, and for each day the offence continues, 150 penalty units, or
 - (b) for an individual—300 penalty units, and for each day the offence continues, 30 penalty units.
- (3) The regulations may exempt a person from the requirement to be licensed to carry out regulated work.
- (4) A person must not falsely represent that the person is—
 - (a) authorised to carry out regulated work, or
 - (b) licensed, or
 - (c) licensed in a particular class.Maximum penalty—
 - (a) for a corporation—3,000 penalty units, and for each day the offence continues, 300 penalty units, or
 - (b) for an individual—600 penalty units, and for each day the offence continues, 60 penalty units.
- (5) An individual convicted of a second or subsequent offence under this section is liable to a penalty not exceeding 1 or both of the following—
 - (a) 500 penalty units,
 - (b) imprisonment for a term of 12 months.

13 Licensing of persons to carry out regulated work

- (1) The Secretary may, by granting a licence under this Part, authorise a person to carry out regulated work.
- (2) The licence authorises only the regulated work authorised by the licence or class of licence granted.
- (3) The regulations may prescribe different licences or classes of licence to authorise the carrying out of specified regulated work.

14 Grounds for finding that a person is not a suitable person to carry out regulated work

- (1) A person is not a suitable person to carry out regulated work if—
 - (a) the person is disqualified from being licensed, or
 - (b) the person, including, if the person is a corporation, a director of the corporation, is—
 - (i) an individual who is under 18 years of age, or
 - (ii) not a fit and proper person to carry out the regulated work, or
 - (c) the person does not have the qualifications, skills, knowledge and experience required to carry out the regulated work, or
 - (d) the person is a mentally incapacitated person, or
 - (e) the person is a corporation and the Secretary is of the opinion that the nominee supervisor is not an eligible individual, or
 - (f) the Secretary is of the opinion that the person is not a suitable person to carry out the regulated work.
- (2) The Secretary may form an opinion that a person is not a suitable person to carry out regulated work in 1 or more of the following circumstances—
 - (a) the person, including, if the person is a corporation, a director of the corporation—
 - (i) has, within the previous 10 years, been convicted of a relevant offence, or
 - (ii) is an undischarged bankrupt,
 - (b) the Independent Commission Against Corruption, within the previous 10 years, has made a finding or has been of the opinion that the person, including, if the person is a corporation, a director of the corporation, has engaged in corrupt conduct,
 - (c) the person has contravened a requirement imposed by or under this Act or a requirement imposed in relation to regulated work under another Act or law,
 - (d) an equivalent authorisation of the person has been suspended or cancelled, other than at the person's request, under the law of another Australian jurisdiction,
 - (e) the person is disqualified, other than on the grounds of not residing in the jurisdiction or on the grounds the person is a corporation, from holding an equivalent authorisation under the law of another Australian jurisdiction,
 - (f) a close associate of the person who would not be a fit and proper person to be licensed exercises a significant influence over the person or the operation and management of the person's business,
 - (g) a circumstance prescribed by the regulations.

Division 2 Application for licence

15 Application for licence

- (1) A person may apply to the Secretary for the grant of a licence.
Note— The definition of **grant** registration in section 8(1) includes grant a renewal or restoration of registration.
- (2) An application must—
 - (a) be in a form approved by the Secretary, and
 - (b) include or be accompanied by information or evidence the Secretary reasonably requires to assess the application.**Note—** The *Crimes Act 1900*, Part 5A contains offences relating to the making of false or misleading applications or providing false or misleading information or documents. Those offences have a maximum penalty of imprisonment for 2 years or a fine of \$22,000, or both.
- (3) The regulations may provide for a fee to be paid for an application for the grant of a licence.
- (4) The Secretary may require the fee to accompany the application.
- (5) If the Secretary considers it necessary, the Secretary may require either or both of the following—
 - (a) further documents or information to be provided by the applicant,
 - (b) for an applicant who is an individual—that the applicant attend an interview, undertake an oral or written examination or provide a demonstration of the applicant's skills.
- (6) If an application for the grant of a renewal of a licence is duly made to the Secretary before the expiry of the licence, the licence is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.

16 Secretary may obtain information from third parties

- (1) The Secretary may, by written notice, require an applicant or a close associate of the applicant to do 1 or more of the following—
 - (a) authorise a person described in the notice—
 - (i) to provide specified information that is relevant to the investigation of the application, and
 - (ii) to produce, in accordance with directions in the notice, specified records relevant to the investigation of the application, and
 - (iii) to permit examination of, the taking of extracts from and the making of copies of, the records, or
 - (b) give the Secretary specified authorities and consents to enable the Secretary to obtain information, including financial and other confidential information, from other persons concerning the applicant or close associate.
- (2) If a requirement notified under this section is not complied with, the Secretary may refuse to consider the application concerned while the non-compliance continues.
- (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

17 Grant or refusal of licence

- (1) The Secretary may, on application, grant or refuse a licence.
- (2) The Secretary may grant a licence in a class the Secretary considers appropriate even if the application is for a different class of licence.

- (3) The Secretary must refuse to grant a licence—
 - (a) if the application for the licence does not comply with a requirement imposed by or under this Act, or
 - (b) if the applicant is not a suitable person to carry out the regulated work authorised by the licence, or
 - (c) on a ground prescribed by the regulations.
- (4) A provisional licence must not be renewed.
- (5) The Secretary may accept a skills recognition as evidence of the qualifications, skills, knowledge or experience of an applicant.
- (6) The Secretary must give the applicant written notice of a decision to grant or refuse the licence.
- (7) If the Secretary fails to give an applicant for a licence notice of a decision to grant or refuse the licence within the period prescribed by the regulations, the Secretary is taken to have refused to grant the licence.
- (8) In this section—
skills recognition—see section 20(1).

18 Duration of licence

- (1) A licence remains in force for a period of 1, 3 or 5 years as specified by the Secretary in the notice by which the licence is granted, unless sooner cancelled.
- (2) A licence has no effect during a period in which the licence is suspended.

19 Variation of licence

- (1) The Secretary may, at any time, by written notice to a licence holder, vary the licence of the licence holder, including conditions of the licence imposed by the Secretary.
- (2) A variation includes the imposition of new conditions on the licence, the substitution of a condition, or the removal or amendment of a condition.
- (3) The regulations may make further provision about the variation of licences, including—
 - (a) applications for variation, and
 - (b) fees for applications for variation.

Division 3 Recognition of eligible persons

20 Skills recognition by approved professional bodies

- (1) The regulations may provide for an approved professional body to recognise that a person eligible for a licence has the appropriate qualifications, skills, knowledge or experience to hold a licence (a *skills recognition*).
- (2) A skills recognition entitles the person recognised to include the recognition as evidence of the person's qualifications, skills, knowledge or experience in an application for the grant of a licence.
- (3) A regulation under this section may—
 - (a) apply to some or all classes of licence, and
 - (b) authorise an approved professional body to place conditions on a skills recognition.
- (4) A regulation under this section may make provision about the following—

- (a) the process for making an application for a skills recognition,
- (b) the processes an approved professional body may or must follow in assessing an application for a skills recognition,
- (c) the minimum requirements of which an approved professional body may or must be satisfied when assessing an application for a skills recognition, including the applicant's—
 - (i) qualifications, skills, knowledge or experience, and
 - (ii) insurance, and
 - (iii) continuing professional development,
- (d) the time in which an approved professional body must decide an application for a skills recognition,
- (e) procedures for monitoring and improving skills recognition processes,
- (f) the maximum fees that may be charged for an application for a skills recognition.

21 Approval of professional bodies to grant skills recognition

- (1) The Secretary may approve a professional body to grant skills recognitions.
- (2) The Secretary may approve the professional body if the Secretary is satisfied the body—
 - (a) has adopted a professional standards scheme, and
 - (b) meets the additional requirements for professional bodies specified by the regulations.
- (3) The Secretary's approval of a professional body to grant skills recognitions may be limited to specified classes of licence.
- (4) The regulations may make provision about the approval of professional bodies, including the following—
 - (a) the process for making an application for approval,
 - (b) the grounds on which the Secretary may grant or refuse an approval,
 - (c) conditions the Secretary may impose on an approval, including conditions imposed on an approval by the Secretary,
 - (d) the variation of an approval, including the conditions of an approval,
 - (e) the fees that may be charged for an application for an approval or a variation of an approval,
 - (f) the duration of an approval,
 - (g) the grounds on which the Secretary may suspend or cancel an approval, including conditions the Secretary may impose on the suspension or cancellation.
- (5) In this section—
professional standards scheme means a scheme approved by the Professional Standards Council, within the meaning of the *Professional Standards Act 1994*, that is in force.

Division 4 Conditions of licence

22 Conditions of licence

- (1) A licence is subject to the following conditions—
 - (a) conditions prescribed by this Act or the regulations,

- (b) conditions imposed by the Secretary.
- (2) The Secretary may impose conditions on a licence—
 - (a) at the time of the grant of the licence, or
 - (b) at another time by variation of the licence.
- (3) A provision of this Division that authorises a type of condition to be imposed on a licence does not prevent other types of conditions being imposed, or limit the matters that may be provided for by conditions, unless expressly provided for by this Division.

23 Compliance with standards or methodologies

The conditions of a licence may require the licence holder to carry out regulated work in accordance with specified codes, standards or methodologies, including codes, standards or methodologies prepared by the Secretary.

24 Conditions may provide that authorisation takes effect later

The conditions of a licence may provide that an authorisation conferred by the licence does not take effect until—

- (a) the end of a specified period, or
- (b) the happening of a particular event, or
- (c) the occurrence of a specified state of affairs.

Division 5 Suspension or cancellation of licence

25 Grounds for suspension or cancellation of licence

Each of the following constitutes grounds for suspending or cancelling a licence—

- (a) the licence holder is not a suitable person to carry out the regulated work authorised by the licence,
- (b) the licence holder is not entitled to be licensed,
- (c) the licence holder has applied for the licence to be suspended or cancelled,
- (d) the licence was granted in error,
- (e) the Secretary has suspended or cancelled another licence held under the building enforcement legislation,
- (f) a ground prescribed by the regulations.

26 Suspension of licence

- (1) The Secretary may, by written notice to a licence holder, suspend the licence of the licence holder if the Secretary is satisfied there are grounds for the suspension of the licence.
- (2) Notice of the suspension must specify—
 - (a) the date or time from which the suspension takes effect, and
 - (b) the period of the suspension, and
 - (c) the grounds for the suspension, and
 - (d) information about how the decision to suspend the licence may be reviewed.

27 Cancellation of licence

- (1) The Secretary may, by written notice to a licence holder, cancel the licence of the licence holder if the Secretary is satisfied there are grounds for the cancellation of licence.
- (2) Notice of the cancellation must specify—
 - (a) the date or time from which cancellation takes effect, and
 - (b) the grounds for the cancellation, and
 - (c) information about how the decision may be reviewed.

28 Suspension or cancellation may be subject to conditions

- (1) A licence may be suspended or cancelled unconditionally or subject to the conditions imposed by the Secretary.
- (2) The conditions may include conditions to which the licence was subject immediately before the suspension or cancellation.
- (3) The Secretary may, by written notice given to the former licence holder, attach new conditions to, or vary or revoke existing conditions of, the suspension or cancellation of the licence.

Division 6 Miscellaneous

29 Offence of contravening condition

- (1) A licence holder or former licence holder who contravenes the following is guilty of an offence—
 - (a) a condition of the licence, other than a condition for which a different maximum penalty is prescribed,
 - (b) a condition of a suspension or cancellation of the licence.Maximum penalty—
 - (a) for a corporation—1,000 penalty units, or
 - (b) for an individual—200 penalty units.
- (2) The regulations may make provision about work carried out in contravention of subsection (1), including payments for the carrying out of the work.

30 Offence of lending licence

- (1) A licence holder must not—
 - (a) let out, hire or lend a licence to another person, or
 - (b) permit another person to use the licence.Maximum penalty—
 - (a) for a corporation—3,000 penalty units, or
 - (b) for an individual—600 penalty units.
- (2) The Secretary must cancel the licence of a licence holder who is convicted of an offence against this section.

31 Voluntary surrender or suspension of licence

- (1) A licence holder may apply to the Secretary for a cancellation or suspension of a licence.
- (2) An application must—

- (a) be in a form approved by the Secretary, and
 - (b) include or be accompanied by information or evidence required by the Secretary to assess the application.
- (3) The regulations may provide for a fee to be paid for an application for the cancellation or suspension of a licence.
- (4) The Secretary may require the fee to accompany the application.
- (5) A reference in this section to an application for suspension of a licence is taken to include a reference to an application to extend, cancel or vary a suspension imposed under this section.

Note— Disciplinary action may be taken against a former licence holder in certain circumstances under the *Building Compliance and Enforcement Act 2022*, Part 6.

32 Recovery of unpaid fees

A fee payable under this Part may be recovered by the Secretary as a debt in a court of competent jurisdiction.

33 Licence register

- (1) The Secretary must keep a register of licences (a ***licence register***), including the information required to be kept in the register by the regulations.
- (2) The licence register must be—
 - (a) in the form determined by the Secretary, and
 - (b) freely available on the internet for inspection by the public.
- (3) Without limiting subsection (1), the regulations may require that the licence register include the following information in relation to a licence—
 - (a) details of the licence, including details of the licence holder,
 - (b) the results of relevant disciplinary determinations,
 - (c) the results of prosecutions under this Act or the *Building Compliance and Enforcement Act 2022*,
 - (d) details of penalty notices paid,
 - (e) instances of non-compliance with an order of the Secretary or Tribunal to carry out work or to pay money,
 - (f) details of warning notices published under the *Building Compliance and Enforcement Act 2022*,
 - (g) details of conditions on the licence,
 - (h) details of a cancellation or suspension of the licence,
 - (i) the number of demerit points incurred against the licence holder under the *Building Compliance and Enforcement Act 2022*.
- (4) The Secretary may remove information from, or otherwise amend, the licence register if the information is, in the opinion of the Secretary—
 - (a) false, erroneous or misleading, or
 - (b) unfairly prejudicial to the interests of the licence holder concerned.

34 Exercise of certain Secretary functions by professional bodies

The regulations may make provision about the exercise, by approved professional bodies, of functions of the Secretary under this Part relating to the following—

- (a) ensuring that licence holders comply with licence requirements,

- (b) the investigation of—
 - (i) complaints about the conduct of licence holders, or
 - (ii) possible failures by licence holders to comply with licence requirements,
- (c) disciplinary action in relation to licence holders.

Part 3 Requirements on licence holders

Division 1 Insurance or other arrangements

35 Licence holders must be indemnified

- (1) A licence holder must, before carrying out regulated work, be adequately insured.
Maximum penalty—
 - (a) for a corporation—1,500 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) In this section, a licence holder is *adequately insured* in relation to regulated work if the licence holder—
 - (a) is indemnified by insurance that complies with the regulations against liability to which the licence holder may become subject as a result of carrying out the regulated work, or
 - (b) is part of another arrangement approved by the regulations that provides indemnity against the liability.
- (3) The regulations may exempt specified regulated work from a requirement of this section.

36 Regulations

The regulations may make provision about the following—

- (a) the persons or bodies who may provide indemnity,
- (b) the period for which a licence holder must be indemnified,
- (c) the amount for which a licence holder must be indemnified,
- (d) the risks for which a licence holder must be indemnified,
- (e) the nature and terms of the insurance or arrangement,
- (f) the obligations on a person or body who provides indemnity,
- (g) the issue of indemnity for liability incurred by a person who is a former licence holder.

Division 2 General requirements

37 Qualifications, skills and experience

- (1) The Secretary may, by notice published in the Gazette, specify the following in relation to the requirements for licence holders—
 - (a) qualifications,
 - (b) registration or recognition by professional bodies,
 - (c) skills, knowledge and experience,

- (d) additional standards or other requirements, including the completion of specified courses of training or other continuing professional development requirements.
- (2) The requirements must also be published on the Department's website.
- (3) A decision of the Secretary relating to the specification of requirements under subsection (1) is not a reviewable decision under this or another Act.

38 Secretary may publish guidelines for supervision of unlicensed employees

- (1) The Secretary may approve practice standards containing requirements relating to supervision (the *supervision standards*).
 - (2) The supervision standards must be published in the Gazette.
 - (3) The supervision standards—
 - (a) may set out requirements by reference to a licence, a class of licence or a type of regulated work, and
 - (b) may exempt certain licences, classes of licence or regulated work from the requirements generally or in particular circumstances, and
 - (c) must be published on the Department's website.
 - (4) A licence holder must, in accordance with the supervision standards, supervise a person while carrying out regulated work if the person is—
 - (a) not authorised, by a licence issued under this Act, to carry out the work, and
 - (b) carrying out the work under the management, influence or direction of the licence holder.
- Maximum penalty—
- (a) for a corporation—3,000 penalty units, or
 - (b) for an individual—600 penalty units.

39 Code of conduct

- (1) The regulations may prescribe a code of conduct for licence holders.
- (2) The code of conduct may specify requirements relating to—
 - (a) the carrying out of regulated work, or
 - (b) the operation of a business that carries out regulated work.
- (3) The regulations may create offences for failing to comply with the code of conduct or provisions of the code of conduct.

40 Licence holder to notify other persons of certain changes

- (1) A licence holder who, in the course of the licence holder's employment, carries out regulated work must give written notice to the licence holder's employer, of—
 - (a) the suspension or cancellation of the holder's licence, or
 - (b) a change in the licence, including its conditions, that would prevent the licence holder from carrying out the regulated work.
- (2) A licence holder who carries out regulated work under a contract must give written notice to the other party to the contract of—
 - (a) the suspension or cancellation of the holder's licence, or
 - (b) a change in the licence, including its conditions, that would prevent the licence holder from carrying out the regulated work.

- (3) A person who is required to give notice under this section must give the notice within 7 days after the person becomes aware of the matters to which the notice relates.

Maximum penalty—

- (a) for a corporation—1,500 penalty units, or
- (b) for an individual—300 penalty units.

41 Licence holder to notify Secretary of certain events

- (1) A licence holder must give written notice to the Secretary of the following events within 7 days after becoming aware of the event—

- (a) an equivalent authorisation held by the licence holder being suspended or cancelled, other than at the request of the licence holder,
- (b) proceedings being instituted against the licence holder, including, if the licence holder is a corporation, proceedings being instituted against a director of the corporation, for a relevant offence,
- (c) the licence holder, including, if the licence holder is a corporation, a director of the corporation—
 - (i) being found guilty of a relevant offence, or
 - (ii) being investigated in another Australian jurisdiction by a government agency or a body that issues an equivalent authorisation in relation to—
 - (A) the carrying out of work authorised to be carried out under an equivalent authorisation, or
 - (B) a failure to comply with an equivalent authorisation, or
 - (iii) becoming bankrupt or making a composition, arrangement or assignment for the benefit of creditors,
- (d) the licence holder no longer being covered by insurance that is required in relation to the carrying out of regulated work by or on behalf of the licence holder,
- (e) if the licence holder is a corporation—the corporation—
 - (i) becoming the subject of a winding up order or having a controller or administrator appointed, or
 - (ii) having no director licensed in a class that would authorise the director to carry out the regulated work authorised to be carried out by the licence of the corporation,
- (f) an event prescribed by the regulations.

Maximum penalty—

- (a) for a corporation—1,000 penalty units, or
- (b) for an individual—200 penalty units.

- (2) A licence holder must give written notice to the Secretary of a change required to the information recorded in the register in relation to the licence holder, other than an event the Secretary has already been notified of, within 14 days of the licence holder becoming aware of the need for the change.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

42 Return of licence

- (1) The Secretary may at any time by written notice require a person whose licence has been suspended, varied or cancelled to return to the Secretary within a specified time the licence issued to the person.
- (2) The notice may be included as part of a statement of a decision by the Secretary to take disciplinary action against the person.
- (3) A person must comply with a notice under this section.
Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.

Division 3 Additional requirements for licensed corporations

43 Directors of licensed corporations must ensure regulated work carried out lawfully

Each director of a licensed corporation must, in relation to regulated work carried out by or on behalf of the corporation, ensure that—

- (a) the corporation complies with the requirements of this and other Acts in relation to the carrying out of the regulated work, and
- (b) appropriate management systems are in place to ensure the corporation complies with the requirements, and
- (c) regulated work is allocated to, and carried out by, a licensed individual whose licence authorises the individual to carry out the work, and
- (d) the person for whom the regulated work is carried out is kept informed of the identity of the licensed individual who is carrying out the regulated work.

Maximum penalty—300 penalty units.

44 Directors of licensed corporations must report certain conduct

Each director of a licensed corporation must report to the Secretary conduct by the following persons as soon as practicable after becoming aware of the conduct if the director suspects, or should reasonably suspect, that the conduct is a ground for taking disciplinary action against the person—

- (a) the corporation,
- (b) another director of the corporation,
- (c) a licensed individual who is carrying out regulated work on behalf of the corporation.

Maximum penalty—300 penalty units.

45 Licensed corporation must ensure regulated work carried out by individual

A licensed corporation must ensure that regulated work carried out on behalf of the corporation is carried out by a licensed individual whose licence authorises the individual to carry out the work.

Maximum penalty—1,500 penalty units.

46 Licensed corporations and partnerships—nominee supervisors

- (1) A corporation or partnership must, in an application for a licence under this Chapter, nominate at least 1 eligible individual to be the nominee supervisor for the licence.
- (2) A licensed corporation or partnership must apply to the Secretary to appoint a nominee supervisor for the licence held by the corporation or partnership if the

corporation or partnership becomes aware that a nominee supervisor appointed for the licence is no longer an eligible individual.

- (3) An application must—
- (a) be made within 7 days of the corporation or partnership becoming aware that the nominee supervisor is no longer an eligible individual, and
 - (b) be in a form approved by the Secretary, and
 - (c) include or be accompanied by information or evidence the Secretary reasonably requires to assess the application.

Note— The *Crimes Act 1900*, Part 5A contains offences relating to the making of false or misleading applications or providing false or misleading information or documents. Those offences have a maximum penalty of imprisonment for 2 years or a fine of \$22,000, or both.

- (4) A licensed corporation or partnership must not carry out regulated work without a nominee supervisor.

Maximum penalty—

- (a) for a corporation—3,000 penalty units, or
- (b) for an individual—600 penalty units.

- (5) In this section—

eligible individual means an individual who—

- (a) is eligible, as specified in the regulations, to be appointed as a nominee supervisor, and
- (b) holds a class of licence that authorises the individual to carry out the work required by the partnership or corporation, and
- (c) provides a declaration that the individual—
 - (i) understands the responsibilities of a nominee supervisor, and
 - (ii) consents to being the nominee supervisor for the licence.

47 Duties of licensed corporations and partnerships

A corporation or partnership that holds a licence for which a nominee supervisor is appointed must keep policies and procedures relating to the following—

- (a) effectively managing and supervising each nominee supervisor,
- (b) the corporate responsibilities of the corporation or partnership under the licence,
- (c) arrangements for regular communication with each nominee supervisor in relation to building work required to be carried out by the corporation or partnership,
- (d) if more than 1 nominee supervisor is appointed for the licence by the corporation or partnership—arrangements for the nominee supervisors to ensure all building work required to be carried out under the licence by the corporation or partnership is appropriately supervised.

48 Duties of nominee supervisor

- (1) A nominee supervisor must, in relation to the licence for which the nominee supervisor is appointed—
- (a) supervise the regulated work carried out by the licence holder under the licence, and
 - (b) ensure regulated work complies with—
 - (i) this Act, and

- (ii) the *Building Compliance and Enforcement Act 2022*, and
- (iii) the National Construction Code.

Maximum penalty—

- (a) for a corporation—1,500 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) A nominee supervisor is not guilty of an offence under this section if the nominee supervisor—
- (a) gave the licence holder written notice in relation to the contravention, and
 - (b) took all reasonable steps to prevent the contravention.
- (3) A nominee supervisor must, if the nominee supervisor reasonably believes the licence holder is not taking all reasonable steps to prevent the contravention, give the Secretary written notice in relation to the contravention.
- (4) The licence holder also commits an offence if the nominee supervisor contravenes subsection (1).

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Chapter 3 Home building work

Part 1 Preliminary

49 Building work to which Chapter applies

- (1) This Chapter applies to regulated work carried out in, on or for a home (*home building work*).
- (2) In this section—
home means a building designed, constructed or adapted for use as a residence, but does not include the following—
 - (a) premises not intended to be used for permanent habitation,
 - (b) a hostel or backpackers' accommodation,
 - (c) a hospital or nursing home,
 - (d) a correctional complex, including a correctional centre,
 - (e) hotel or motel accommodation or serviced apartments,
 - (f) a registered club or a residence within premises licensed under the *Liquor Act 2007*,
 - (g) a residence associated with, or provided by, a hospital or educational establishment,
 - (h) a building or premises excluded by the regulations.*nursing home* has the same meaning as in the *Public Health Act 2010*.

50 Date of completion of home building work (HBA s 3B)

- (1) This section does not apply to home building work to which section 51 applies.
- (2) The completion of home building work occurs on the date the work is complete within the meaning of the contract under which the work is carried out.
- (3) If subsection (2) does not apply, the completion of home building work occurs on *practical completion* of the work, being the first occurring of the following days—
 - (a) if the work is carried out under a contract that does not provide for when work is complete—the day the work is completed in compliance with the contract, including—
 - (i) all plans and specifications for the work, and
 - (ii) all statutory requirements applying to the work,
 - (b) if the work is not carried out under a contract—the day the work is completed without defects or omissions, other than minor defects or omissions that will not unreasonably affect the intended use of the work,
 - (c) the day on which the licence holder hands over possession of the work to the owner,
 - (d) the day on which the licence holder last attends the site to carry out work, other than work to remedy a defect that does not affect practical completion,
 - (e) the day on which an occupation certificate is issued for the building to which the work relates.
- (4) If the home building work comprises the construction of 2 or more buildings, each of which is reasonably capable of being used and occupied separately, practical completion of the individual buildings may occur at different times.

- (5) This section applies for the purposes of determining when completion of home building work occurs under this Act, the regulations or mandatory insurance.

51 Date of completion of new buildings in strata schemes (HBA s 3C)

- (1) This section applies to home building work involving the construction of a new building in a strata scheme if the issue of an occupation certificate is required to authorise commencement of the use or occupation of the building.
- (2) The completion of home building work to which this section applies occurs on—
- (a) the date of issue of an occupation certificate that authorises the occupation and use of the whole of the building, or
 - (b) the occurrence of another event prescribed by the regulations as constituting completion of the work.
- (3) If a contract to carry out home building work (the *primary contract*) comprises the construction of 2 or more separate buildings—
- (a) the date of completion of the work must be determined as if there were a separate contract for each building with each contract on the same terms as the primary contract, and
 - (b) as a result, the work for each building may have a separate completion date.
- (4) This section applies for the purpose of determining when completion of home building work occurs under this Act, the regulations or mandatory insurance.
- (5) In this section, a building is *separate* if it is reasonably capable of being used and occupied separately from another building.
- (6) In this section—

building means a structure that, as a new building, requires the issue of an occupation certificate to authorise the building's use and occupation.

Note— A swimming pool, tennis court or detached garage may be a building for the purposes of this section if an occupation certificate is required to authorise its use and occupation. If a structure in a strata scheme does not require an occupation certificate, section 3B applies.

Part 2 Contract requirements

Division 1 Preliminary

52 Definitions

In this Part—

contracted party means a party to a home building work contract who is—

- (a) an owner, or
- (b) an owner-builder, or
- (c) a person who enters into a contract with a contractor.

contractor means a party to a home building work contract who is—

- (a) a licence holder, or
- (b) the supplier of a kit home or a pre-fabricated building, or
- (c) a developer.

home building work contract—see section 53(1).

progress payment has the same meaning as in the *Building and Construction Industry Security of Payment Act 1999*.

53 Application of Part

- (1) This Part applies to a contract to carry out home building work, including a variation to the contract (a *home building work contract*).
- (2) If the same parties enter into 2 or more separate home building work contracts to carry out the work in stages, the separate contracts are taken to be a single contract for which the contract price is the sum of the contract prices for the separate contracts.
- (3) This Part does not affect a right or remedy that a person, other than the person who contracts to do the work, may have apart from this Act.

Division 2 Major work contracts

Subdivision 1 Requirements for major work contracts

54 Application of Division

- (1) This Division applies to a major work contract, including a variation to the contract.
- (2) This Division does not apply to a major work contract made between parties who are both contractors authorised to enter into the contract.

Example— This Division does not apply to—

- (a) a subcontracting arrangement between licensees, and
- (b) a contract between licensees for work to be done on premises that one of the licensees owns.

55 Form of major work contracts

- (1) A major work contract must be—
 - (a) clearly set out in writing, and
 - (b) dated and signed by or on behalf of each party to the contract.
- (2) A major work contract must contain the following—
 - (a) the names of the parties to the contract, including—
 - (i) if the contractor is a member of a partnership—the names and addresses of all partners must be included in the contract, and
 - (ii) if the contractor is a corporation—the ACN of the corporation must be included in the contract,
 - (b) if the contractor holds a licence—the number of the licence,
 - (c) a detailed scope and description of the work to which the contract relates,
 - (d) if an approval is required for the work—the plans and specifications for the work,
 - (e) one of the following set out in a prominent position on the first page of the contract—
 - (i) the contract price,
 - (ii) the method for calculating the contract price, including a reasonable estimate,
 - (f) if the contract price may be varied—the following placed next to the contract price—
 - (i) a warning that the contract price may be varied,
 - (ii) an explanation of the effect of the provision allowing variation of the contract price,

- (g) the date, or how the date will be determined, for—
 - (i) the start of the work at the building site, and
 - (ii) practical completion of the work,
 - (h) the statutory warranties applying to the work,
 - (i) a conspicuous statement setting out the cooling-off period that applies to the contract (a **cooling-off statement**),
 - (j) for home building work other than a construction contract to which the *Building and Construction Industry Security of Payment Act 1999* applies—details of progress payments payable under the contract,
 - (k) a statement that—
 - (i) the contract may be terminated in the circumstances provided by the general law, and
 - (ii) the general law does not prevent the parties agreeing to additional circumstances in which the contract may be terminated,
 - (l) a checklist in the approved form,
 - (m) information, in the approved form, that explains the operation of the *Building and Construction Industry Security of Payment Act 1999*,
 - (n) other matters prescribed by the regulations.
- Maximum penalty—
- (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.

56 Variations

- (1) A document evidencing a variation of a major work contract (a **variation document**) must—
 - (a) be a written document signed by each party to the contract, and
 - (b) include a detailed description of the variation, and
 - (c) state the reason for the variation, and
 - (d) specify the cost of the variation, and
 - (e) if the variation will result in a delay affecting the work to which the contract relates—state a reasonable estimate for the period of the delay.
- (2) The contractor must give a signed copy of the variation document to each contracted party.
- (3) The contractor must not start to carry out home building work relating to the variation before the contractor has complied with subsection (2).

57 Display homes (cf s 9)

- (1) An exhibitor must, when a display home is available for inspection, prominently display the following at the display home—
 - (a) a copy of the plans and specifications relating to the construction of the home,
 - (b) if the person is aware that persons will be invited to enter into contracts for the construction of similar homes—a copy of a standard form of contract that complies with the requirements for major work contracts under section 55,
 - (c) other information prescribed by the regulations.
- Maximum penalty—
- (a) for a corporation—500 penalty units, or

- (b) for an individual—100 penalty units.
- (2) A contract is taken to contain a provision that a home will be constructed in accordance with this Act, another law and the National Construction Code if—
 - (a) the contract is entered into with the contractor for the construction of a home similar to the display home, and
 - (b) the contractor knows the contract was entered into after the contracted party had inspected the display home, and
 - (c) the contract identifies the home to be built by reference to the display home.
- (3) In this section—

display home means a home, including a representation of a home, made available for inspection to persons who are invited, expressly or impliedly, to enter into a contract for the construction of a similar home.

exhibitor means a person who—

 - (a) makes a display home available for inspection, or
 - (b) advertises that a display home is available for inspection.

58 Maximum progress payments (cf ss 8 and 8A)

- (1) In this section—

base stage means—

 - (a) for a home with a timber floor—the stage when the concrete footings for the floor are poured and the base brickwork is built to floor level, or
 - (b) for a home with a timber floor with no base brickwork—the stage when the stumps, piers or columns are completed, or
 - (c) for a home with a suspended concrete slab floor—the stage when the concrete footings are poured, or
 - (d) for a home with a concrete floor—the stage when the floor is completed, or
 - (e) for a home for which the exterior walls and roof are constructed before the floor is constructed—the stage when the concrete footings are poured.

fixing stage means the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position.

frame stage means the stage when a home's frame is completed.

lock-up stage means the stage when a home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows, whether or not temporary, are fixed.
- (2) Unless otherwise provided in the contract, a licence holder must not demand, recover or retain under a major work contract more than the prescribed amount at the completion of the following stages of the work to which the contract relates—
 - (a) the base stage,
 - (b) the frame stage,
 - (c) the lock-up stage,
 - (d) the fixing stage.

Maximum penalty—

 - (a) for a corporation—1,000 penalty units, or
 - (b) for an individual—200 penalty units.
- (3) The regulations may prescribe the amount—

- (a) by reference to a percentage of the contract price, and
- (b) in relation to different types of contracts.

Subdivision 2 Rescission and cooling-off periods

59 Application of Subdivision

- (1) This Subdivision does not apply to the following major work contracts—
 - (a) a major work contract entered into between a licence holder and a developer,
 - (b) a major work contract entered into between licence holders,
 - (c) a major work contract supplied and fully prepared by or on behalf of the contracted party, but only if no terms or conditions are added to the contract by or on behalf of the contractor,
 - (d) a major work contract prescribed by the regulations.
- (2) Section 66 does not apply to a home building work contract if—
 - (a) there is likely to be—
 - (i) a hazard to the health or safety of a person or the public, or
 - (ii) damage to property, and
 - (b) the work cannot be carried out urgently if the contractor complies with the section before commencing the work.

60 Rescission

- (1) A contracted party may, by written notice, rescind a major work contract before the expiration of 5 clear business days after the person—
 - (a) for a person who has been given a copy of the signed contract—is given a copy of the contract, or
 - (b) for a person who has not been given a copy of the signed contract within 5 days after the contract has been signed—becomes aware that the person is entitled to be given a copy of the signed contract.
- (2) The notice must state that the person rescinds the contract and must be given—
 - (a) to the contractor personally, or
 - (b) by leaving it at the address shown in the contract as the address of the contractor, or
 - (c) by serving it on the contractor in accordance with a notice or service provision in the contract.
- (3) If a notice is given in accordance with this section—
 - (a) the contract is taken to be rescinded from the time the contract was signed, and
 - (b) the contractor may keep the amount of reasonable out-of-pocket expenses the contractor incurred before the rescission, and
 - (c) the contractor must refund all other money paid to the contractor under the contract by or on behalf of the party who rescinded the contract, and
 - (d) the party who rescinded the contract is not liable to the contractor for the rescission of the contract.
- (4) A contract may be rescinded even if work has been done under the contract at the time of rescission.
- (5) The contractor is entitled to a reasonable price for work carried out under the contract to the date the contract is rescinded.

61 Variation or avoidance of cooling-off period

- (1) A cooling-off period may be shortened or avoided by a provision in a major work contract.
- (2) The provision takes effect when the contracted party gives the contractor a waiver certificate.
- (3) A waiver certificate must—
 - (a) be given in writing, and
 - (b) be signed by a relevant Australian legal practitioner, and
 - (c) indicate the purpose for which the certificate is given, and
 - (d) contain a statement to the effect that the relevant Australian legal practitioner explained the following to the contracted party—
 - (i) the effect of the contract,
 - (ii) the nature of the certificate,
 - (iii) the effect of giving the certificate to the contractor.
- (4) In this section—

relevant Australian legal practitioner means an Australian legal practitioner other than the following—

 - (a) an Australian legal practitioner acting for the contractor,
 - (b) another Australian legal practitioner employed in the legal practice of an Australian legal practitioner acting for the contractor,
 - (c) another Australian legal practitioner who is a member or employee of a firm in which an Australian legal practitioner acting for the contractor is a member or employee,
 - (d) a close associate of the contractor.

62 Person may rescind contract if cooling-off statement not included

- (1) If a contract does not contain a cooling-off statement, a person, other than the contractor, may, by written notice, rescind the contract within 7 days of becoming aware the contract should have contained the statement.
- (2) The notice must state that the person rescinds the contract and must be given—
 - (a) to the contractor personally, or
 - (b) by leaving it at the address shown in the contract as the address of the contractor, or
 - (c) by serving it on the contractor in accordance with a notice or service provision in the contract.
- (3) The notice must be given in the approved form.
- (4) If a notice is given in accordance with this section, the contract is taken to be rescinded from the time the contract was signed.
- (5) A contract may be rescinded even if work has been done under the contract at the time of rescission.
- (6) The contractor—
 - (a) is entitled to a reasonable price for work carried out under the contract to the date the contract is rescinded, and
 - (b) must not recover more than the contractor would have been entitled to recover under the contract.

- (7) In this section—
cooling-off statement—see section 55(2)(i).

Division 3 Minor work contracts

63 Requirements for minor work contracts

- (1) A minor work contract must be—
- clearly written, and
 - dated and signed by or on behalf of each party to the contract.
- (2) A minor work contract must contain the following—
- the names of the parties to the contract, including—
 - if the contractor is a member of a partnership—the names and addresses of all partners must be included in the contract, and
 - if the contractor is a corporation—the ACN of the corporation must be included in the contract,
 - if the contractor holds a licence—the number of the licence,
 - a description of the work to which the contract relates,
 - if an approval is required for the work—the plans and specifications for the work,
 - the contract price, or the method for calculating the contract price, including a reasonable estimate, set out in a prominent position on the first page of the contract,
 - if the contract price may be varied—the following placed next to the contract price—
 - a warning that the contract price may be varied,
 - an explanation of the effect of the provision allowing variation of the contract price,
 - other matters prescribed by the regulations.
- Maximum penalty—
- for a corporation—500 penalty units, or
 - for an individual—100 penalty units.
- (3) This section does not apply to a minor work contract made between parties who are contractors authorised to carry out the work under the contract.
- Note—** This exception applies to a subcontracting arrangement between licensees and to a contract between licensees for work to be done on premises that one of the licensees owns.
- (4) In this section—
minor work contract means a home building work contract for which the contract price is within the amount prescribed by the regulations.

Division 4 Other requirements

64 Terms of home building work contracts

- A home building work contract must include, and is taken to include, statutory terms.
- A home building work contract containing a term that is inconsistent with a statutory term is unenforceable to the extent of the inconsistency.
- A regulation made under this section does not apply to a contract in force on the day the regulation commences.

- (4) In this section—
statutory term means a term or other information—
(a) set out in Schedule 1, or
(b) prescribed by the regulations.

65 Certain terms and conditions void in home building work contracts

- (1) A licence holder must not enter into a home building work contract that—
(a) contains a prohibited condition or term, or
(b) is or contains a prohibited variation.
Maximum penalty—
(a) for a corporation—500 penalty units, or
(b) for an individual—100 penalty units.
- (2) A home building work contract is unenforceable to the extent to which it—
(a) contains a prohibited condition or term, or
(b) is or contains a prohibited variation, or
(c) may reasonably be construed as an attempt to enforce a prohibited condition or term or a prohibited variation.
- (3) A regulation made under this section does not apply to a contract in force on the day the regulation commences.
- (4) The regulations may make provision about terms or other information that must not be included in a home building work contract.
- (5) In this section—
prohibited condition or term means a condition or term prescribed by the regulations as a prohibited condition or term.
prohibited variation means a variation of a term prescribed by the regulations as a term that must not be varied.

66 Consumer information (cf s 7AA)

- (1) Before entering into a home building work contract, the licence holder must give consumer information to each other contracted party.
Maximum penalty—
(a) for a corporation—500 penalty units, or
(b) for an individual—100 penalty units.
- (2) Subsection (1) does not apply to the following contracts—
(a) a home building work contract entered into between a licence holder and a developer,
(b) a contract prescribed by the regulations.
- (3) In this section—
consumer information means—
(a) information, in the approved form, that explains the following—
(i) the operation of this Act,
(ii) the role of a registered certifier,
(iii) the procedure for the resolution of disputes—
(A) under the contract, and

- (B) relating to insurance, and
- (b) other information prescribed by the regulations.

67 Copy of contract (cf s 7B)

A contractor must, no later than 5 clear business days after entering into a home building work contract, give each other contracted party a signed copy of the contract in the form in which it was made.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

68 Arbitration provision prohibited

A provision in a home building work contract that requires a dispute under the contract to be referred to arbitration is void.

69 Interests in land under contract

- (1) A home building work contract does not give the contractor or other person a legal or equitable estate or interest in land.
- (2) A provision in a contract or other agreement is void to the extent that it may reasonably be construed as an attempt to create an estate or interest in land.
- (3) This section does not apply to a provision in a home building work contract that creates a charge over land if—
 - (a) the land the subject of the charge is land on which the work is or will be carried out under the contract, and
 - (b) the charge is in favour of the contractor, and
 - (c) the charge is created to secure the payment to the contractor by another contracted party of money payable under the contract, but only if a court or tribunal has made an order or judgment for the payment, and
 - (d) for a charge over land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land.
- (4) A charge over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land.

70 Enforceability of contracts and other rights

- (1) This section applies to a person (a **non-compliant person**) who enters into a contract to carry out home building work—
 - (a) otherwise than in accordance with a licence authorising the person to carry out the work, or
 - (b) under a major work contract that does not comply with a requirement imposed by or under this Act, or
 - (c) in contravention of another provision prescribed by the regulations.
- (2) The contract is unenforceable by the non-compliant person.
- (3) The non-compliant person is, in relation to a breach of the contract committed by another party to the contract, not entitled—
 - (a) to damages, or

- (b) to enforce another remedy.
- (4) The non-compliant person is, in relation to a breach of the contract committed by the non-compliant person—
 - (a) liable for damages, and
 - (b) subject to other remedies.
- (5) This section does not affect the liability of the non-compliant person for an offence against a provision of, or made under, this or another Act.

Part 3 Statutory warranties

71 Definitions

- (1) In this Part—
 - non-contracting owner** of land, in relation to home building work carried out under a contract on the land—
 - (a) means an individual, partnership or corporation who is the owner of the land but is not a party to the contract, and
 - (b) includes a subsequent owner of the land.
- (2) In this Part, a breach of warranty **becomes apparent** when a person entitled to the benefit of the warranty first becomes aware, or ought reasonably to have become aware, of the breach.

72 Persons having benefit of warranties

- (1) The owner of land, including a non-contracting owner of land, on which home building work is carried out is entitled to the benefit of a statutory warranty as if the owners were parties to a contract under which the work was carried out.
- (2) If a licence holder or a developer (a **relevant person**) carries out home building work on land owned by the relevant person, the subsequent owner of the land is entitled to the benefit of a statutory warranty as if the relevant person and the subsequent owner were parties to a contract under which the work was carried out.
- (3) For subsection (2), home building work carried out on behalf of a developer is taken to have been carried out by the developer.
- (4) A person is not entitled to enforce a statutory warranty in proceedings in relation to a deficiency in work or materials if the warranty has already been enforced in relation to the deficiency.

73 Duties of persons having benefit of statutory warranty (HBA s 18BA)

- (1) Breach of a statutory warranty constitutes a breach of contract.
- (2) A person who suffers loss arising from the breach has a duty to mitigate the person's loss.
- (3) The onus of establishing a failure to mitigate loss is on the person alleging the failure.
- (4) A person who has the benefit of a statutory warranty must—
 - (a) take reasonable steps to ensure a person against whom the statutory warranty may be enforced is given written notice of a breach of a statutory warranty within 6 months after the breach becomes apparent, and
 - (b) not refuse reasonable access to the home building work to enable a person to rectify the breach (the **duty to allow reasonable access**).

- (5) If a failure to comply with a duty is established in proceedings before a court or tribunal concerning a breach of a statutory warranty, the failure is a matter the court or tribunal may take into account.
- (6) If the failure is a failure to comply with the duty to allow reasonable access, the court or tribunal must take the failure into account.

74 Persons responsible for providing statutory warranties

- (1) The person who enters a contract with the owner of the land on which home building work is carried out is responsible for providing a statutory warranty.
- (2) If a contract to carry out home building work is not made with the owner of the land, the person who contracts or arranges for, facilitates or otherwise causes, whether directly or indirectly, the work to be carried out is responsible for providing the statutory warranty as if the person was a party to a contract under which the work was carried out.

75 Warranties (HBA s 18B)

In carrying out home building work, the following warranties apply to the work (*statutory warranties*)—

- (a) a warranty that the work will be carried out with due care and skill,
- (b) a warranty that the work will be carried out in accordance with the plans and specifications set out in the contract,
- (c) a warranty that all materials supplied, whether assembled on-site or off-site, will be—
 - (i) good, and
 - (ii) suitable for the purpose for which the materials are used, and
 - (iii) unless otherwise stated in the contract, new,
- (d) a warranty that the work will be carried out in accordance with this or another law,
- (e) a warranty that the work will be carried out with due diligence and within—
 - (i) the time agreed, or
 - (ii) if no time is agreed—a reasonable time,
- (f) a warranty that the work will result in a home that is reasonably fit for habitation,
- (g) a warranty that the work and the materials used in carrying out the work will be reasonably fit for the specified purpose or result.

76 Proceedings for breach of statutory warranty (HBA s 18E)

- (1) Proceedings for breach of a statutory warranty must be commenced—
 - (a) before the end of the warranty period for the breach, or
 - (b) if the breach becomes apparent within the last 6 months of the warranty period—within a further 6 months after the end of the warranty period.
- (2) The warranty period is—
 - (a) for a breach resulting in a serious defect—6 years, or
 - (b) otherwise—2 years.
- (3) The warranty period starts on completion of the home building work to which it relates.
- (4) If the home building work is not completed, the warranty period starts on—

- (a) the date on which the contract is terminated, or
 - (b) if the contract is not terminated—the date on which the home building work under the contract stops, or
 - (c) if the contract is not terminated and home building work under the contract did not commence—the date on which the contract is made, or
 - (d) if there is no contract—the date on which a person last attended the site to carry out home building work.
- (5) A person who has enforced a statutory warranty for a particular deficiency in the work is not prevented from enforcing the same warranty for a deficiency of a different kind in the work (*the other deficiency*) if—
 - (a) the other deficiency existed when the work to which the statutory warranty relates was completed, and
 - (b) the person did not know, and could not reasonably be expected to have known, of the existence of the other deficiency when the statutory warranty was previously enforced.
- (6) Subsection (5) does not apply to the warranty set out in section 75(e).
- (7) In this section—
serious defect has the same meaning as in the *Building Compliance and Enforcement Act 2022*.

77 Commencement of proceedings if building bond lodged (HBA s 18E(1A))

- (1) This section applies if a building bond has been lodged for building work under the *Strata Schemes Management Act 2015*, Part 11.
- (2) The period of 2 years specified for commencing proceedings for a breach of a statutory warranty for the work is extended until the end of 90 days after the end of the period within which a final inspection report on the building work under the Part is required.
- (3) This section does not limit another law that permits the period for commencement of proceedings to be extended.

78 Defences (HBA s 18F)

- (1) It is a defence for the defendant to prove the deficiencies of which the plaintiff complains arise from—
 - (a) instructions given by the person for whom the work was contracted to be done contrary to the written advice of the defendant or person who did the work, given before the work was done, or
 - (b) reasonable reliance by the defendant on written instructions, given before the work was done or confirmed after the work was done, given by a person who is—
 - (i) a relevant professional acting for the person for whom the work was contracted to be done, and
 - (ii) independent of the defendant.
- (2) A relevant professional is independent of the defendant if the relevant professional was not engaged by the defendant—
 - (a) to provide a service in connection with the work, or
 - (b) to carry out work for the defendant in connection with the work.
- (3) A relevant professional is not independent of the defendant if it is established that the relevant professional—

- (a) was engaged on the basis of a recommendation or referral of the defendant to act for the person for whom the work was contracted to be done, or
 - (b) is, or was within 3 years before the relevant instructions were given, a close associate of the defendant.
- (4) In this section—
relevant professional means a person who—
- (a) represents the person to be one or more of the following—
 - (i) an architect,
 - (ii) a registered design practitioner,
 - (iii) a registered principal design practitioner,
 - (iv) an engineer,
 - (v) a certifier, or
 - (b) represents the person to have, in relation to home building work or a particular aspect of home building work, expert or specialised qualifications or knowledge, or
 - (c) represents the person—
 - (i) is engaged in a profession, or
 - (ii) holds a qualification published in the Gazette under section 37, or
 - (d) is a person prescribed by the regulations.

79 Warranties may not be excluded

A provision of an agreement or other instrument that restricts or removes, whether directly or indirectly, the rights of a person in relation to a statutory warranty is void.

Part 4 Owner-builder work

80 Definitions

In this Division—

owner-builder means a person who carries out owner-builder work authorised by an owner-builder permit issued to the person.

owner-builder permit or **permit** means an owner-builder permit issued under this Part.

owner-builder work means home building work—

- (a) that is 1 or more of the following—
 - (i) the carrying out of exempt building work prescribed by the regulations,
 - (ii) the engagement of a licence holder to carry out residential building work,
 - (iii) the coordination of the supply and installation of a kit home or pre-fabricated buildings, and
- (b) relating to the erection of a dwelling house or secondary dwelling, but only if—
 - (i) development consent is required to carry out the work, or
 - (ii) the work may be carried out as complying development.

81 Applications for owner-builder permits

- (1) An application for an owner-builder permit may—
 - (a) be made only by an individual, and

- (b) not be made by a corporation, partnership or other association.
- (2) The Secretary may only grant an application for an owner-builder permit to carry out work if the Secretary is satisfied—
 - (a) the applicant is an individual who is at least 18 years of age, and
 - (b) the applicant is named as an owner of the land on the land title, whether or not the applicant owns the land with other individuals, and
 - (c) the work will be carried out on land containing the intended principal residence of the applicant, and
 - (d) the work is owner-builder work, and
 - (e) the applicant has completed the education or training, or holds the qualifications, required to hold the permit, and
 - (f) the applicant does not already hold an owner-builder permit.
- (3) The Secretary must refuse an application for an owner-builder permit if—
 - (a) during the relevant period, an owner-builder permit was issued for land owned by the applicant, whether or not the permit was issued to the applicant, and
 - (b) the Secretary is satisfied special circumstances justifying the granting of the permit do not exist.
- (4) In this section—
relevant period means—
 - (a) a period of 5 years before the application is made, or
 - (b) another period prescribed by the regulations.

82 Authority of owner-builder permit

- (1) An owner-builder permit authorises the permit holder to carry out the owner-builder work set out in the permit on the land specified in the permit.
- (2) The Secretary may, on the application of a permit holder, vary the authority conferred by the permit by giving written notice to the permit holder.

83 Duration of owner-builder permit

An owner-builder permit remains in force for a period of 5 years, unless sooner cancelled.

84 Cancellation of owner-builder permit

- (1) The Secretary may, by written notice to a permit holder, cancel the owner-builder permit of the permit holder if the Secretary is satisfied there are grounds for the cancellation of the permit.
- (2) Each of the following constitutes grounds for cancelling an owner-builder permit—
 - (a) the permit holder carries out work that is not authorised by the permit,
 - (b) the permit holder is not entitled to hold the permit,
 - (c) the permit was granted in error,
 - (d) another ground prescribed by the regulations.
- (3) Notice of the cancellation must specify—
 - (a) the date or time from which cancellation takes effect, and
 - (b) the grounds for the cancellation, and
 - (c) information about how the decision may be reviewed and appealed.

85 Unlicensed contracting

- (1) A permit holder must not engage another person to carry out home building work for the permit holder unless the other person holds a licence authorising the person to carry out the work.
Maximum penalty—300 penalty units.
- (2) A person is not guilty of an offence under this section if the person establishes that the person took all reasonable steps to prevent the contravention.

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Chapter 4 Reviewable decisions and resolving disputes

Part 1 Resolving building disputes

Division 1 Preliminary

86 Definitions

In this Part—

building dispute means a dispute notified in accordance with section 88.

87 Meaning of “building claim”

(1) In this Part—

building claim means a claim for 1 or more of the following arising from a supply of building goods or services, whether under a contract or not, or arising under a contract that is collateral to a contract for the supply of building goods or services—

- (a) the payment of a specified sum of money,
- (b) the supply of specified services,
- (c) relief from payment of a specified sum of money,
- (d) the delivery, return or replacement of specified goods or goods of a specified description.

building goods or services means goods or services supplied for or in connection with the carrying out of home building work or specialist work carried out in connection with home building work, including goods or services supplied—

- (a) by the person who contracts to carry out, or otherwise carries out, the work, or
- (b) in the circumstances prescribed by the regulations to the person who contracts to carry out the work.

goods means materials, products and components that form part of a building, structure or work arising from home building work.

services and **supply** have the same meanings as in the *Fair Trading Act 1987*, Part 6A.

(2) A building claim includes the following—

- (a) an external appeal against a decision of an insurer under a building cover contract required to be entered into under this Act,
- (b) a claim for compensation for loss arising from a breach of a warranty,
- (c) other matters prescribed by the regulations.

(3) The regulations may specify that a claim is not a building claim.

Division 2 Dealing with building disputes and claims

88 Notification of disputes

- (1) A person may notify the Secretary of a dispute in relation to home building work or specialist work carried out for a home.
- (2) The regulations may specify circumstances in which disputes may and may not be notified under this section.
- (3) A notification must be made in the way approved by the Secretary.
- (4) Without limiting subsection (1), a notification may be made by—

- (a) if the work is carried out on common property in a strata scheme—the owner of a lot in the strata scheme, or
 - (b) if the work is carried out on association property in a scheme—the owner of a lot in the scheme.
- (5) In this section—
scheme has the same meaning as in the *Community Land Management Act 2021*.

89 Secretary may determine disputes

- (1) The Secretary may, after being notified of a dispute, do 1 or more of the following—
 - (a) investigate the dispute,
 - (b) take enforcement action under the *Building Compliance and Enforcement Act 2022*,
 - (c) make a home building work direction in accordance with Division 5,
 - (d) refer the dispute for mediation in accordance with the regulations.
- (2) The Secretary must give written notice of the following to the person who notified the Secretary of the dispute—
 - (a) the outcome of the Secretary’s investigation of the dispute, if any,
 - (b) whether or not the Secretary gives the person approval to apply to the Tribunal for the determination of the dispute.
- (3) The regulations may make provision about the following—
 - (a) the procedures for mediations,
 - (b) whether or not a mediation required under this section is binding.

Division 3 Jurisdiction in relation to building claims

90 Application for determination of building claim

- (1) A person may, after receiving the Secretary’s approval under section 89(2)(b), apply to the Tribunal for the determination of a building claim.
- (2) A building claim may be withdrawn—
 - (a) if, immediately before a building claim is made, the person is subject to the requirements of an enforcement action under the *Building Compliance and Enforcement Act 2022*—with the leave of the Tribunal, or
 - (b) otherwise—at any time.

91 Jurisdiction of Tribunal in relation to building claims

- (1) The Tribunal has jurisdiction to hear and determine a building claim—
 - (a) for an amount of \$500,000 or less, or
 - (b) another amount, if any, prescribed by the regulations.
- (2) The Tribunal does not have jurisdiction in relation to the following building claims—
 - (a) a claim relating to building goods or services supplied to or for, or required to be supplied to or for, the claimant if the date on which the claim was lodged is more than 3 years after—
 - (i) the date on which the supply was made or required to be made, or
 - (ii) if made or required to be made in instalments—the date on which the supply was last made or the last date on which the supply was required to be made,

- (b) a claim arising out of a building cover contract required to be entered into under this Act if the date on which the claim was lodged is more than 10 years after the date on which the home building work the subject of the claim was completed,
- (c) a claim arising from a breach of a statutory warranty if the date on which the claim is lodged is after the end of the period within which proceedings for a breach of the statutory warranty must be commenced,
- (d) if the date on which the claim was lodged is more than 3 years after the date on which the contract was entered into—a claim—
 - (i) otherwise relating to a contract for the supply of goods or services, or
 - (ii) relating to a collateral contract.
- (3) The Tribunal is not prevented from hearing a building claim arising out of a contract that also involves the sale of land.
- (4) This section prevails to the extent of an inconsistency with the *Civil and Administrative Tribunal Act 2013*, Schedule 4, clause 5.

92 Tribunal responsible for resolving building claims

- (1) This section applies to proceedings in relation to a building claim if—
 - (a) a person starts the proceedings in or before a court, and
 - (b) the building claim may be heard by the Tribunal under this Division.
- (2) If a defendant in proceedings to which this section applies makes an application for the proceedings to be transferred, the proceedings must—
 - (a) be transferred to the Tribunal in accordance with the regulations, and
 - (b) continue before the Tribunal as if the proceedings had been instituted in the Tribunal.
- (3) This section does not apply to matters arising under the *Building and Construction Industry Security of Payment Act 1999*, sections 15, 16 or 25.
- (4) This section prevails to the extent of an inconsistency with the *Civil and Administrative Tribunal Act 2013*, Schedule 4, clause 6.

93 Jurisdiction for actions against refusal of insurance claims

A building claim relating to the refusal of an insurance claim must be heard by a court of competent jurisdiction if the insurance claim is more than—

- (a) \$500,000, or
- (b) another amount prescribed by the regulations.

Division 4 Powers of Tribunal

94 Determination of building claims

- (1) In determining a building claim, the Tribunal may consider a report prepared by an authorised officer who, under the *Building Compliance and Enforcement Act 2022*, investigated a matter giving rise to the building dispute.
- (2) The Tribunal may make 1 or more of the following orders, whether or not the applicant asks for the order—
 - (a) an order that a party to the proceedings—
 - (i) pay money, whether by way of debt, damages or restitution, to—
 - (A) another party to the proceedings, or

- (B) a person specified in the order, or
 - (ii) refund money paid by a specified person,
- (b) an order that—
 - (i) a specified amount of money is not due or owing by a party to the proceedings to a specified person, or
 - (ii) a party to the proceedings is not entitled to a refund of money paid to another party to the proceedings,
- (c) an order that a party to the proceedings—
 - (i) carry out specified work or perform a specified service or obligation arising under this Act or the terms of an agreement, or
 - (ii) carry out or perform, or refrain from carrying out or performing, a specified act, matter or thing.
- (3) The *Fair Trading Act 1987*, sections 79R and 79T–79V apply, with necessary modifications, to the determination of a building claim.
- (4) The Tribunal must, as soon as practicable after making an order under this Part, inform the Secretary of—
 - (a) the order, and
 - (b) the time limit for compliance with the order.

95 Secretary must be informed of compliance with order

- (1) A person against whom an order has been made by the Tribunal under this Part must notify the Secretary when the order has been complied with.
Maximum penalty—
 - (a) for a corporation—1,000 penalty units, or
 - (b) for an individual—200 penalty units.
- (2) The person must not inform the Secretary that the order has been complied with if the person knows or ought reasonably to know that the order has not been complied with.
- (3) If the Secretary is satisfied the person has complied with the order, the Secretary must ensure the record of the order is removed from the licence register.
- (4) Nothing in this section prevents the Secretary from recording non-compliance with an order if the Secretary had previously removed a reference to the order from the licence register.

96 Failure to inform of compliance

If the Secretary is not informed that an order has been complied with by the end of the time limit for compliance with the order—

- (a) the order is taken to have not been complied with, and
- (b) the Secretary may record the non-compliance on the licence register.

Division 5 Home building work directions

97 Application of Subdivision

- (1) This Subdivision applies to home building work the subject of a dispute—
 - (a) involving a failure to provide building goods and services paid for by the claimant, and
 - (b) of a kind prescribed by the regulations.

- (2) The regulations may specify circumstances in which this Subdivision does and does not apply to home building work the subject of a building claim.
- (3) In this Subdivision—
consumer means a person who has notified the Secretary of a dispute to which this Subdivision applies in accordance with section 88.

98 Home building work directions

- (1) The Secretary may, on the Secretary's own initiative or on the application of a consumer, resolve a building claim by making a home building work direction.
- (2) A consumer may apply to the Secretary for a home building work direction in the way and form determined by the Secretary.
- (3) The Secretary may, by written notice to a supplier, direct the supplier—
 - (a) to repair building goods or services, or
 - (b) to replace building goods or services, or
 - (c) to refund to the consumer—
 - (i) money paid by the consumer for a building goods or services, or
 - (ii) an amount equal to the value of another consideration provided by the consumer for the building goods or services.
 - (d) to carry out another action prescribed by the regulations.
- (4) A home building work direction must specify—
 - (a) the period within which the direction must be complied with, and
 - (b) the total amount to be refunded to the consumer.
- (5) The Secretary must give a copy of a home building work direction to the consumer at the same time as the direction is given to the supplier.
- (6) The Secretary may refuse to make a home building work direction—
 - (a) if the Secretary is of the opinion that—
 - (i) because of the complexity of the subject matter of the application, the matter should be dealt with by the Tribunal, or
 - (ii) it would not be in the public interest to make the direction, or
 - (iii) it is fair and reasonable in the circumstances to refuse to make the direction, or
 - (b) for another reason prescribed by the regulations.

99 Recovery of refund

If a supplier fails to comply with a home building work direction, the amount directed to be refunded to the consumer may be registered as a judgment debt in a court of competent jurisdiction.

100 Regulations

The regulations may make provision about the following—

- (a) the procedures to be used by the Secretary in making home building work directions,
- (b) the written and oral submissions and evidence the consumer and supplier may provide to the Secretary before the making of a home building work direction,
- (c) the provision of reasons for making or refusing to make a decision in relation to a home building work direction,

- (d) the making and withdrawal of applications for home building work directions,
- (e) the amendment of home building work directions,
- (f) applications to the Tribunal for reviews of the making of home building work directions, including the procedures of the Tribunal.

Division 6 Miscellaneous

101 Requirement to notify Secretary of court order to pay money in relation to building claim

- (1) If a licence holder is ordered by a court to pay an amount of money in relation to a building claim, the licence holder must, within 7 days after the order is made, give the Secretary written notice of the following—
 - (a) the amount of money ordered to be paid,
 - (b) the date on which the money is due to be paid if the date is specified in the order,
 - (c) the name of the person to whom the money must be paid,
 - (d) other information prescribed by the regulations.Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) If a court makes an order for the payment of money in relation to a building claim, a party to the proceedings in which the order was made may notify the Secretary of—
 - (a) the making of the order, and
 - (b) the terms of the order.
- (3) A reference in this section to a building claim includes a reference to a claim for the payment of an unspecified sum of money arising from a supply of building goods or services.

Part 2 Jurisdiction of Civil and Administrative Tribunal

Division 1 Administrative reviews

102 Review by Tribunal

- (1) A person aggrieved by the following decisions may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision—
 - (a) a decision of the Secretary to refuse an application for the grant of a licence or owner-builder permit,
 - (b) a decision of the Secretary to refuse to approve a professional body,
 - (c) a decision of the Authority to refuse an application for an insurer's licence or a provider's licence,
 - (d) a decision of the Secretary or the Authority to suspend or cancel—
 - (i) an insurer's licence or a provider's licence, or
 - (ii) a licence, or
 - (iii) an owner-builder permit, or
 - (iv) the approval of a professional body,

- (e) a decision of the Authority to refuse to grant approval to the person to assign an insurer's licence or a provider's licence,
 - (f) a decision of the Secretary or the Authority to impose, vary or revoke a condition on—
 - (i) an insurer's licence or a provider's licence, or
 - (ii) a licence, or
 - (iii) an owner-builder permit, or
 - (iv) the approval of a professional body,
 - (g) a decision of the Secretary or the Authority to impose a penalty,
 - (h) a decision of the Secretary to make a home building work direction,
 - (i) another decision prescribed by the regulations.
- (2) Despite the provisions of Chapter 3, Part 3, Division 2 of the *Administrative Decisions Review Act 1997*, the Tribunal may not order that a decision of the Authority be stayed pending the determination of an application for its administrative review.

103 Time limits for review of Secretary's decisions

- (1) An application for an administrative review of a decision of the Secretary or the Authority may be made to the Tribunal within 30 days after the decision (the **30-day period**).
- (2) A late application may, with the leave of the Tribunal, be made to the Tribunal within 30 days after the end of the 30-day period.
- (3) The Tribunal may only grant leave to make a late application if satisfied that—
 - (a) there is a sufficient explanation as to why the application was not made in time, and
 - (b) the other persons concerned in the matter would not be prejudicially affected if leave were granted.

104 Determination of reviews

- (1) A review must be dealt with by way of a rehearing.
- (2) Fresh evidence, or evidence in addition to, or in substitution for, the evidence received by the Secretary, may be given.
- (3) In determining a review, the Tribunal may make the following orders—
 - (a) an order confirming the Secretary's decision,
 - (b) an order substituting for the Secretary's decision another decision the Secretary may have made.

Division 2 Unjust contracts

105 Jurisdiction relating to unjust contracts

- (1) The Tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for home building work or specialist work.
- (2) This section does not—
 - (a) authorise the Tribunal to exercise the powers conferred by the *Contracts Review Act 1980*, section 10, or

- (b) affect the jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts to carry out home building work or specialist work.

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Chapter 5 Insurance

Part 1 Insurance (HBA Part 6)

Division 1 Preliminary

106 Definitions

- (1) In this Chapter—
- certificate of insurance** means a certificate—
- (a) in a form approved by the Authority, and
 - (b) evidencing mandatory insurance.
- construction period insurance contract**—see section 116(2).
- contractor**—see section 52.
- insured work** means home building work insured under mandatory insurance.
- mandatory insurance** means a contract of insurance that—
- (a) is required, under this Part, to insure home building work, and
 - (b) complies with this Part, and
 - (c) is in the name under which the licence holder contracts to carry out the work, and
 - (d) is in force in relation to the work.
- speculative work** means home building work that is not carried out under a home building work contract.
- statutory warranty period** means the period specified in section 76.
- warranty period insurance contract**—see section 116(3).
- (2) In this Part, a reference to the disappearance of a licence holder, supplier or owner-builder is a reference to the following—
- (a) if the licence holder, supplier or owner-builder is a corporation—the deregistration of the corporation under the Corporations Act,
 - (b) if the licence holder, supplier or owner-builder is a partnership—the dissolution of the partnership,
 - (c) the fact that, after due search and inquiry, the licence holder, supplier or owner-builder cannot be found in Australia.

107 Mandatory insurance extends to rectification work

Mandatory insurance for home building work (the **original work**) carried out by a person extends to home building work carried out by the person to rectify the original work.

108 Operation of mandatory insurance for owners of land (HBA ss 92C, 99(2A) and (2B))

- (1) The benefit of mandatory insurance for home building work extends to the person who has the benefit of a statutory warranty for the work under this Act.
- (2) Subsection (1) applies whether or not the contract of insurance contains a contrary term or otherwise.

Division 2 Insurance requirements and premiums

Subdivision 1 Mandatory insurance

109 General requirements for mandatory insurance (HBA s 102)

- (1) Mandatory insurance must—
 - (a) be of a kind approved by the Authority, and
 - (b) be provided by the Self Insurance Corporation or another licensed insurer, and
 - (c) provide for cover of at least the amount prescribed by the regulations when the contract is entered into by the licence holder, and
 - (d) comply with this Act and the regulations.
- (2) Mandatory insurance may provide—
 - (a) for additional matters not inconsistent with this Act or the regulations, and
 - (b) that the insurer is not liable for a specified amount of each claim (the *claim excess*).
- (3) The regulations may make provision about the following—
 - (a) requiring the retention, at a specified place, of copies of contracts of insurance,
 - (b) additional matters that may be provided for in mandatory insurance,
 - (c) the maximum amount that may be specified as the claim excess in mandatory insurance.
- (4) Nothing in this Part prevents mandatory insurance from also providing insurance cover for—
 - (a) loss arising in additional circumstances to those required under this Part, or
 - (b) risks or loss in addition to the risks or loss required to be covered under this Part.

110 Insurance periods (HBA s 103B)

- (1) Mandatory insurance, other than a warranty period insurance contract, must provide cover for loss arising from non-completion of the insured work for a period of at least 1 year after—
 - (a) the failure to commence the work, or
 - (b) the work stops being carried out.
- (2) Mandatory insurance, other than a construction period insurance contract, must provide cover for other loss insured in accordance with this Act for a period at least equal to the statutory warranty period.
- (3) Mandatory insurance must provide that the insurer is not entitled to do the following on the ground that the contract for the work to which the insurance relates was entered into before the insurance period commenced if the insurer has issued a certificate of insurance or otherwise accepted cover—
 - (a) to refuse to pay a claim under the mandatory insurance for work carried out before the insurance period commenced,
 - (b) to cancel the mandatory insurance.

111 Limits on claims (HBA ss 103BB and 103BC)

- (1) Mandatory insurance provides cover for loss only if a claim for the loss is made to the insurer—

- (a) during the insurance period, or
 - (b) in accordance with this section within 10 years after the insured work is completed.
- (2) A claim may, within 6 months after the loss becomes apparent (the ***extended claim period***), be made for a loss that becomes apparent in the last 6 months of the insurance period.
- (3) The extended claim period does not apply to loss arising from—
 - (a) non-completion of work, or
 - (b) a breach of a statutory warranty for work insured by a construction period insurance contract.
- (4) A claim may be made after the insurance period (a ***delayed claim***) if—
 - (a) a loss becomes apparent during the insurance period and an insured event within the meaning of section 116(4)—
 - (i) has not occurred, or
 - (ii) occurs in the last 6 months of the insurance period, and
 - (b) the beneficiary diligently pursued the enforcement of the statutory warranty concerned after the loss became apparent.
- (5) Mandatory insurance does not, unless expressly provided in the mandatory insurance, provide cover for loss arising from a breach of a statutory warranty if a claim has been—
 - (a) made to—
 - (i) an insurer, whether under the same or a different contract of insurance, or
 - (ii) a provider, and
 - (b) paid by the insurer or provider.
- (6) A mortgagee in possession of land on which insured work is carried out is not entitled to the benefit of the mandatory insurance unless expressly provided in the mandatory insurance.
- (7) This section does not extend an insurance period.
- (8) The regulations may make provision about what does or does not constitute diligent pursuit of the enforcement of a statutory warranty under subsection (4)(b).

112 Notification of insurer (HBA s 92A)

A person who enters into a major work contract to carry out work required to be covered by mandatory insurance must inform the insurer of the following—

- (a) the identity of the person and the other parties to the contract,
- (b) the address at which the home building work will be carried out,
- (c) other matters prescribed by the regulations.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) otherwise—100 penalty units.

113 Insolvency or death in partnership carrying out home building work

- (1) If a partnership contracts to carry out insured work, the insolvency of a partner of the partnership constitutes the insolvency of the contractor under mandatory insurance.

- (2) A partnership is taken to be insolvent if—
 - (a) a partner in the partnership dies, and
 - (b) the partner was the only nominee supervisor for the licence held by the partnership, and
 - (c) another nominee supervisor is not appointed in accordance with this Act.
- (3) Mandatory insurance must give effect to this section.

114 Insurance not required for persons carrying out work for contractor (HBA s 98)

A person, who carries out building work for, or on behalf of, a contractor who is required to hold mandatory insurance under this Act, is not—

- (a) required to hold insurance for the work required to be covered by the mandatory insurance, and
- (b) liable for an offence for failing to hold insurance for the work required to be covered by the mandatory insurance.

Subdivision 2 Insurance relating to major work contracts

115 Work under major work contracts must be insured (HBA s 92)

- (1) A contractor must not carry out home building work or demand or receive a payment under a major work contract unless—
 - (a) the contractor holds mandatory insurance, and
 - (b) a certificate of insurance has been provided to at least 1 of the other parties to the contract.

Maximum penalty—

- (a) for a corporation—1,500 penalty units, or
- (b) for an individual—300 penalty units.

Note— Part 3 provides that the requirement to obtain insurance under this section may be met by obtaining coverage through an alternative indemnity product.

- (2) An individual convicted of a second or subsequent offence under subsection (1) is liable to 1 or both of the following—
 - (a) a penalty not exceeding 600 penalty units, or
 - (b) imprisonment for a term not exceeding 12 months.
- (3) The regulations may specify persons who are not required to be insured under subsection (1)(a).

116 Mandatory insurance for work carried out under major work contracts (HBA s 99)

- (1) Mandatory insurance must insure—
 - (a) the owner of the land on which the work is carried out against loss arising from non-completion of the work because of an insured event, and
 - (b) the owner of the land on which the work is carried out, including subsequent owners of the land, against the risk of being unable, because of an insured event—
 - (i) to have the contractor rectify a breach of a statutory warranty for the work, or
 - (ii) to recover compensation from the contractor for the breach.
- (2) Mandatory insurance may consist of 2 separate contracts of insurance if—
 - (a) a contract (a *construction period insurance contract*) insures against—

- (i) loss arising from non-completion of the work, and
 - (ii) a breach of a statutory warranty arising from non-completion of the work, and
- (b) the other contract (a **warranty period insurance contract**) insures against a breach of a statutory warranty that becomes apparent after the work is completed.
- (3) A licensed insurer—
 - (a) may provide a construction period insurance contract and a warranty period insurance contract for the same work, and
 - (b) must not require a contractor to enter into a construction period insurance contract and a warranty period insurance contract with the licensed insurer.
- (4) In this section—
insured event in relation to mandatory insurance means the following—
 - (a) the insolvency, death or disappearance of the contractor who holds the insurance,
 - (b) the failure of the contractor who holds the insurance to pay, within 28 days after the period for payment specified in the order, the amount specified in an order by the Tribunal or court that is payable to an owner of the land on which work is carried out by the contractor.

Subdivision 3 Insurance relating to speculative work

117 Definitions

In this Subdivision—

speculative work means home building work carried out by a licence holder on land owned by the licence holder.

118 Speculative work not carried out under a contract must be insured (HBA ss 96, 100)

- (1) A person must not carry out speculative work without entering into a contract for the work unless the person holds mandatory insurance.
Maximum penalty—
 - (a) for a corporation—1,500 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) Mandatory insurance must insure the purchaser, including subsequent purchasers, of the land on which the work is carried out against the risk of being unable, because of the insolvency, death or disappearance of the licence holder—
 - (a) to have the licence holder rectify a breach of a statutory warranty in relation to the work, or
 - (b) to recover compensation from the licence holder for a breach of a statutory warranty in relation to the work.
- (3) A person who carries out speculative work without entering into a contract for the work must not enter into a contract for the sale of the land on which the speculative work is carried out unless a certificate of insurance is attached to the contract of sale.
Maximum penalty—
 - (a) for a corporation—1,500 penalty units, or
 - (b) for an individual—300 penalty units.
- (4) The regulations may exempt a person from subsection (1) or (3).

- (5) This section does not apply to—
 - (a) a sale of the land after the statutory warranty period, or
 - (b) speculative work if the reasonable market cost of the labour and materials involved in the speculative work does not exceed the amount prescribed by the regulations.

119 Exemptions from insurance requirements (HBA s 97)

- (1) A person may apply to the Authority for an exemption from the requirement to hold mandatory insurance under this Act.
- (2) The regulations may prescribe the following—
 - (a) persons who may apply for an exemption,
 - (b) the circumstances in which a person may apply for an exemption.
- (3) The Authority may, by written notice, grant an exemption if satisfied that—
 - (a) exceptional circumstances justify the granting of the exemption, or
 - (b) full compliance with the requirement—
 - (i) is impossible, or
 - (ii) would cause undue hardship.
- (4) An exemption may be granted with or without conditions.
- (5) An exemption exempts the person from the operation of the relevant provision, subject to compliance with the conditions, if any, of the exemption.

Subdivision 4 Developers

120 Developers not entitled to claim under mandatory insurance

A developer, and a person carrying out work on behalf of a developer, is not entitled to make a claim under mandatory insurance.

121 Obligations of developers (HBA s 96A)

- (1) A developer must not enter into a contract for the sale of land on which home building work is carried out on the developer's behalf unless a certificate of insurance is attached to the contract of sale.
Maximum penalty—
 - (a) for a corporation—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (2) This section does not apply to a sale of the land after the statutory warranty period.

Subdivision 5 Premiums

122 Premiums (HBA s 103BE)

- (1) The licensed insurer must file with the Authority a premium or set of premiums it proposes to charge.
- (2) The licensed insurer may, on and from the proposed commencement date for the premium, charge a premium that has not been rejected by the Authority within the rejection period.
- (3) The insurer must not charge another premium on and from the proposed commencement date.

- (4) The proposed commencement date for a premium is the date specified in a filed premium as the date on and from which the proposed premium will be charged.
- (5) The proposed commencement date must not be earlier than the end of the rejection period but may, by written notice to the Authority, be changed to accommodate a change in the rejection period.
- (6) In this section—
rejection period means the period allowed for rejecting a premium as specified in the Insurance Guidelines.

123 Filing of premiums (HBA s 103BF)

- (1) A licensed insurer—
 - (a) must file the insurer's premiums with the Authority at the times specified by the Insurance Guidelines, and
 - (b) may, subject to the Guidelines, file the insurer's premiums with the Authority at other times the insurer considers appropriate.
- (2) The Authority may, by written notice, require a licensed insurer to file the insurer's premiums with the Authority.
- (3) The notice must allow a period of at least 8 weeks after the notice is served for the premiums to be filed.
- (4) The premiums must be filed with the Authority by filing—
 - (a) a full set of the insurance premiums the licensed insurer proposes to charge for the contracts of insurance, and
 - (b) additional information, including actuarial reports, reasonably required by the Authority.
- (5) A licensed insurer must pay to the Authority the fee required by the Insurance Guidelines to be paid by insurers in connection with the filing of premiums by insurers.
- (6) It is a condition of a licence granted to a licensed insurer under this Act that the insurer must comply with this section.

124 Rejection of premiums by Authority (HBA s 103BG)

- (1) The Authority may reject an insurance premium filed with it under this Division if of the opinion that—
 - (a) after considering actuarial advice and other relevant financial information available to the Authority, the premium is excessive or inadequate, or
 - (b) the premium does not conform to the Insurance Guidelines.
- (2) The Authority must, by written notice, notify the licensed insurer of the rejection of a premium and the reasons for the rejection.
- (3) If the Authority rejects a premium of a licensed insurer, the insurer may request the Authority to reconsider the rejection.
- (4) Before reconsidering the rejection, the Authority may request an actuary to determine a provisional premium.
- (5) The determination of a provisional premium has effect, pending the Authority's reconsideration, as if it were an insurance premium that may lawfully be charged by the insurer.
- (6) The Insurance Guidelines may—

- (a) specify the factors to be taken into account in determining—
 - (i) the reasonable cost of claims and reasonable claim settlement expenses, and
 - (ii) whether a premium is excessive, and
- (b) exclude specified costs and expenses from being taken into account as costs and expenses of the insurer, and
- (c) limit the extent to which specified costs and expenses may be taken into account as costs and expenses of the insurer.

125 Arbitration after rejection of premium (HBA s 103BG(6) and (7))

- (1) If the Authority has not withdrawn the rejection of a premium within 4 weeks after a request to reconsider the rejection, the matter must be arbitrated.
- (2) Subject to this Act and the regulations, the *Commercial Arbitration Act 2010* applies to an arbitration under this section.
- (3) The Authority and the licensed insurer may, by agreement within 7 days, appoint a person to act as an arbitrator in connection with the matter.
- (4) If an arbitrator is not appointed under subsection (3), IPART may—
 - (a) act as an arbitrator to hear and determine the matter, or
 - (b) appoint a person from a panel to act as an arbitrator in connection with the matter.
- (5) The panel must—
 - (a) be constituted by the Minister, and
 - (b) consist of persons who have appropriate knowledge and understanding of economics, general insurance and the interests of consumers.
- (6) The regulations may make provision about the arbitration of matters under this section.
- (7) The arbitrator may determine the premium that may be charged by the licensed insurer.
- (8) In this section—
IPART means the Independent Pricing and Regulatory Tribunal established by the *Independent Pricing and Regulatory Tribunal Act 1992*.

Subdivision 6 Miscellaneous

126 Contracts for sale of land voidable if certificate of insurance not provided

- (1) If a person contravenes section 118(3) or 121(1) in relation to a contract for the sale of land (the *sale contract*), the sale contract is voidable at the option of the purchaser before the completion of the sale contract.
- (2) The sale contract is not voidable under subsection (1) if—
 - (a) the person obtained the certificate of insurance before entering the sale contract, and
 - (b) before completion of the sale contract, the person served the certificate of insurance on—
 - (i) the purchaser, or
 - (ii) an Australian legal practitioner acting on the purchaser's behalf.

127 Register of insurance and other particulars (HBA s 102A)

- (1) The Authority must keep a register in relation to the following (an *insurance register*)—
 - (a) mandatory contracts of insurance,
 - (b) alternative indemnity products,
 - (c) other matters relating to the provision of insurance or alternative indemnity products under this Act.
- (2) The insurance register may include the following—
 - (a) certificates issued to evidence building cover contracts entered into under this Chapter,
 - (b) claims made successfully under building cover contracts.
- (3) Personal information may be kept in the insurance register.
- (4) The regulations may prescribe circumstances in which personal information may not be kept in the insurance register.
- (5) A licensed insurer or licensed provider is authorised to disclose information to the Authority for the purposes of the insurance register despite the *Privacy and Personal Information Protection Act 1998*.
- (6) The Authority must make the insurance register publicly available in the way the Authority considers appropriate.
- (7) In this section—
personal information has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

128 Part may not be excluded (HBA s 103D)

A provision of a contract or another agreement that purports to restrict or remove the rights of a person under this Part is void.

129 Exemption for work done for public sector agencies (HBA s 103E)

- (1) This Part does not apply to home building work carried out by or on behalf of the Crown or a State owned corporation.
- (2) If home building work is carried out under a contract, an exemption from this Part does not apply unless the contract under which the work is carried out specifies that the person is relying on the exemption.
- (3) The regulations may make provision about the following—
 - (a) circumstances in which an exemption does not apply,
 - (b) conditions of exemptions,
 - (c) the inclusion of consumer warnings in contracts for the sale of land on which home building work was carried out by a person subject to an exemption.
- (4) In this section—
Crown has the same meaning as in the *Crown Proceedings Act 1988*.

130 Regulations (HBA s 103C)

The regulations may make provision about requirements for mandatory insurance, including the following—

- (a) limitations on, and reductions in, liability,
- (b) losses indemnified,

- (c) subrogation,
- (d) when an insurance claim is taken to have been refused,
- (e) determinations of the maximum amount of insurance cover,
- (f) when work is taken to be completed,
- (g) procedures for appeals against decisions of insurers, including the time within which appeals may be made,
- (h) circumstances in which work is taken to have stopped,
- (i) circumstances in which a contractor is taken to be insolvent.

Division 3 Insurance Guidelines

131 Insurance Guidelines (HBA ss 103EC and 103ED)

- (1) The Authority may issue guidelines (*Insurance Guidelines*) in relation to a matter authorised or required under this Act to be provided for by Insurance Guidelines, including the following—
 - (a) appropriate market practices or claims handling procedures in connection with the provision of insurance under this Part by a licensed insurer,
 - (b) prudential standards and the application of the standards to licensed insurers,
 - (c) contracts of insurance, including eligibility requirements for obtaining insurance and underwriting of contracts of insurance,
 - (d) review of compliance with the eligibility requirements.
- (2) The Authority may amend, revoke or replace Insurance Guidelines.
- (3) The Authority must—
 - (a) consult with licensed insurers and licensed providers before it issues, amends, revokes or replaces Insurance Guidelines relating to premiums or market practices, and
 - (b) provide reasonable notice of an amendment to, or replacement of, Insurance Guidelines before the amendment or replacement takes effect.
- (4) Insurance Guidelines may adopt the provisions of other publications whether—
 - (a) with or without modification or addition, and
 - (b) in force at a particular time or from time to time.
- (5) Insurance Guidelines must be published on the NSW legislation website.
- (6) It is a condition of an insurer's licence and a provider's licence that the licence holder comply with the Insurance Guidelines.

Note— The Self Insurance Corporation is required, under the *NSW Self Insurance Corporation Act 2004*, section 8A, to comply with the Insurance Guidelines.

132 Insurance Guidelines for the determination of premiums (HBA s 103BD)

- (1) The Insurance Guidelines may provide for the determination of insurance premiums for mandatory insurance.
- (2) The Insurance Guidelines may—
 - (a) specify the way premiums must be determined and the factors to be taken into account in determining premiums, and
 - (b) require licensed insurers to specify how premiums have been determined, and

- (c) specify additional information and reports the Authority may require licensed insurers to provide with the premiums they file or to justify premiums they have filed including in relation to the following—
 - (i) estimated investment earnings,
 - (ii) the verification of assumptions,
 - (iii) estimated profit,
 - (iv) capital allocation to insurance business under this Act,
 - (v) other relevant matters, and
- (d) specify the following by reference to an amount or percentage of premium income—
 - (i) the maximum fee payable to the agents of the licensed insurers,
 - (ii) the maximum other acquisition or policy administration expenses that licensed insurers may include in the determination of premiums.

133 Regulations relating to Insurance Guidelines (HBA s 103EE)

- (1) The regulations may make provision about the following—
 - (a) the issue of Insurance Guidelines,
 - (b) a matter for which Insurance Guidelines may be issued.
- (2) A reference in this Act to the Insurance Guidelines includes a reference to the regulations.

Division 4 Home Building Operational Fund

134 Home Building Operational Fund (HBA s 103EF)

- (1) The Home Building Operational Fund (the *Fund*) is established.
- (2) The Fund belongs to and is vested in the Authority.
- (3) The following must be paid into the Fund—
 - (a) money required to be contributed to or otherwise paid into the Fund by or under this or another Act,
 - (b) the interest from time to time accruing from the investment of the Fund.
- (4) The following must be paid from the Fund—
 - (a) to the extent the costs relate to the administration of this Act, the following costs of the Board of the Authority and the members of staff of the Authority—
 - (i) remuneration,
 - (ii) allowances,
 - (iii) office accommodation,
 - (iv) other associated costs,
 - (b) where money is not otherwise provided, all payments required to meet expenditure incurred in relation to the functions of the Authority under this Act,
 - (c) all other money required by or under this or another Act to be paid from the Fund.
- (5) The Authority may invest money held in the Fund that is not immediately required for the purposes of the Fund in the way the Authority is permitted to invest money under the Part.

135 Payment of contributions by licensed insurers (HBA s 103EG)

- (1) Licensed insurers must pay contributions to the Fund in accordance with a determination by the Authority.
- (2) Contributions must be made in accordance with the arrangements specified by the regulations.
- (3) In determining the contribution payable to the Fund by licensed insurers for a relevant period, the Authority must—
 - (a) estimate the total of the amounts to be paid from the Fund during the relevant period, and
 - (b) determine what amounts, if any, must be set aside as provisions to meet expenditure from the Fund in future periods, and specify for what purpose each amount is being set aside, and
 - (c) estimate the total amounts to be received, including the amounts already received, into the Fund during the relevant period otherwise than by contributions for the relevant period under this Division from licensed insurers, and
 - (d) determine the total amount to be contributed to the Fund under this Division for the relevant period by licensed insurers after accounting for the amounts—
 - (i) likely to be standing to the credit of the Fund at the beginning of the period, including amounts set aside in earlier periods as provisions to meet expenditure in later periods, and
 - (ii) estimated under paragraph (c) to be received into the Fund during the relevant period, and
 - (e) record the estimates, provisions and amounts to be contributed to the Fund by licensed insurers.
- (4) It is a condition of an insurer's licence that the insurer pay contributions in accordance with this section.
- (5) The Authority may determine—
 - (a) different contributions for different classes of licensed insurers, and
 - (b) a licensed insurer or class of licensed insurers is not liable to pay a contribution for a relevant period.
- (6) A contribution payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (7) In this section—

financial year means a period of 1 year commencing on 1 July.

relevant period means—
 - (a) a financial year, or
 - (b) the period determined by the Authority if—
 - (i) there is no gap between successive relevant periods, and
 - (ii) the period is no longer than 1 year.

Part 2 Insolvent insurers (HBA Part 6A)

Division 1 Preliminary

136 Interpretation

- (1) In this Part—
beneficiary—see section 139(1).
Guarantee Fund—see section 144.
insolvent insurer means an insurer declared to be an insolvent insurer under an order in force under section 137.
insolvent insurer's policy means mandatory insurance entered into by an insolvent insurer, whether before or after the insurer became an insolvent insurer.
insurer means a licensed insurer, other than the Self Insurance Corporation, but does not include an insolvent insurer.
liquidator includes—
(a) a provisional liquidator, and
(b) a liquidator or provisional liquidator appointed outside New South Wales.
State indemnity means an indemnity provided by the State under this Part.
- (2) The liquidator of an insolvent insurer appointed outside New South Wales has the functions conferred or imposed on the liquidator by this Part.
- (3) To the extent of an inconsistency, this Part prevails over—
(a) the *Corporations (New South Wales) Act 1990*, and
(b) an applicable provision, within the meaning of the *Corporations (New South Wales) Act 1990*, of the State.

137 Insolvent insurers

- (1) The Minister may, with the approval of the Treasurer, declare an insurer to be an insolvent insurer if—
(a) the Minister is satisfied a liquidator has been appointed in relation to the insurer, or
(b) the insurer has been dissolved.
- (2) The declaration must be made by order published in the Gazette.

138 State indemnity after insolvent insurer dissolved

Despite the dissolution of an insolvent insurer—

- (a) the State indemnity continues, and
(b) this Part applies as if the insurer had not been dissolved.

Division 2 State indemnity

139 State indemnity

- (1) The State must indemnify a person (a **beneficiary**) if the person is—
(a) entitled to recover an amount under mandatory insurance (the **person's entitlement**), and
(b) covered by an insolvent insurer's policy.

- (2) The State must indemnify the beneficiary to the extent of the beneficiary's entitlement.
- (3) A person who is not required to be insured under this Act is not entitled to the indemnity.
- (4) The State indemnity may only be enforced by a claim made to, and proceedings taken against, the Authority.
- (5) The regulations may make provision about matters to which, or circumstances in which, the indemnity does or does not apply.

140 Amount of State indemnity if other claim made

- (1) This section applies to a beneficiary if—
 - (a) the beneficiary has made a claim under an insolvent insurer's policy, and
 - (b) an amount for the claim (the *claim amount*) has been—
 - (i) determined by the Tribunal or a court, or
 - (ii) agreed to as part of a settlement.
- (2) The State must indemnify the beneficiary for the claim amount minus the amount paid to the beneficiary in relation to the claim by—
 - (a) the insolvent insurer, or
 - (b) a liquidator of the insolvent insurer.

141 State indemnity claim must be made to Authority

- (1) A claim by a beneficiary under a State indemnity must be made to the Authority.
- (2) The claim may be made for a matter, whether or not a claim for the matter has been made against—
 - (a) an insolvent insurer, or
 - (b) a liquidator of an insolvent insurer, or
 - (c) another person.
- (3) The Authority may, from time to time, approve procedures for the making, handling and resolution of claims, including the following—
 - (a) the way a claim must be made,
 - (b) the time within which a claim must be made,
 - (c) the information that must be provided to the Authority, including a requirement to provide a statutory declaration.
- (4) A person must not make a statement in relation to the making of a claim under this Part that the person knows is false or misleading.
Maximum penalty—100 penalty units.

Division 3 Determination of claims

142 Payment of claims

- (1) If the Authority accepts a claim made under this Part, the Authority must pay the amount assessed by the Authority as payable under the State indemnity to—
 - (a) the beneficiary, or
 - (b) a person nominated by the beneficiary.
- (2) The payment must be made out of the Guarantee Fund.

143 Assignment of rights

- (1) This section applies if the Authority pays an amount to a beneficiary for a matter under the State indemnity.
- (2) The beneficiary is taken to have assigned the beneficiary's rights in relation to the matter to the Authority.
- (3) The Authority may enforce the assigned rights as if the rights had been personally assigned by the beneficiary.
- (4) The regulations may make provision about assignments of beneficiaries' rights, including the following—
 - (a) the nature and extent of assignments,
 - (b) the enforcement of assignments by the Authority.
- (5) In this section, the assignment of a beneficiary's rights includes the assignment of rights the beneficiary may have in relation to the matter against a developer or another person.

Division 4 Home Building Insurers' Guarantee Fund

144 Home Building Insurers' Guarantee Fund

- (1) The Home Building Insurers' Guarantee Fund (the *Guarantee Fund*) is established.
- (2) The Guarantee Fund is under the direction, control and management of the Authority.
- (3) The following must be paid into the Guarantee Fund—
 - (a) money contributed under section 145,
 - (b) the interest and other amounts accruing from the investment of the Guarantee Fund,
 - (c) money recovered by the Authority under this Part, including money recovered by the exercise of a beneficiary's rights assigned to the Authority,
 - (d) money borrowed for the purposes of the Guarantee Fund,
 - (e) money required to be paid into the Guarantee Fund by or under this or another Act.
- (4) The following must be paid out of the Guarantee Fund—
 - (a) money required to be paid out of the Guarantee Fund by this Part,
 - (b) payments relating to the costs and expenses of the Authority incurred in, or in connection with, the exercise of the Authority's functions under this Part,
 - (c) repayments of money borrowed for the purposes of the Guarantee Fund.
- (5) The Authority may invest money in the Guarantee Fund that is not immediately required in the way the Authority is permitted to invest money under the *Government Sector Finance Act 2018*, Part 6.

145 Contributions to Guarantee Fund

- (1) A licensed insurer must pay contributions into the Guarantee Fund as determined by the Authority.
- (2) In determining the contribution payable for a relevant period, the Authority must consider the sufficiency of the Guarantee Fund to manage the risk of insurers becoming insolvent.
- (3) The Authority may—

- (a) determine different contributions for different classes of licensed insurers, and
 - (b) exempt a licensed insurer from the requirement to pay a contribution for a relevant period.
- (4) The regulations may specify the way in which contributions must be made.
- (5) It is a condition of an insurer's licence that the insurer pay contributions in accordance with this section and the regulations.
- (6) A contribution payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (7) In this section—
relevant period means—
 - (a) a period of 1 year commencing on 1 July, or
 - (b) the period determined by the Authority if—
 - (i) there is no gap between successive relevant periods, and
 - (ii) the period is no longer than 1 year.

Division 5 Miscellaneous

146 Functions of Authority

- (1) The Authority has the following functions—
 - (a) to determine claims under this Part,
 - (b) to manage the Guarantee Fund in accordance with this Act,
 - (c) other functions prescribed by the regulations.
- (2) The Authority may delegate its functions under this Part to an insurer or other person.

147 Authority may enter into agreements and arrangements with liquidator of insolvent insurer

The Authority may enter into agreements or arrangements with, or accept an assignment from, a liquidator of an insolvent insurer or another person for a purpose relating to the determination of claims under this Part.

148 Recovery of amounts under contracts or arrangements for re-insurance, co-insurance, guarantees or indemnities

- (1) For the purpose of enabling the Authority to recover a recoverable amount, the Authority—
 - (a) is entitled to the benefit of the insolvent insurer under the contract, arrangement, guarantee or indemnity concerned, and
 - (b) may exercise the rights and powers of the insolvent insurer under the contract, arrangement, guarantee or indemnity concerned.
- (2) The Authority must pay the amount recovered into the Guarantee Fund.
- (3) In this section—
recoverable amount means the amount an insolvent insurer would have, if the insurer had provided indemnity for an amount paid out of the Guarantee Fund under the insolvent insurer's policy, been entitled to recover under—
 - (a) a contract or an arrangement for re-insurance or co-insurance, or
 - (b) a guarantee or indemnity given by a person.

149 Liquidator to notify claims administrator of claims

The liquidator of an insolvent insurer must, on receiving a claim relating to the insolvent insurer's policy covered by the State indemnity, give a copy of the claim to the Authority.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

150 Directions for certain documents and information

- (1) This section applies to the following persons (a *relevant person*)—
 - (a) the liquidator of an insolvent insurer,
 - (b) another person who holds documents—
 - (i) relating to an insolvent insurer's policies covered by the State indemnity, and
 - (ii) that the liquidator is entitled to possess, and
 - (iii) that the liquidator would be entitled to possess but for a lien.
 - (2) A relevant person must, if directed by the Authority, give the Authority the following information and documents—
 - (a) copies of—
 - (i) documents relating to the insolvent insurer's policies covered by the State indemnity, and
 - (ii) claims or judgments held by the person and made in relation to the policies, and
 - (b) all information held by the person relating to—
 - (i) the policies, and
 - (ii) the claims or judgments.
 - (3) A relevant person must, if directed by a person authorised by the Minister, make the following available for the authorised person's inspection—
 - (a) documents relating to the insolvent insurer's policies covered by the State indemnity, and
 - (b) claims or judgments held by the person and made in relation to the policies.
- Maximum penalty—
- (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.

151 Authority may take certain legal proceedings

- (1) This section applies to proceedings relating to the following—
 - (a) if the liquidator of an insolvent insurer applies to a court for directions in relation to a matter arising under the winding up,
 - (b) if the exercise by the liquidator of an insolvent insurer of the liquidator's functions is challenged, reviewed or called into question in proceedings before the Tribunal or a court,
 - (c) if another matter relating to the operation of this Part is raised in proceedings before the Tribunal or a court.
- (2) The Authority may intervene in proceedings to which this section applies by appointing an Australian legal practitioner or an agent to intervene.

- (3) On intervening, the Authority—
 - (a) becomes a party to the proceedings, and
 - (b) has all the rights of a party to the proceedings, including the right to appeal against an order, judgment or direction of the Tribunal or court.
- (4) If the Attorney General may take proceedings on behalf of a beneficiary, the Authority—
 - (a) is taken to sufficiently represent the interests of the public, and
 - (b) may take the proceedings in the Authority's own name.

152 Review of decisions of Authority

The Tribunal has the same jurisdiction in relation to a claim for a State indemnity as it has in relation to a claim under mandatory insurance.

Part 3 Alternative indemnity products (HBA Part 6B)

153 Alternative indemnity products

In this Part—

alternative indemnity product means the following—

- (a) a fidelity fund scheme,
- (b) a specialised insurance arrangement,
- (c) another insurance product or arrangement prescribed by the regulations.

provider of an alternative indemnity product—

- (a) means a person who provides an alternative indemnity product, and
- (b) includes the trustee of a fidelity fund under a fidelity fund scheme.

154 Approval of alternative indemnity products

- (1) The Authority may approve the use of an alternative indemnity product to provide cover for loss required to be covered under mandatory insurance for at least the period for which the cover is required to be provided.
- (2) The Authority must not approve an alternative indemnity product unless satisfied the product will provide cover for the loss.
- (3) An approval may be unconditional or subject to conditions.

155 Alternative indemnity product may be used instead of insurance

- (1) A person is taken to comply with a requirement under this Act to hold mandatory insurance for work carried out by the person if the person obtains cover for the work under an alternative indemnity product approved under section 154.
- (2) Evidence of cover under an alternative indemnity product is taken to be evidence of mandatory insurance, including a certificate of insurance.
- (3) The evidence of cover under an alternative indemnity product must be in the form approved by the Authority.
- (4) A relevant provision applies to an alternative indemnity product in the same way as the provision applies to mandatory insurance.

156 Regulation of alternative indemnity products

- (1) The regulations may make provision about the following—

- (a) information required to be provided to the provider of an alternative indemnity product by the person to whom the cover is provided,
 - (b) the loss covered by alternative indemnity products,
 - (c) the period of cover provided by an alternative indemnity product,
 - (d) limits on claims generally,
 - (e) the determination and rejection of premiums or equivalent charges payable for cover by an alternative indemnity product,
 - (f) actuarial or auditing requirements for providers of alternative indemnity products,
 - (g) the disclosure of data and other information by, to or about providers or former providers of alternative indemnity products,
 - (h) prohibiting false or misleading conduct by—
 - (i) providers of alternative indemnity products, and
 - (ii) persons who arrange cover under alternative indemnity products,
 - (i) arrangements for alternative indemnity product cover if the provider's licence is cancelled,
 - (j) contributions to the Home Building Operational Fund by licensed providers of alternative indemnity products.
- (2) The regulations may apply, with the modifications specified by the regulations, provisions of this Act that apply to—
- (a) mandatory insurance to alternative indemnity products, and
 - (b) insurers or former insurers to providers or former providers of alternative indemnity products.

157 Insolvent providers

- (1) Part 2 applies to a provider of an alternative indemnity product in the same way it applies to an insurer.
- (2) The regulations may make provision about the circumstances in which the provider of an alternative indemnity product is taken to be insolvent.

158 Insurance Guidelines relating to alternative indemnity products

The Authority may issue an Insurance Guideline for the following matters—

- (a) requirements for approval of an alternative indemnity product,
- (b) the determination of premiums or other charges for the provision of cover under an alternative indemnity product, including a matter specified in section 132(2),
- (c) appropriate market practices and claims handling procedures relating to the provision of alternative indemnity products by a licensed provider,
- (d) prudential standards and the application of the standards to licensed providers,
- (e) alternative indemnity products, including eligibility requirements for obtaining cover and underwriting of products,
- (f) the review of compliance with eligibility requirements.

Part 4 Insurers and providers (HBA Part 6C)

Division 1 Licensing of insurers and providers

Subdivision 1 Preliminary

159 Definition

In this Part—

Insurance Act means the *Insurance Act 1973* of the Commonwealth.

160 Offence—unlicensed insurers and providers

- (1) A person must not enter into mandatory insurance to provide insurance unless the person is a licensed insurer.
Maximum penalty—1,000 penalty units.
- (2) A person must not enter into a contract or arrangement to provide cover under an alternative indemnity product unless the person is a licensed provider.
Maximum penalty—1,000 penalty units.
- (3) If a person contravenes this section or a condition on an insurer's licence or a provider's licence held by the person—
 - (a) the building cover contract remains a valid contract or arrangement, and
 - (b) the contravention does not—
 - (i) annul or affect the building cover contract, or
 - (ii) affect the liability of the insurer or provider to the person covered under the building cover contract.

161 Self Insurance Corporation is licensed insurer

- (1) The Self Insurance Corporation is a licensed insurer.
- (2) The Authority may, by written notice given to the Corporation—
 - (a) impose conditions on the exercise by the Corporation of functions as a licensed insurer under this Act, and
 - (b) vary or revoke the conditions.
- (3) The Corporation must comply with a condition imposed by the Authority under this section.
- (4) The regulations may exempt the Corporation from a provision of this Part.
- (5) A condition may be imposed, revoked or varied by the Authority only with the approval of the Board of the Authority.

Subdivision 2 Application for licence

162 Application for insurer's and provider's licence

- (1) A corporation that carries on insurance business may apply to the Authority for a grant of an *insurer's licence*.
- (2) A corporation required to be authorised to carry on insurance business under the Insurance Act must not apply for an insurer's licence unless the corporation is authorised to carry on insurance business.
- (3) A provider of an alternative indemnity product may apply to the Authority for a grant of a *provider's licence*.

- (4) An application for a provider's licence to provide cover under a fidelity fund scheme must be made to the Authority jointly by all of the trustees of the fund.
- (5) An application for a joint licence may be made by 2 or more persons.
- (6) An application must—
 - (a) be in a form approved by the Authority, and
 - (b) include or be accompanied by information or evidence the Authority reasonably requires to assess the application.
- (7) The regulations may require a specified fee to be paid for the grant of the licence.
- (8) If the Authority considers it necessary, the Authority may require further documents or information to be provided by the applicant.

163 Grant or refusal of licence

- (1) The Authority may, on application, grant or refuse the licence.
- (2) The Authority must refuse a licence—
 - (a) if the application for the licence does not comply with a requirement imposed by or under this Act, or
 - (b) if the applicant is not a suitable person to hold the licence, or
 - (c) on a ground prescribed by the regulations.
- (3) The Insurance Guidelines may specify eligibility criteria for the grant of a licence under this Division.
- (4) The Authority must give all licensed insurers and licensed providers at least 14 days' notice of a proposal to grant a licence, specifying the name of the proposed licensed insurer or licensed provider.
- (5) The Authority must give the applicant written notice of a decision to grant or refuse the licence.

164 Duration of licence

- (1) A licence remains in force for the period specified by the Authority in the notice by which the licence is granted, unless sooner cancelled.
- (2) A licence has no effect during a period in which the licence is suspended.

165 Variation of licence

- (1) The Authority may, at any time, by written notice to a licensed insurer or licensed provider, vary the licence of the licensed insurer or licensed provider, including conditions of the licence imposed by the Authority.
- (2) A variation includes the following—
 - (a) the imposition of a new condition on the licence,
 - (b) the substitution of a condition,
 - (c) the removal or amendment of a condition.
- (3) The regulations may make provision about the variation of a licence, including—
 - (a) applications for variation, and
 - (b) fees for applications for variation.

166 Assignment of licence

- (1) A licence holder may apply to the Authority for the assignment of a licence to—

- (a) another licence holder, or
 - (b) an insurer or provider to whom the Authority proposes to grant a licence.
- (2) The Authority may, on the application of a licence holder or on its own initiative—
 - (a) assign a licence or contract of insurance, and
 - (b) impose conditions on, or revoke or vary conditions of, a licence on the assignment of the licence.
- (3) The regulations may make provision about the following—
 - (a) procedures relating to the assignment of a licence or contract of insurance, including the making of payments relating to premiums,
 - (b) circumstances in which the Authority may or may not make or approve an assignment under this section.
- (4) In this section—
licence holder includes a former licence holder.

Subdivision 3 Conditions of insurer's licence and provider's licence

167 Conditions on licence

- (1) An insurer's licence and a provider's licence is subject to the following conditions—
 - (a) conditions prescribed by this Act or the regulations, and
 - (b) conditions imposed by the Authority.
- (2) The Authority may, with the approval of the Board of the Authority, impose conditions on a licence in accordance with the regulations—
 - (a) at the time of the grant of the licence, or
 - (b) at another time by variation of the licence.
- (3) The regulations may make provision about—
 - (a) the types of conditions that may be imposed on a licence, and
 - (b) limit the matters that may be provided for by conditions.

168 Offence of contravening condition

- (1) A licensed insurer or licensed provider who contravenes a condition of the insurer's licence or provider's licence is guilty of an offence.
Maximum penalty—1,500 penalty units.
- (2) An insurer or provider must not be convicted of an offence under this section and required to pay a civil penalty under section 169 in relation to the same act or omission.

169 Imposition of civil penalty on or censure of licensed insurers and providers

- (1) If the Authority is satisfied a licensed insurer or licensed provider has contravened the licence, this Act or the regulations, the Authority may, instead of suspending the licence—
 - (a) impose a civil penalty, not exceeding \$500,000, on the licensed insurer or licensed provider, or
 - (b) issue a letter of censure to the licensed insurer or licensed provider.
- (2) Before imposing a civil penalty, the Authority must—

- (a) refer the matter to a special committee constituted in accordance with the regulations for advice, and
 - (b) consider advice, if any, provided by the special committee.
- (3) The regulations may make provision about the following—
 - (a) the constitution of the special committee,
 - (b) procedures of the special committee on receiving a referral under this section.
- (4) A civil penalty imposed under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (5) A civil penalty paid or recovered must be paid into the Home Building Operational Fund.

Subdivision 4 Suspension or cancellation of licence

170 Grounds for suspension or cancellation of licence

Each of the following constitutes grounds for suspending or cancelling a licence—

- (a) the licence holder is not a suitable person to hold the licence,
- (b) the licence holder is not entitled to be licensed,
- (c) the licence holder has applied for the licence to be suspended or cancelled,
- (d) a ground prescribed by the regulations.

171 Suspension of licence

- (1) The Authority may, by written notice to a licence holder, suspend the licence of the licence holder if the Authority is satisfied there are grounds for the suspension of the registration.
- (2) Notice of the suspension must specify—
 - (a) the date or time from which suspension takes effect, and
 - (b) the period of suspension, and
 - (c) the grounds for the suspension.

172 Cancellation of licence

- (1) The Authority may, by written notice to a licence holder, cancel the licence of the insurer or provider if the Authority is satisfied there are grounds for the cancellation of the licence.
- (2) Notice of the cancellation must specify—
 - (a) the date or time from which cancellation takes effect, and
 - (b) the grounds for the cancellation.
- (3) The regulations may make provision about the following—
 - (a) procedures relating to the cancellation of a licence,
 - (b) circumstances in which a licence may or may not be cancelled.

173 Suspension or cancellation may be subject to conditions

- (1) A licence may be suspended or cancelled unconditionally or subject to the conditions the Authority determines to impose.
- (2) The conditions may include conditions to which the licence was subject immediately before it was suspended or cancelled.

- (3) The Authority may, by written notice given to the former licence holder, attach new conditions to, or vary or revoke existing conditions of, the suspension or cancellation of the licence.

Subdivision 5 Records and information

174 Records relating to insurer's and provider's licences

The Authority must keep records about insurer's licences and provider's licences, including information about the following—

- (a) the grant, refusal, suspension and cancellation of licences,
- (b) conditions imposed, varied or revoked in relation to licences,
- (c) the assignment of licences and notices served under this Division,
- (d) other matters the Authority considers appropriate.

175 Certificate evidence of certain matters (HBA s 105P(2))

A document signed by the chief executive of the Authority, or a person authorised by the chief executive, and certifying 1 or more of the following is admissible in criminal or civil proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the matters certified—

- (a) that a specified person was or was not, at a specified time or during a specified period, a licensed insurer or licensed provider,
- (b) that a licence held by a specified person was or was not, at a specified time or during a specified period, subject to a specified condition or was or was not suspended,
- (c) that a specified person was or was not, at a specified time or during a specified period, an insurer or provider,
- (d) another matter prescribed by the regulations.

176 Publication of information about licence holders (HBA s 105R)

- (1) The Authority may, with the approval of the Board of the Authority, publish the following information about licence holders—
 - (a) information about compliance by licence holders under this Act and the regulations, the Insurance Guidelines and conditions on licences,
 - (b) information about the pricing by licence holders of premiums or charges for building cover contracts,
 - (c) information about the profitability of the insurance or alternative indemnity products operations of licence holders,
 - (d) information comparing the performance of licence holders in connection with claims under this Act, by reference to timeliness, outcomes, customer service or complaints,
 - (e) other information about licence holders the Authority considers should be made public in the public interest.
- (2) Information must be published in the way approved by the Board of the Authority.
- (3) The Authority—
 - (a) may publish information that identifies individual insurers or providers, and
 - (b) must not otherwise publish protected information unless satisfied it is necessary in the public interest.

- (4) No liability is incurred by the State for anything done in good faith for the purpose of publishing information under this section.
- (5) No liability is incurred by a person publishing, in good faith, information that has been published under this section.
- (6) In this section—
liability includes liability in defamation.

177 Accounts, returns and other records of licensed insurers and providers

- (1) A licensed insurer and licensed provider must, in relation to the business or financial position of the insurer or provider, keep the accounting and other records—
 - (a) prescribed by the regulations, and
 - (b) directed by the Authority by written notice.
- (2) A licensed insurer and licensed provider must lodge with the Authority returns in relation to the business or financial position of the insurer or provider.
- (3) The returns must be lodged—
 - (a) in the form approved by the Authority, and
 - (b) within the period and contain the information and documents—
 - (i) prescribed by the regulations, and
 - (ii) directed by the Authority by written notice.
- (4) The regulations may make provision about the following—
 - (a) the appointment of appropriately qualified persons to audit or inspect, or report to the Authority on, the accounting and other records of licensed insurers and licensed providers,
 - (b) the way the appointed person must carry out the audit or inspection,
 - (c) requirements on licensed insurers, licensed providers and the Authority in relation to an audit, inspection or a report.
- (5) The Authority may make publicly available a copy of a return, including documents accompanying a return.
- (6) A licensed insurer or licensed provider who contravenes a requirement imposed on the insurer or provider under this section is guilty of an offence.
Maximum penalty—500 penalty units.
- (7) In this section—
accounting and other records includes working papers and other documents necessary to explain the methods and calculations by which accounts are made up, including documents and information prescribed by the regulations.

178 Information and documents to be provided to Authority by licensed insurers and providers

- (1) The Authority may, by written notice, direct a licensed insurer or licensed provider—
 - (a) to disclose to the Authority information relating to the business and financial position of the following—
 - (i) the licensed insurer or licensed provider,
 - (ii) a corporation who is a related body corporate,
 - (iii) a fund managed by the licensed insurer or licensed provider, and
 - (b) to provide to, or make available for inspection by, the Authority documents kept by the following—

- (i) the licensed insurer or licensed provider,
 - (ii) a corporation who is a related body corporate.
- (2) The direction may specify the following—
 - (a) the way the information must be provided,
 - (b) the date by, or period within, which the information must be provided,
 - (c) the particular information that must be provided.
- (3) A licensed insurer or licensed provider who fails to comply with a direction under this section is guilty of an offence.
Maximum penalty—1,000 penalty units.
- (4) It is a defence to the offence if the licensed insurer or licensed provider satisfies the court that it is not within the insurer's or provider's power to comply with the direction.
- (5) In this section—
documents includes returns and accounts provided under—
 - (a) the Corporations Act, and
 - (b) the Insurance Act.**licensed insurer or licensed provider** includes a former licensed insurer or licensed provider.

179 Licensed insurer and licensed provider reports

- (1) The Authority may from time to time give the Minister a report (a **licensed insurers and providers report**) relating to the following—
 - (a) the level of compliance by licensed insurers and licensed providers with—
 - (i) the requirements of this Act and the regulations, and
 - (ii) conditions on licences,
 - (b) complaints made about licensed insurers and licensed providers,
 - (c) other matters prescribed by the regulations.
- (2) A licensed insurers and providers report may—
 - (a) relate generally to licensed insurers and licensed providers or to a specified licensed insurer or licensed provider, and
 - (b) identify a licensed insurer or licensed provider, and
 - (c) include the information and recommendations the Authority considers appropriate.
- (3) The Minister may—
 - (a) make a licensed insurers and providers report public, and
 - (b) lay a licensed insurers and providers report before the Houses of Parliament.

Division 2 Miscellaneous

180 Application of Division

In this Division—

licensed insurer or licensed provider includes a former licensed insurer or licensed provider.

181 Power of Supreme Court to deal with licensed insurers and licensed providers

- (1) The Supreme Court may, on the application of the Authority, make orders the Supreme Court considers necessary to protect the interests of the persons covered under building cover contracts entered into by a licensed insurer or licensed provider.
- (2) The Supreme Court may make an order if satisfied the licensed insurer or licensed provider—
 - (a) is not able to, or may not be able to, meet the insurer's or provider's liabilities under the contracts, or
 - (b) has acted, or may act, in a way that is prejudicial to the interests of the persons covered under the contracts.
- (3) The Supreme Court may make the following orders—
 - (a) an order regulating the administration and payment of claims under the contracts,
 - (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licensed insurer or licensed provider,
 - (c) an order requiring the licensed insurer or licensed provider to discharge the insurer's or provider's liabilities under the contracts out of the insurer's or provider's assets and the assets of a related body corporate,
 - (d) an order appointing a receiver, or receiver and manager, of the property of the licensed insurer or licensed provider or a related body corporate, including an order specifying the powers of the receiver and manager.
- (4) The Supreme Court may, before considering an application, grant an interim order.
- (5) The Supreme Court must not require the Authority, as a condition of granting an interim order, to give an undertaking as to damages.
- (6) The Authority must give APRA and ASIC notice of the Authority's intention to apply for an order.
- (7) APRA and ASIC each have a right to appear and be heard in proceedings for the order.
- (8) The Supreme Court may, on application by the Authority or by a person affected by an order, make a further order rescinding or varying the order.
- (9) A person subject to an order who contravenes, whether by act or omission, the order is guilty of an offence.
Maximum penalty—100 penalty units or imprisonment for 6 months, or both.
- (10) The Supreme Court must not exercise the Court's powers in relation to a corporation in the course of being wound up.
- (11) In this section—
Australian Prudential Regulation Authority or *APRA* means the Australian Prudential Regulation Authority.
Australian Securities and Investments Commission or *ASIC* means the Australian Securities and Investments Commission.

182 Notification to Authority of certain defaults

- (1) A licensed insurer or licensed provider must give written notice to the Authority of the following events within 21 days after becoming aware of the event—
 - (a) the insurer or provider no longer carrying on insurance business,

- (b) the insurer or provider no longer holding an authorisation required under the Insurance Act,
 - (c) 1 or more of the following persons being appointed over all or part of the assets or undertaking of the insurer or provider—
 - (i) a liquidator or official liquidator,
 - (ii) a receiver,
 - (iii) a manager or official manager,
 - (iv) a trustee,
 - (d) an event prescribed by the regulations.
- (2) A licensed insurer or licensed provider must, as soon as practicable after becoming aware of the event, give written notice to the Authority of the following—
- (a) a decrease or proposed decrease in the issued capital of the insurer or provider within 21 days after the decrease or proposal to effect the decrease,
 - (b) the receipt by the insurer or provider of a bidder's statement or target's statement within the meaning of the Corporations Act,
 - (c) an event prescribed by the regulations.
- Maximum penalty—500 penalty units.

183 Proceedings for non-compliance

Proceedings may not be taken against a licensed insurer or licensed provider for a non-compliance under this Act or the regulations, other than by the Authority.

184 Data required to be supplied to Authority by licensed insurers and licensed providers (HBA s 121C)

- (1) The Authority may require a licensed insurer or licensed provider to disclose to the Authority data relating to building cover contracts, claims and other related matters under this Act, including data relating to—
 - (a) an insurance scheme, including an alternative indemnity product, and
 - (b) building cover contracts or claims generally or a particular building cover contract or claim.
 - (2) The Authority may specify—
 - (a) the time within which the data must be disclosed, and
 - (b) the way the data must be disclosed.
 - (3) A licensed insurer or licensed provider may be required to disclose data to the Authority that is personal information or health information about an individual despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.
 - (4) Unless a licensed insurer or licensed provider satisfies the court it is not within the insurer's or provider's power to comply with a requirement under this section, a licensed insurer or licensed provider that fails to comply with a requirement under this section is guilty of an offence.
- Maximum penalty—500 penalty units.

Chapter 6 Certification of building work, subdivision work and specialist work (EPA Pt 6)

Part 1 Preliminary

185 Definitions

- (1) In this Chapter—

beneficiary means the person having the benefit of a development consent.

building work means physical activity involved in the erection of a building.

certifier means a council or a registered certifier.

change of building use means a change of the use of a building from a use as a class of building recognised by the National Construction Code to a use as a different class of building recognised by the National Construction Code.

Crown means the following—

- (a) a public authority, other than a council,
- (b) an Australian university, within the meaning of the *Higher Education Act 2001*,
- (c) a TAFE establishment, within the meaning of the *Technical and Further Education Commission Act 1990*,
- (d) other persons prescribed by the regulations.

Crown building work means development, other than exempt development, or an activity subject to environmental impact assessment under the *Environmental Planning and Assessment Act 1979*, Division 5.1, by the Crown that comprises the following or the doing of anything incidental to the following—

- (a) the erection of a building,
- (b) the demolition of a building or work.

new building includes an altered part of, or an extension to, an existing building.

principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 189.

principal contractor for building work means a person—

- (a) who agrees to carry out building work under a contract or arrangement (the **head contract**), and
- (b) for whom work is or will be carried out under at least 1 other contract or arrangement as part of, or incidental to, the work carried out under the head contract.

subdivision work means a physical activity authorised to be carried out in connection with a subdivision under the conditions of—

- (a) a development consent for the subdivision of land, or
- (b) if the regulations apply this Part to subdivision work under an approval for State significant infrastructure—an approval for State significant infrastructure involving the subdivision of land.

- (2) A word used in this Chapter has the same meaning as in the *Environmental Planning and Assessment Act 1979* unless otherwise defined in this Chapter.

186 Subdivision of land

- (1) In this Chapter, **subdivision** of land means the division of land into 2 or more parts that, after the division, would be adapted for separate occupation, use or disposition.

- (2) The division of land may be effected—
 - (a) by conveyance, transfer or partition, or
 - (b) by an agreement, dealing, plan or instrument rendering different parts of the land available for separate occupation, use or disposition.
- (3) The **subdivision** of land includes the procuring of the registration in the office of the Registrar-General of—
 - (a) a plan of subdivision within the meaning of the *Conveyancing Act 1919*, section 195, or
 - (b) a strata plan or a strata plan of subdivision within the meaning of the *Strata Schemes Development Act 2015*.

Note— The definition of **plan of subdivision** in the *Conveyancing Act 1919* extends to plans of subdivision for lease purposes, within the meaning of the Act, section 23H, and to various kinds of plan under the *Community Land Development Act 2021*.
- (4) The **subdivision** of land does not include—
 - (a) a lease of a building, or
 - (b) the opening of a public road, or the dedication of land as a public road, by the Crown, a statutory body representing the Crown or a council, or
 - (c) the acquisition of land, by agreement or compulsory process, under a provision of an Act, including a Commonwealth Act, that authorises the acquisition of land by compulsory process, or
 - (d) a division of land effected by means of a transaction referred to in the *Conveyancing Act 1919*, section 23G, or
 - (e) the procuring of the registration in the office of the Registrar-General of—
 - (i) a plan of consolidation, a plan of identification or a miscellaneous plan within the meaning of the *Conveyancing Act 1919*, section 195, or
 - (ii) a strata plan of consolidation or a building alteration plan within the meaning of the *Strata Schemes Development Act 2015*.

Part 2 Certifiers

187 Functions of certifiers

- (1) A principal certifier may do the following—
 - (a) issue a subdivision certificate for a subdivision involving subdivision works,
 - (b) issue an occupation certificate,
 - (c) issue a compliance certificate if the certificate is an authorised alternative to an occupation certificate,
 - (d) carry out inspections of building work,
 - (e) carry out inspections of subdivision work.

Note— Section 197 requires a principal certifier who issues an occupation certificate to ensure a building manual is provided to the owner of the building.
- (2) A certifier may, with the approval of the principal certifier—
 - (a) inspect building work, and
 - (b) inspect subdivision work.
- (3) A certifier may issue—
 - (a) a construction certificate for building work, and
 - (b) a subdivision works certificate for subdivision work, and

- (c) a subdivision certificate if the certifier is—
 - (i) a council, or
 - (ii) a registered certifier authorised by an environmental planning instrument to issue the certificate.
- (4) A certifier also has the functions conferred or imposed on the certifier under this or another Act.

Note— A certifier has the function of issuing complying development certificates under the *Environmental Planning and Assessment Act 1979*, Part 4.

- (5) A certifier must not issue a certificate under this Chapter if—
 - (a) this Part provides that the certificate must not be issued, or
 - (b) the function of issuing the certificate is not conferred on the certifier by this Chapter.

Maximum penalty—

- (a) for a corporation—10,000 penalty units, and for each day the offence continues, 1,000 penalty units, or
- (b) for an individual—2,000 penalty units, and for each day the offence continues, 200 penalty units.

188 Directions by principal certifiers

- (1) This section does not apply to a principal certifier who is a council if the council has given notice of an intention to give a development control order in accordance with the *Environmental Planning and Assessment Act 1979*, Schedule 5, Part 6 in relation to the work or activity.
- (2) If a principal certifier for work or an activity becomes aware of a non-compliance to which this section applies in relation to the work or activity, the principal certifier must give a written notice to the person responsible for carrying out the work or activity.
- (3) The notice—
 - (a) must identify the matter that has resulted, or would result, in the non-compliance, and
 - (b) may direct the person to take specified action within a specified period to remedy the matter, and
 - (c) must be published on the NSW planning portal.
- (4) If the person does not comply with a direction within the time specified in the notice, the principal certifier must, within the period prescribed by the regulations—
 - (a) give a copy of the notice to the consent authority, and
 - (b) give written notice to the Secretary and the consent authority that the direction has not been complied with (a **non-compliance notice**), and
 - (c) publish the non-compliance notice on the NSW planning portal.
- (5) Subsection (4)(a) and (b) does not apply to a principal certifier who is the consent authority for the work or activity.
- (6) The regulations may make provision about the following—
 - (a) specifying non-compliances to which this section applies,
 - (b) the procedure for giving notices under this section,
 - (c) requirements in relation to follow-up action,
 - (d) the keeping of records in relation to notices and follow-up action taken,

- (e) requirements for a matter or record relating to a notice or follow-up action to be notified to specified persons.

Part 3 General requirements

189 Requirements before building work or subdivision work commences

- (1) The requirements set out in this section must be met before the commencement of building work or subdivision work in accordance with a development consent.
- (2) A development consent does not authorise building work or subdivision work until a certifier has been appointed as the principal certifier for the work by, or with the approval of—
 - (a) the beneficiary, other than a person who—
 - (i) will carry out the building work, and
 - (ii) is not the owner of the land on which the work will be carried out, or
 - (b) another person authorised by the regulations.
- (3) The principal certifier must, no later than 2 days before the building work or subdivision work commences, notify—
 - (a) the following of the certifier's appointment as the principal certifier—
 - (i) the consent authority,
 - (ii) if the council is not the consent authority—the council, and
 - (b) the beneficiary of inspections required to be carried out for the building work or subdivision work.
- (4) Subsection (3)(a) does not apply to a principal certifier who is a council.
- (5) The beneficiary must give at least 2 days' notice to the following of the beneficiary's intention to commence the building work or subdivision work—
 - (a) the council,
 - (b) if the council is not the principal certifier—the principal certifier.
- (6) A person carrying out building work as an owner-builder must notify the principal certifier of the following—
 - (a) the person's name,
 - (b) that the person will carry out the work as an owner-builder,
 - (c) the number of the owner-builder permit held by the person for the work.
- (7) If the beneficiary is not carrying out building work as an owner-builder, the beneficiary must—
 - (a) appoint a principal contractor for the building work, being a person authorised to carry out the work, and
 - (b) if the beneficiary is not the principal contractor—
 - (i) notify the principal certifier of the appointment, and
 - (ii) notify the principal contractor of inspections required to be carried out for the building work.
- (8) The principal certifier for the building work or subdivision work must be satisfied that the preconditions, if any, in relation to the work, required to be met before the work commences, have been met before the work commences.
- (9) If the building work or subdivision work requires development consent, the principal certifier who has control over the work must, before the work commences, be

satisfied a construction certificate, subdivision works certificate or complying development certificate has been issued.

- (10) A person must comply with other requirements, if any, prescribed by the regulations.
- (11) A person must not fail to give a notice that the person is required to give under this section.
Maximum penalty—
 - (a) for a corporation—10,000 penalty units, and for each day the offence continues, 1,000 penalty units, or
 - (b) for an individual—2,000 penalty units, and for each day the offence continues, 200 penalty units.
- (12) This section does not apply to Crown building work certified under this Chapter to comply with the *Building Code of Australia*.

190 Requirements before home building work commences (EPA Reg, ss 71 and 150)

- (1) This section applies to a development consent for development involving home building work.
- (2) A principal certifier for building work or subdivision work must, before home building work over which the principal certifier has control commences, be satisfied the principal contractor for the work—
 - (a) is authorised to carry out the work under this Act, and
 - (b) is covered by mandatory insurance, if required under this Act.
- (3) A principal certifier who is not a council must give the council written notice of the following for work that requires the appointment of a principal contractor—
 - (a) the name and licence number of the principal contractor,
 - (b) if the work is carried out on behalf of an owner-builder—the name of the owner-builder and the number of the owner-builder permit held by the owner-builder,
 - (c) the unique identifier of the certificate of insurance issued to the principal contractor for the work.
- (4) If the information notified under subsection (3) is no longer correct, the principal certifier must, as soon as practicable, give the council written notice of the correct information.
- (5) This section does not apply to Crown building work certified under this Chapter to comply with the *Building Code of Australia*.

191 Work or activity that requires certificate

- (1) A person must not carry out the following work or activity without a certificate for the work or activity—
 - (a) building work,
 - (b) subdivision work,
 - (c) the occupation or use of a building, including a change of use,
 - (d) the subdivision of land,
 - (e) another activity to which this Chapter applies.
- (2) A person must carry out the work or activity in accordance with a certificate issued in relation to the work or activity.
- (3) A certificate is not required to carry out exempt development.

Note— A complying development certificate is a form of development consent issued under the *Environmental Planning and Assessment Act 1979*, Part 4 that authorises the carrying out of complying development. Unlike other development consents, construction certificates or subdivision works certificates are not required for building or subdivision work authorised by a complying development certificate.

- (4) This section does not apply to a compliance certificate.

Maximum penalty—

- (a) for a corporation—10,000 penalty units, and for each day the offence continues, 1,000 penalty units, or
- (b) for an individual—2,000 penalty units, and for each day the offence continues, 200 penalty units.

Note— For civil enforcement—see the *Environmental Planning and Assessment Act 1979*, Part 9, Division 9.5.

Part 4 Certificates for building work

192 Construction certificates

- (1) A **construction certificate** certifies that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the regulations.

Note— See also the *Strata Schemes Development Act 2015*, section 54 for requirement for construction certificate in connection with issue of strata certificate for proposed strata plan.

- (2) A construction certificate is required for building work carried out under a development consent.
- (3) A construction certificate is not required for the following—
- (a) building work carried out under a complying development certificate,
 - (b) Crown building work certified under this Part to comply with the *Building Code of Australia*.

193 Restriction on issue of construction certificate

- (1) A construction certificate must not be issued for the plans and specifications for building work unless—
- (a) the requirements of the regulations have been complied with, and
 - (b) if required to be paid, the long service levy or the first instalment of the levy has been paid in accordance with the *Building and Construction Industry Long Service Payments Act 1986*, Part 5.
- (2) A construction certificate is invalid if it is issued after the building work to which it relates is physically commenced.

194 Occupation certificates

- (1) An **occupation certificate**—
- (a) authorises—
 - (i) the occupation and use of the whole or a part of a new building in accordance with a development consent, or
 - (ii) a change of building use for an existing building in accordance with a development consent, and
 - (b) is taken to be part of the development consent to which it relates.
- (2) An occupation certificate is required for the commencement of—
- (a) the occupation or use of a new building, or

- (b) a change of building use for an existing building.
- (3) An occupation certificate is not required if—
 - (a) the erection of the building or the change of building use is, or forms part of, exempt development or development that does not otherwise require development consent, or
 - (b) the new building or the existing building was erected by or on behalf of—
 - (i) the Crown, or
 - (ii) a person prescribed by the regulations.
- (4) The regulations may make provision about the following in relation to the commencement of the occupation or use of a new building or a change of building use for an existing building—
 - (a) persons who are not required to obtain an occupation certificate,
 - (b) the circumstances in which an occupation certificate is not required.

195 Restrictions on issue of occupation certificates

- (1) An occupation certificate must not be issued unless preconditions, if any, to the issue of the certificate specified in a development consent have been complied with.
- (2) An occupation certificate must not be issued to authorise a person to commence occupation or use of a new building unless—
 - (a) a development consent is in force in relation to the building, and
 - (b) for a building erected in accordance with a development consent, other than a complying development certificate—a construction certificate has been issued in relation to the plans and specifications for the building, and
 - (c) the completed building is suitable for occupation or use in accordance with the building's classification under the National Construction Code, and
 - (d) other requirements, if any, prescribed by the regulations have been complied with.
- (3) An occupation certificate must not be issued to authorise a person to commence a new use of a building resulting from a change of building use for an existing building unless—
 - (a) a development consent is in force in relation to the change of building use, and
 - (b) the building is suitable for occupation or use in accordance with the building's classification under the National Construction Code, and
 - (c) other requirements, if any, prescribed by the regulations have been complied with.

196 Effect of occupation certificate on earlier occupation certificates

- (1) An occupation certificate issued for a building revokes an earlier occupation certificate for the building.
- (2) An occupation certificate issued for part of a building revokes an earlier occupation certificate to the extent to which it applies to the same part of the building.

197 Owners building manual

- (1) A certifier must not issue an occupation certificate for a building prescribed by the regulations unless a building manual for the building has been prepared and provided to the owner of the building in accordance with the regulations.

- (2) The regulations may make provision about building manuals, including the following—
 - (a) the preparation, form and maintenance of building manuals,
 - (b) the content of building manuals, including requirements that a building manual identify, in a consolidated format, matters for ongoing compliance in relation to the relevant building,
 - (c) the inspection of building manuals,
 - (d) the circumstances in which a building manual is required to be prepared and provided under this section,
 - (e) the persons who are responsible for preparing and providing building manuals.

Part 5 Certificates for subdivision work and subdivisions

198 Subdivision works certificates

- (1) A *subdivision works certificate* certifies that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the regulations.
- (2) A subdivision works certificate is required to carry out subdivision work in accordance with a development consent.
- (3) A subdivision works certificate is not required for the following—
 - (a) subdivision work carried out in accordance with a complying development certificate,
 - (b) Crown building work involving subdivision work certified under this Part to comply with the *Building Code of Australia*.

199 Restriction on issue of subdivision works certificate

- (1) A subdivision works certificate must not be issued in relation to the plans and specifications for subdivision work unless—
 - (a) the requirements of the regulations have been complied with, and
 - (b) if required to be paid, the long service levy or the first instalment of the levy has been paid in accordance with the *Building and Construction Industry Long Service Payments Act 1986*, Part 5.
- (2) A subdivision works certificate is invalid if it is issued after the subdivision work to which it relates is physically commenced on the land to which the relevant development consent applies.

200 Subdivision certificates

A *subdivision certificate*—

- (a) authorises the registration of a plan of subdivision under the *Conveyancing Act 1919*, Part 23, and
- (b) is taken to be part of the development consent that authorised the carrying out of the subdivision.

Note— The *Conveyancing Act 1919*, section 195A requires a person to lodge a subdivision certificate when lodging a plan of subdivision for registration under that Act.

201 Restriction on issue of subdivision certificates

- (1) A subdivision certificate must not be issued for a subdivision unless—
 - (a) the subdivision is not prohibited under this Act, and

- (b) for a subdivision that may only be carried out with development consent—a development consent is in force for the subdivision, and
 - (c) for a subdivision for which a development consent has been granted—the conditions of the development consent that are required to be complied with before the certificate is issued in relation to the plan of subdivision have been complied with, and
 - (d) for a subdivision to which a planning agreement under the *Environmental Planning and Assessment Act 1979*, Part 7 applies—the requirements of the agreement that are required to be complied with before the certificate is issued in relation to the plan of subdivision have been complied with, and
 - (e) for a subdivision for which the operation of the development consent has been deferred under the *Environmental Planning and Assessment Act 1979*, Part 4—the consent authority is satisfied of all matters in relation to which the consent authority must be satisfied before the development consent may operate, and
 - (f) for a subdivision the subject of a development consent for which the consent authority is required under this Act to notify an objector—
 - (i) the objector is notified more than 28 days before the issue of the certificate, or
 - (ii) if an appeal is made by the objector—the appeal has been finally determined.
- (2) A subdivision certificate must not be issued for a subdivision involving subdivision work unless—
- (a) the subdivision work to which the certificate relates has been completed, or
 - (b) agreement has been reached between the applicant for the certificate and the consent authority on—
 - (i) the payment by the applicant to the consent authority of the cost of carrying out the subdivision work to which the certificate relates, and
 - (ii) when the work will be completed by the consent authority, or
 - (c) agreement has been reached between the applicant for the certificate and the consent authority on—
 - (i) the security to be given by the applicant to the consent authority in relation to the work to be completed, and
 - (ii) when the work will be completed by the applicant.
- (3) A subdivision certificate must not be issued for a subdivision involving subdivision work unless other requirements, if any, prescribed by the regulations have been complied with.

Part 6 Work requiring compliance certificates

202 Compliance certificates

- (1) A **compliance certificate** certifies that—
- (a) completed building work or subdivision work complies with particular plans and specifications or with particular standards or requirements, or
 - (b) a particular condition, attached to a planning approval, in relation to building work or subdivision work has been complied with, or
 - (c) a building or proposed building has a particular classification identified in accordance with the National Construction Code, or

- (d) an aspect of development, including design, complies with particular standards or requirements.
- (2) A compliance certificate may certify strict, substantial or other compliance with a relevant matter.
- (3) A compliance certificate is required for building work or subdivision work in the circumstances prescribed by the regulations.
- (4) A condition of a development consent is invalid to the extent it requires a compliance certificate to be obtained in relation to development.
- (5) A certifier may obtain a compliance certificate from another person in relation to building work or subdivision work for which the certifier is responsible even if a compliance certificate is not required.

203 Persons who may issue compliance certificates

A compliance certificate may be issued by—

- (a) a registered certifier, or
- (b) a person authorised by the regulations.

204 Restriction on issue of compliance certificates

The regulations may prevent the issue of specified compliance certificates for regulated work unless a consent, approval or certificate is in force under this Act in relation to the building or subdivision to which the work relates.

Part 7 Certificates of compliance for specialist work

Division 1 Preliminary

205 Definitions

In this Division—

installation or system means the following—

- (a) a plumbing installation,
- (b) a sanitary plumbing system,
- (c) a sanitary drainage system,
- (d) a medical gas installation,
- (e) an electrical installation,
- (f) other installations or systems prescribed by the regulations.

responsible person means—

- (a) for specialist work carried out by a licence holder—the licence holder who carried out the work, or
- (b) for specialist work carried out or proposed to be carried out under the supervision of a licence holder—the licence holder who supervised the work.

Division 2 Notifiable work

206 Certain specialist work must be pre-notified to Secretary

- (1) The Secretary may, by order published in the Gazette, specify specialist work that must be notified in accordance with this Subdivision.

- (2) The responsible person for specialist work must ensure that no specialist work is carried out by, or under the supervision of, the responsible person unless—
 - (a) the responsible person has given the Secretary a notice of work, and
 - (b) the work carried out corresponds to the specifications in the notice of work.Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (3) A **notice of work** is a notice in the approved form that specifies—
 - (a) the work to be carried out, and
 - (b) the responsible person for the work.
- (4) The notice of work must be given to the Secretary—
 - (a) within the period prescribed by the regulations, and
 - (b) in the way prescribed by the regulations.
- (5) Work carried out corresponds to the specifications in a notice of work only if—
 - (a) the work is the same as or not materially different from the work specified in the notice of work, and
 - (b) the work is carried out by or under the supervision of the responsible person specified in the notice of work.
- (6) Work notified in accordance with this section is work that has been **pre-notified**.

207 Emergency work does not have to be pre-notified

- (1) Emergency work does not have to be pre-notified.
- (2) **Emergency work** is specialist work prescribed by the regulations.
- (3) The responsible person for emergency work that is not pre-notified must give the Secretary notice of the emergency work within the period prescribed by the regulations after carrying out the work.
Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (4) The notice must be given in the approved form.
- (5) The responsible person for emergency work must take all reasonable steps to ensure the work does not threaten the health and safety of an occupier of premises affected by the work.
Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.

208 Notice of defective installation or system

- (1) The responsible person for specialist work carried out on land must give notice of a defective installation or system on the land discovered in the course of carrying out the specialist work to—
 - (a) the owner of the land, and
 - (b) if the owner does not occupy the land—the occupier of the land.Maximum penalty—

- (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) The notice must be given—
 - (a) within the period prescribed by the regulations, and
 - (b) in the way prescribed by the regulations.
- (3) The responsible person for specialist work carried out on land must give the Secretary notice of a defective installation or system on the land discovered in the course of carrying out the specialist work if the defective installation or system poses an imminent threat to public health or safety.
Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (4) A defective installation or system is discovered if the responsible person, or a person carrying out the specialist work under the responsible person's supervision, becomes aware that the installation or system is defective.

Division 3 Inspection of specialist work

209 Inspection of specialist work by Secretary

- (1) The Secretary may, for the purpose of monitoring compliance with this Act, do either or both of the following—
 - (a) inspect specialist work prescribed by the regulations,
 - (b) inspect documents prescribed by the regulations.
- (2) The Secretary may carry out more than 1 inspection if the Secretary considers it necessary in the circumstances.

210 Responsible person to notify Secretary when work is ready for inspection

- (1) A responsible person for specialist work must notify the Secretary when the work will be ready for inspection by the Secretary—
 - (a) before completing the work, or
 - (b) within the period prescribed by the regulations.Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) Notice is given only if the fee, if any, required to be paid for the inspection has been paid to the Secretary.
- (3) Before carrying out an inspection, the Secretary must advise the responsible person—
 - (a) of the period during which the specialist work must be available for inspection by the Secretary (the *inspection period*), and
 - (b) that the responsible person must ensure the specialist work is accessible for inspection during the inspection period.
- (4) The inspection period must be—
 - (a) agreed between the Secretary and the responsible person or

- (b) in the absence of an agreement—determined by the Secretary considering what is reasonable in the circumstances.
- (5) The responsible person must, unless the responsible person has a reasonable excuse—
 - (a) ensure the specialist work is accessible and ready to be inspected during the inspection period, and
 - (b) be present, or ensure an agreed representative of the responsible person is present, during the inspection period at the place at which the specialist work has been carried out.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (6) In this section—
 - agreed representative*** of a responsible person means a person—
 - (a) authorised to carry out the work being inspected, and
 - (b) nominated by the responsible person, with the agreement of the Secretary, to attend the inspection as the responsible person's representative.

Division 4 Obligations to supply certificates of compliance and plans

211 Person to give certificate of compliance after specialist work completed

- (1) The responsible person for specialist work prescribed by the regulations must—
 - (a) give the Secretary a certificate of compliance—
 - (i) if a physical inspection of the specialist work has been carried out—on the completion of the work, or
 - (ii) otherwise—within the prescribed period, and
 - (b) give, within the prescribed period, a copy of the certificate of compliance to—
 - (i) the person for whom the work is carried out, and
 - (ii) other persons, if any, prescribed by the regulations.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) The documents must be given in the way prescribed by the regulations.
- (3) In this section, specialist work is completed by a responsible person when—
 - (a) the responsible person completes, in accordance with this Act, all of the specialist work the person was engaged to carry out, and
 - (b) the inspection period has ended.
- (4) In this section—
 - inspection period*** has the same meaning as in section 210(3).

212 Supply of plans

- (1) On completion of relevant specialist work, the responsible person for the work must give a plan of the work to the following persons—
 - (a) the owner of the land or the owner's agent,
 - (b) the Secretary.

Maximum penalty—

- (a) for a corporation—1,500 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) The plans must be provided—
- (a) in the way prescribed by the regulations, and
 - (b) in the approved form, and
 - (c) within the prescribed period.
- (3) The regulations may make provision about the following—
- (a) the types of plans that must be provided under this section in relation to relevant specialist work,
 - (b) further requirements for the provision of specified plans in relation to relevant specialist work to the Secretary and other persons specified by the regulations
- (4) In this section—
- relevant specialist work*** means the following—
- (a) plumbing and drainage work that consists of or involves carrying out work on a sanitary drainage system,
 - (b) other work prescribed by the regulations.

Division 5 Miscellaneous

213 Obligation to prevent threats to public health or safety

- (1) The owner or occupier of land who has control of an installation or system must take all reasonable steps to ensure the installation or system does not threaten public health or safety.

Maximum penalty—

- (a) for a corporation—10,000 penalty units, or
 - (b) for an individual—2,000 penalty units.
- (2) The regulations may exempt specified persons from the offence in subsection (1).

214 Authorised fittings required for specialist work

- (1) A responsible person for specialist work must ensure a fitting used in the specialist work is an authorised fitting.

Maximum penalty—100 penalty units.

- (2) The Secretary may, by order published in the Gazette, give directions about the fittings that may be used in specialist work by specifying fittings that—
- (a) may be used, or
 - (b) must not be used.
- (3) A direction may apply generally or in specified circumstances.
- (4) In this section, a fitting is an ***authorised fitting*** if its use does not contravene a direction made by the Secretary.

Part 8 Duty of care

215 Definitions

- (1) In this Part—

association means an association within the meaning of the *Community Land Management Act 2021*.

building work includes—

- (a) the design or inspection of building work, and
- (b) the issue of a complying development certificate or a certificate under this Chapter for building work.

civil action includes a counter-claim.

subdivision work includes—

- (a) the design or inspection of subdivision work, and
- (b) the issue of a complying development certificate or a certificate under this Chapter for subdivision work.

- (2) In this Part, a reference to a person who carries out building work includes a reference to a person who manufactures or supplies a building product used for the work.

216 Extension of duty of care

- (1) A person who carries out building work or subdivision work has a duty to exercise reasonable care to avoid economic loss caused by defects—
 - (a) in or related to a building or subdivision for which the work is carried out, and
 - (b) arising from the building work or subdivision work.
- (2) The duty of care is owed to each owner of the land in relation to which the building work is carried out and to each subsequent owner of the land.
- (3) A person to whom the duty of care is owed is entitled to damages for the breach of the duty as if the duty were a duty established by the common law.
- (4) The duty of care is owed to an owner whether or not the building work or subdivision work was carried out—
 - (a) under a contract or other arrangement entered into with the owner or another person, or
 - (b) otherwise than under a contract or arrangement.

217 Limitation on time when action for defective building work or subdivision work may be brought

- (1) A civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work may not be brought more than 10 years after the date of completion of the work.
- (2) Building work is taken to be completed on—
 - (a) the date on which the occupation certificate authorising the occupation of the building in relation to which the work was carried out is issued, or
 - (b) if an occupation certificate is not required—the date on which a compliance certificate is issued for the completed building work, or
 - (c) if the occupation certificate is required, but has not been issued—the date on which a required inspection of the completed building work is carried out by a certifier, or
 - (d) otherwise—the date on which the building in relation to which the work was carried out is first occupied or used.
- (3) Subdivision work is taken to be completed on—

- (a) if the work was completed before the issue of a subdivision certificate for the subdivision for which the work was carried out—the date on which the certificate is issued, or
 - (b) if the work was completed after the issue of the certificate—the date on which a compliance certificate certifying the work has been completed is issued.
- (4) This section has effect despite another Act or law, but does not operate to extend a period of limitation under this Act or the *Limitation Act 1969*.

218 Economic loss—owners corporations and associations

- (1) In this Part, an owners corporation or an association is taken to suffer economic loss if the corporation or association bears the cost of rectifying defects, including damage caused by defects, that are the subject of a breach of the duty of care imposed under this Part.
- (2) In subsection (1), the economic loss suffered by an owners corporation or association includes the reasonable costs of providing alternative accommodation where necessary.
- (3) Subsection (1) applies whether or not the owners corporation or association was the owner of the land when the building work or subdivision work was carried out.
- (4) Subsections (1) and (2) do not limit the economic loss for which an owners corporation, association or an owner may claim damages under this Part.

219 Duty must not be delegated

A person who owes a duty of care under this Part is not entitled to delegate the duty.

220 No contracting out of Part

- (1) This Part applies despite a contract or stipulation to the contrary made after the commencement of this Part.
- (2) No contract or agreement made or entered into, or amended, after the commencement of this Part operates to annul, vary or exclude a provision of this Part.

221 Relationship with other duties of care and law

- (1) The provisions of this Part—
 - (a) operate in addition to duties, statutory warranties or other obligations imposed under this Act, other Acts or the common law, and
 - (b) do not limit the duties, statutory warranties or other obligations imposed under this Act, other Acts or the common law.
- (2) This Part does not limit damages or other compensation that may be available to a person under another Act or at common law because of a breach of a duty by a person who carries out building work or subdivision work.
- (3) This Part is subject to the *Civil Liability Act 2002*.

Note— Actions under this Part are subject to applicable limitation periods established under the *Limitation Act 1969*.

Part 9 Appeals

222 Appeals against failure or refusal to issue certificate

- (1) An appeal may be made to the Court against the following decisions of a council—
 - (a) a decision to refuse to issue a certificate,

- (b) a decision to issue a certificate subject to conditions.
- (2) The appeal may be made by the applicant for the certificate.
- (3) An appeal may be made only within 6 months after the date on which the decision is made.
- (4) This section does not apply to the issue of—
 - (a) a compliance certificate under Part 6, or
 - (b) a certificate of compliance for specialist work under Part 7.

223 Deemed refusal for purposes of appeal

- (1) For an appeal under this Part, a council is taken to have made a decision to refuse to issue a certificate (a *deemed refusal*) if the council fails to issue the certificate to the applicant within the period prescribed by the regulations.
- (2) Subsection (1) does not prevent a council from determining the application for the certificate after the prescribed period.
- (3) The determination of the application for the certificate after the prescribed period does not affect the continuance or determination of an appeal made in relation to the deemed refusal.
- (4) If a determination is made to grant the certificate after the prescribed period, the council may, with the consent of the applicant and without prejudice to costs, withdraw an appeal against the deemed refusal before the determination of the appeal.

224 Regulations

The regulations may make provision about appeals under this Division, including the procedures for an appeal.

Part 10 Miscellaneous

225 Crown subdivision, building, demolition and incidental work

- (1) In this Part, a reference to a certifier in relation to a subdivision carried out by the Crown includes a reference to a person acting on behalf of the Crown.
- (2) Crown building work must not commence unless the Crown building work is certified by or on behalf of the Crown to comply with the *Building Code of Australia* in force as at—
 - (a) the date of the invitation for tenders to carry out the Crown building work, or
 - (b) otherwise—the date on which the Crown building work commences.
- (3) The Minister may, by order published in the Gazette, determine in relation to buildings generally or a specified building that a specified provision of the *Building Code of Australia*—
 - (a) does not apply, or
 - (b) applies with specified exceptions or modifications.
- (4) A determination of the Minister applies to a building erected—
 - (a) on behalf of the Minister, or
 - (b) by or on behalf of a person appointed, constituted or regulated under an Act administered by the Minister.

226 Certifiers may be satisfied of certain matters

- (1) The regulations may provide that a requirement for a consent authority or council to be satisfied of a specified matter is taken to have been complied with if the person or body issuing the certificate is satisfied of the matter.
- (2) This section applies to a requirement imposed by or under the following—
 - (a) this Act or the regulations,
 - (b) the *Environmental Planning and Assessment Act 1979* or the regulations made under that Act,
 - (c) an environmental planning instrument,
 - (d) a development consent.

227 Assumption of compliance with conditions precedent to the issue of certificates

- (1) A person exercising functions under this Act in reliance on a certificate under this Chapter is entitled to assume—
 - (a) the certificate has been duly issued, and
 - (b) all conditions precedent to the issue of the certificate have been duly complied with, and
 - (c) all things stated in the certificate as existing or having been done do exist or have been done.
- (2) The person is not liable for loss or damage arising from a matter in relation to which the certificate is issued.
- (3) This section does not apply to a registered certifier in relation to a certificate issued by the certifier.

228 Regulations

- (1) The regulations may make provision about carrying out building work, subdivision work or specialist work, including the following—
 - (a) requirements to comply with provisions of the National Construction Code or other specified standards in relation to building work, subdivision work or specialist work,
 - (b) applications for, and the issue of, certificates under this Chapter,
 - (c) the form and contents of certificates under this Chapter,
 - (d) conditions of certificates under this Chapter,
 - (e) conditions of complying development certificates issued under the *Environmental Planning and Assessment Act 1979*,
 - (f) modification of certificates under this Chapter,
 - (g) exempting manufactured homes or temporary structures from requirements relating to construction certificates or occupation certificates,
 - (h) inspection of building work, subdivision work or specialist work,
 - (i) the functions of certifiers,
 - (j) the replacement of certifiers,
 - (k) exemptions in relation to the requirement to obtain a certificate under this Chapter,
 - (l) the keeping of records in relation to building work, subdivision work or specialist work,

- (m) notices and information required to be given in relation to building work, subdivision work or specialist work,
 - (n) the procedure for dealing with complaints about building work, subdivision work or specialist work.
- (2) The regulations may apply the provisions of this Part to State significant infrastructure within the meaning of the *Environmental Planning and Assessment Act 1979*.

229 Regulations—general

The regulations may make provision about the following—

- (a) the circumstances in which a principal certifier must be appointed by the Registration Secretary,
- (b) particular development in which the principal certifier must be appointed in the way prescribed by the regulations, including being appointed in accordance with a scheme prescribed by the regulations,
- (c) other matters ancillary to the scheme,
- (d) circumstances in which a council or other person must not refuse to be appointed as a principal certifier,
- (e) circumstances in which a principal certifier may refuse appointment,
- (f) fees that may be charged by principal certifiers for particular matters, including by reference to a maximum fee,
- (g) circumstances in which an applicant for certification may request a different principal certifier,
- (h) circumstances in which the appointment of a principal certifier may be terminated,
- (i) circumstances in which the appointment of a principal certifier may be revoked or changed by the Registration Secretary,
- (j) obligations on persons in relation to fire and building safety, including the functions to be exercised only by specified licence holders,
- (k) requirements for the issue of certificates under this Chapter,
- (l) requirements for the issue of complying development certificates for building work involving the installation, extension or modification of fire safety systems.

230 Regulations—smoke alarms in buildings providing sleeping accommodation

- (1) The regulations may prohibit persons from removing or interfering with the operation of smoke alarms installed in buildings in which persons sleep.
- (2) The regulations may specify the following—
 - (a) the kinds of buildings in which smoke alarms must be installed,
 - (b) the kinds of smoke alarms that must be installed,
 - (c) where a smoke alarm must be located,
 - (d) the maintenance that may be required in relation to a smoke alarm that has been installed,
 - (e) circumstances in which development consent is not required in relation to the installation of a smoke alarm,
 - (f) circumstances in which the consent of an owners corporation is not required in relation to the installation of a smoke alarm.

- (3) In this section—
building includes a manufactured home, moveable dwelling or associated structure within the meaning of the *Local Government Act 1993*.

DRAFT

Chapter 7 Miscellaneous

Part 1 Premises affected by loose-fill asbestos insulation (HBA Part 8, Div 1A)

231 Definitions

In this Part—

affected residential premises means residential premises listed on the asbestos insulation register, but does not include premises excluded by the regulations.

asbestos insulation register—see section 232.

loose-fill asbestos insulation means loose-fill asbestos used as ceiling insulation.

residential premises means a building wholly or partly used, or wholly or partly designed, constructed or adapted for use, as a place of residence.

232 Asbestos insulation register

- (1) The Secretary must keep a register of residential premises that contain or have contained loose-fill asbestos insulation (the *asbestos insulation register*).
- (2) Residential premises must be listed on the asbestos insulation register if the Secretary is satisfied the presence of loose-fill asbestos insulation at the premises has been verified in accordance with the regulations.
- (3) Other residential premises may be listed on the asbestos insulation register in the circumstances prescribed by the regulations.
- (4) The asbestos insulation register must include the following information in relation to residential premises listed on the asbestos insulation register—
 - (a) the address and title of the land,
 - (b) other information prescribed by the regulations.
- (5) The names of owners or occupiers of residential premises who are individuals must not be included on the asbestos insulation register.
- (6) The asbestos insulation register must be—
 - (a) kept in the approved form, and
 - (b) available for inspection by the public.
- (7) The Secretary must remove the following information relating to affected residential premises from the asbestos insulation register—
 - (a) if the Secretary is satisfied the premises have been demolished and the land on which the premises were erected has been remediated—all information,
 - (b) information the Secretary is satisfied—
 - (i) is false or misleading, or
 - (ii) has been mistakenly included in the asbestos insulation register,
 - (c) other information in the circumstances prescribed by the regulations.

233 Warning signs

- (1) The owner of affected residential premises must ensure a compliant warning sign is displayed on the part of the premises prescribed by the regulations.
- (2) The owner of a lot in a strata scheme is not required to display a compliant warning sign on part of the premises that is not part of the lot.

- (3) If affected residential premises are the subject of a strata scheme, the owners corporation for the scheme must ensure a compliant warning sign is displayed on the part of the premises prescribed by the regulations that consists of common property.
- (4) A person must not remove, or cause or permit to be removed, a compliant warning sign from affected residential premises.
- (5) A compliant warning sign may be removed from affected residential premises by a person authorised under the *Building Compliance and Enforcement Act 2022* or another Act to enter the premises.
- (6) The Secretary may, by order published in the Gazette, extend the application of this section to premises specified in the order if the Secretary is satisfied there are reasonable grounds to suspect the premises contain loose-fill asbestos insulation.
- (7) In this section—
affected residential premises includes premises in relation to which an order under this section is in force.
compliant warning sign means a sign about loose-fill asbestos insulation that complies with the requirements, including display requirements, prescribed by the regulations.
lot has the same meaning as in the *Strata Schemes Management Act 2015*.
Maximum penalty—
 - (a) for a corporation—500 penalty units, or
 - (b) otherwise—100 penalty units.

Part 2 Offences

234 Disclosure and misuse of information

A person must not disclose information obtained in connection with the administration or execution of this Act unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of disciplinary or legal proceedings arising out of this Act or of a report of the proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

235 Secrecy of information

- (1) A person who acquires information in the exercise of functions under this Act must not, if the person knows the information is protected information, make a record of the information or disclose the information to another person otherwise than—
 - (a) in accordance with this Act, or
 - (b) in the exercise of functions under this Act.

Maximum penalty—

- (a) for a corporation—500 penalty units, or
- (b) for an individual—100 penalty units.

- (2) Protected information may be divulged to—
- (a) a particular person if the Minister or Authority certifies it is necessary in the public interest that the information be divulged to the person, or
 - (b) a person or authority prescribed by the regulations, or
 - (c) a person expressly or impliedly authorised to obtain the information by the insurer or provider of an alternative indemnity product from which the information was acquired, or
 - (d) the Minister or the Authority.
- (3) A person is not required—
- (a) to produce in a court a document or other thing containing protected information that has come into the person's possession, custody or control because of, or in the exercise of, the person's functions under this Act, or
 - (b) to divulge to a court protected information that has come to the person's notice in the exercise of the person's functions under this Act.
- (4) A person may be required to produce a document or other thing in a court or to divulge protected information to a court if—
- (a) the Minister or Authority certifies it is necessary in the public interest, or
 - (b) it is expressly authorised by the insurer or provider of an alternative indemnity product to whom the information relates, or to whom the information contained in the document or thing relates.
- (5) This section applies to—
- (a) an authority or person to whom protected information is divulged under subsection (2), and
 - (b) a person or employee under the control of the authority or person.
- (6) This section does not apply to the divulging of information to, or the production of a document or other thing to—
- (a) a law enforcement agency, or
 - (b) a person or body prescribed by the regulations.
- (7) This section does not apply to the publishing of protected information in accordance with—
- (a) section 176, or
 - (b) a report in accordance with section 179.
- (8) In this section—
- court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.
- functions under this Act*** includes functions under the regulations or other instruments under this Act.
- produce*** includes permit access to.
- protected information*** means information, excluding publicly available information, about the business or commercial operations of an insurer or provider of an alternative indemnity product obtained from an insurer or provider under, or in connection with the administration or execution of, Chapter 5.

236 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, a provision of this Act or the regulations, each person who is a director of the corporation or who is concerned

in the management of the corporation is taken to have contravened the same provision if the person—

- (a) knows or ought reasonably to know that the offence would be or is being committed, and
 - (b) fails to take all reasonable steps to prevent or stop the commission of the offence.
- (2) A person may be proceeded against and convicted under a provision of this Act or the regulations under subsection (1) whether or not the corporation has been proceeded against or convicted under the provision.
- (3) Nothing in this section affects a liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

237 Onus of proof—reasonable excuse

In proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse lies with the defendant.

238 Penalty notices

- (1) A penalty notice officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.
Note— The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that may be imposed for the offence by a court.
- (5) This section does not limit the operation of another provision of, or made under, this or another Act relating to proceedings that may be taken in relation to offences.
- (6) In this section—
penalty notice officer has the same meaning as in the *Building Compliance and Enforcement Act 2022*.

239 Proceedings for offences

- (1) Proceedings for an offence against this Act must be dealt with summarily before—
 - (a) the Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence against this Act are brought in the Local Court, the maximum monetary penalty the Local Court may impose for the offence is 1,000 penalty units.
- (3) Proceedings for an offence against the regulations must be dealt with summarily before the Local Court.
- (4) The proceedings must be commenced by an information laid within 3 years after the commission of the offence.

Part 3 Miscellaneous

240 Building Administration Fund

- (1) The Secretary must maintain a Building Administration Fund.
- (2) The following must be paid into the Building Administration Fund—
 - (a) fees for the issue of licences and owner-builder permits,
 - (b) money received from the payment of fines or penalty infringement notices issued under this Act, other than Chapter 5,
 - (c) money received from the payment of fees for inspections under Chapter 6, Part 7,
 - (d) amounts paid to the Department for the provision of continuing professional development,
 - (e) amounts required to be paid into the Fund,
 - (f) income from investment of the Fund,
 - (g) other amounts received or recouped in relation to the administration of this Act or another Act prescribed by the regulations.
- (3) Money in the Fund must be applied by the Secretary—
 - (a) to meet the costs of operating the scheme for resolving building disputes, and
 - (b) to meet the costs of administering this Act and other Acts prescribed by the regulations, and
 - (c) to make investments authorised under the *Government Sector Finance Act 2018*, Part 6.

241 Service of documents

- (1) A document authorised or required by this Act or the regulations to be given to a person may be given by the following methods—
 - (a) for an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) for an individual who has not specified an address for that purpose—by post to the residential or business address of the person last known to the person serving the document,
 - (d) for a corporation—by post to the registered office or another office of the corporation or by leaving it at the office with a person apparently over 16 years of age,
 - (e) by email to an email address specified by the person for the service of documents of that kind,
 - (f) by another method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of a provision of a law or of the rules of a court authorising a document to be served on a person by another method.
- (3) In this section—
give includes serve or send.

242 Exchange of information—Authority

- (1) The Authority may provide to a relevant agency information reasonably necessary to enable or assist the relevant agency to regulate or take other action in relation to one or more of the following—
 - (a) a building cover contract,
 - (b) other matters prescribed by the regulations.
- (2) A relevant agency may provide to the Authority information reasonably necessary to enable or assist the Authority to exercise the Authority's functions under this Act.
- (3) This section does not—
 - (a) require the Authority to provide information to a relevant agency only in accordance with subsection (1), where the information can otherwise be lawfully provided, or
 - (b) limit the operation of another Act or law under which a relevant agency is authorised or required to disclose information to another person or body.
- (4) In this section—
relevant agency means the following—
 - (a) a government sector agency,
 - (b) the Self Insurance Corporation or another licensed insurer or licensed provider,
 - (c) the Tribunal,
 - (d) other persons or bodies prescribed by the regulations.

243 Exchange of information—Secretary

- (1) The Secretary may provide to a relevant agency information reasonably necessary to enable or assist the relevant agency to regulate or take other action in relation to one or more of the following—
 - (a) regulated work,
 - (b) a licence holder,
 - (c) a building cover contract,
 - (d) other matters prescribed by the regulations.
- (2) A relevant agency may provide to the Secretary information reasonably necessary to enable or assist the Secretary to exercise the Secretary's functions under this Act.
- (3) The Secretary may enter into an arrangement (an **information sharing arrangement**) with a relevant agency to share or exchange information held by the Secretary or the agency.
- (4) Under an information sharing arrangement, the Secretary and the relevant agency are, despite another Act or law, authorised—
 - (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose information to the other party.
- (5) Subsection (4) applies only to the extent the information is reasonably necessary to assist in the exercise of functions of the Secretary under this Act or the functions of the relevant agency.
- (6) This section does not—

- (a) require the Secretary to provide information to a relevant agency only in accordance with subsection (1), or with an information sharing arrangement, where the information can otherwise be lawfully provided, or
 - (b) limit the operation of another Act or law under which a relevant agency is authorised or required to disclose information to another person or body.
- (7) In this section—
relevant agency means the following—
 - (a) a government sector agency,
 - (b) the Self Insurance Corporation or another licensed insurer or licensed provider,
 - (c) the Tribunal,
 - (d) other persons or bodies prescribed by the regulations.

244 Delegation

- (1) The Secretary may delegate the exercise of a function of the Secretary under this Act, other than this power of delegation to a person—
 - (a) employed in the Department, or
 - (b) authorised by the regulations.
- (2) The Minister may delegate the exercise of a function of the Minister under this Act, other than this power of delegation to a person—
 - (a) employed in the Department, or
 - (b) authorised by the regulations.

245 Personal liability

- (1) A protected person is not personally subject to a liability for anything done—
 - (a) in good faith, and
 - (b) for the purpose of exercising a function under this Act.
- (2) The liability instead attaches to the Crown.
- (3) In this section—
done includes omitted to be done.
liability means civil liability and includes action, claim or demand.
protected person means—
 - (a) the Secretary, or
 - (b) an authorised officer, or
 - (c) a person acting under the direction of the Secretary or an authorised officer.

246 Certificate evidence

- (1) A document certifying a relevant matter is admissible in criminal or civil proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the matter certified if the document is signed by—
 - (a) the Secretary, or
 - (b) an employee of the Department prescribed by the regulations.
- (2) In this section—
relevant matter means the following—

- (a) that a specified person was or was not, at a specified time or during a specified period, a licence holder,
- (b) that a licence held by a specified person did or did not authorise the carrying out of certain work,
- (c) that a licence held by a specified person was or was not, at a specified time or during a specified period, subject to a specified condition or was or was not suspended,
- (d) that a specified person was or was not, at a specified time or during a specified period, an authorised officer,
- (e) that a notice required to be given to or by the Secretary was, at a specified time or during a specified period, given or was not given,
- (f) that an approval or exemption was or was not, at a specified time or during a specified period—
 - (i) held by a specified person, or
 - (ii) subject to a specified condition, or
 - (iii) was or was not suspended,
- (g) that a particular or other matter was or was not, at a specified time or during a specified period, included on a register,
- (h) another matter prescribed by the regulations.

247 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, about a matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may make provision about the following—
 - (a) advertisements and the display of signs relating to regulated work,
 - (b) agreements or arrangements relating to regulated work,
 - (c) the keeping of records and the provision of information to the Secretary by licence holders in relation to regulated work,
 - (d) the qualifications, skills and experience required for a licence including the approval of—
 - (i) training, and
 - (ii) persons to conduct the training or to assess persons undergoing the training,
 - (e) forms, records, notices and returns,
 - (f) appeals and show cause proceedings,
 - (g) the keeping of trust accounts by licence holders and former licence holders,
 - (h) the conduct of examinations,
 - (i) matters required to be taken into account by the Secretary in deciding whether special circumstances exist,
 - (j) fees payable under this Act or the regulations,
 - (k) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under this Act or the regulations,
 - (l) exemptions from requirements of this Act or the regulations,
 - (m) the keeping of public registers.
- (3) A regulation may create an offence punishable by a penalty not exceeding—

- (a) for a corporation—500 penalty units, and
- (b) for an individual—100 penalty units.

248 Review of Act

- (1) The Minister must review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review must be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

DRAFT

Schedule 1 Terms to be included in certain contracts

section 64(4)

Part 1 Home building work contracts

1 Plans and specifications

- (1) All plans and specifications for work to be carried out under this contract, including variations to the plans and specifications, are taken to form part of this contract.
- (2) An agreement to vary this contract, or to vary the plans and specifications for work to be carried out under this contract, must be in writing signed by or on behalf of each party to this contract.
- (3) This section only applies to a home building work contract to which section 66 applies.

Note— Before entering into a home building work contract, the licence holder must give consumer information to each other party to the contract—see section 66.

2 Quality of construction

- (1) All work carried out under this contract will comply with—
 - (a) the *Building Code of Australia*, to the extent required under the *Environmental Planning and Assessment Act 1979*, including a regulation or other instrument made under that Act, and
 - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
 - (c) the conditions of a relevant development consent or complying development certificate.
- (2) This contract may limit the liability of the contractor for a failure to comply with subsection (1) if the failure relates solely to a design or specification—
 - (a) prepared by or on behalf of the owner, but not by or on behalf of the contractor, or
 - (b) required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subsection (1).

Part 2 Contracts for work requiring certifiers

3 Selection of registered certifier

- (1) The contractor will notify the owner if a registered certifier is required for particular work carried out under this contract.
- (2) The selection of a registered certifier is the sole responsibility of the owner.

Note— The *Building Act 2022* imposes requirements on the appointment of registered certifiers in relation to certain home building work—see sections 194 and 195.
- (3) The contractor will not object to the selection by the owner of a particular registered certifier.

Part 3 Contracts to supply kit homes or pre-fabricated buildings

4 Plans and specifications

- (1) All plans and specifications for building components to be supplied under this contract, including variations to the plans and specifications, are taken to form part of this contract.
- (2) An agreement to vary this contract, or to vary the plans and specifications for building components to be supplied under this contract, must be in writing signed by or on behalf of each party to this contract.

5 Quality of construction

- (1) All building components supplied under this contract will comply with—
 - (a) the *Building Code of Australia*, to the extent required under the *Environmental Planning and Assessment Act 1979*, including a regulation or other instrument made under that Act, and
 - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
 - (c) the conditions of a relevant development consent or complying development certificate.
- (2) This contract may limit the liability of the contractor for a failure to comply with subsection (1) if the failure relates solely to a design or specification—
 - (a) prepared by or on behalf of the owner, and not by or on behalf of the contractor, or
 - (b) required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subsection (1).

Schedule 2 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement, but not before the date of assent to—
 - (a) for a provision of this Act—this Act, or
 - (b) for a provision amending this Act—the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before its publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before its publication.
- (6) In this section—
person does not include the State or an authority of the State.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part—

corresponding licence means a licence prescribed by the regulations as the corresponding licence for an existing licence.

existing licence means the following—

- (a) a licence, permit or supervisor certificate under the former Act,
- (b) a registration in relation to professional engineering work under the *Design and Building Practitioners Act 2020*.

former Act means the *Home Building Act 1989*.

repeal day means the day on which the former Act is repealed.

3 Saving of existing licences, permits and registrations

- (1) An existing licence in force immediately before the repeal day—
 - (a) is taken to be the corresponding licence granted under this Act, and
 - (b) continues in force for the unexpired part of the term of the existing licence unless sooner—
 - (i) surrendered by the licence holder, or

- (ii) suspended or revoked under this Act, and
 - (c) must not be renewed.
- (2) The conditions to which an existing licence is subject—
 - (a) are taken to be conditions imposed on the corresponding licence by the Secretary under this Act, and
 - (b) may be varied or revoked in accordance with this Act.
- (3) In subsection (1), an existing licence that, on the repeal day, is suspended is taken to be in force, but the suspension continues for the unexpired part of the term of the suspension.

4 Pending applications

- (1) An application for an existing licence, not yet determined before the repeal day, is taken to be an application for the corresponding licence made to the Secretary under this Act.
- (2) A fee paid for an application for an existing licence is taken to have been paid for an application for the corresponding licence under this Act.
- (3) If there is a difference between the fee paid and the fee required to be paid for the corresponding licence under this Act—
 - (a) the applicant must pay the balance of the underpayment, and
 - (b) the balance of an overpayment must be refunded to the applicant.

5 Appeals and reviews

- (1) An appeal made, or review commenced, in relation to an existing licence or an application for an existing licence that has not been determined before the repeal day must be determined as if the former Act had not been repealed.
- (2) Section 3 applies to the existing licence as in force following the appeal or review.

6 Offences under Home Building Act 1989 are relevant offences

In this Act, a reference to a **relevant offence** is taken to include a reference to an offence against the former Act or the regulations made under that Act.

7 Persons carrying out regulated work may apply for licence within prescribed period

- (1) This section applies to a person (an **unlicensed person**) who, immediately before the repeal day, was authorised to carry out regulated work without a licence.
- (2) Chapter 2 does not, for the period prescribed by the regulations, apply to an unlicensed person who—
 - (a) is required to hold a licence to carry out regulated work under this Act, and
 - (b) does not hold a licence to carry out the regulated work.
- (3) An unlicensed person must, within the period prescribed by the regulations, apply for a licence in accordance with this Act to carry out the regulated work concerned.

8 Application of Chapter 3

Chapter 3 applies only to a contract, including a deemed contract, entered into, or taken to be entered into, on or after the repeal day.

9 Application of Chapter 5

Chapter 5 applies only to—

- (a) building work commenced on or after the repeal day, and
- (b) mandatory insurance entered into on or after the repeal day.

10 Licensed corporations and partnerships

- (1) A licensed corporation or partnership may, within the period prescribed by the regulations, appoint a person who, immediately before the repeal day, holds a supervisor certificate as the nominee supervisor for the licence held by the partnership or corporation.
- (2) A nominee supervisor appointed under subsection (1) is taken to be an eligible individual for the period prescribed by the regulations.
- (3) In this section—
eligible individual—see section 46(5).

11 Plumbing and drainage work carried out before repeal day

A person who, immediately before the repeal day, was a responsible person, within the meaning of the *Plumbing and Drainage Act 2011*, for plumbing and drainage work is taken to be the responsible person for the work under Chapter 6, Part 7.

12 Building Insurers' Guarantee Corporation

- (1) A new claim may not be made by a person in relation to a matter covered by a former approved insurer.
- (2) A claim is a *new claim* if the claim is—
 - (a) made on or after the repeal day, or
 - (b) a continuation or revival of a claim made before the repeal day that—
 - (i) had been previously finalised or withdrawn, or
 - (ii) had not been prosecuted by the claimant for a period of at least 1 year.
- (3) In this section—
former approved insurer has the same meaning as in the former Act.

13 Dissolution of Guarantee Corporation and closure of accounts

- (1) The Guarantee Corporation is dissolved on the repeal day.
- (2) On the repeal day—
 - (a) the Building Insurers' Guarantee Fund and the Guarantee Corporation General Account are closed, and
 - (b) the balance standing to the credit of the accounts is transferred to the Crown.
- (3) The annual report for the year ending 30 June 2023 may be included in the annual report of the Department for that year.
- (4) A reference in another Act or instrument made under another Act or in another instrument to the Guarantee Corporation is, to the extent that it relates to the assets, rights and liabilities transferred to the Crown, to be read on and from the dissolution day as being a reference to the Crown.
- (5) In this section—
Building Insurers' Guarantee Fund has the same meaning as in the former Act.
Guarantee Corporation has the same meaning as in the former Act.

14 Transfer of assets, rights and liabilities

- (1) On the repeal day, the assets, rights and liabilities of the Guarantee Corporation immediately before its dissolution are transferred to the Crown.
- (2) On and from the repeal day, the following provisions have effect in relation to the transfer—
 - (a) the transferred assets vest in the transferee without the need for a further conveyance, transfer, assignment or assurance,
 - (b) the transferred rights and liabilities become the rights and liabilities of the transferee,
 - (c) all proceedings relating to the transferred assets, rights or liabilities commenced before the repeal day by or against the Guarantee Corporation pending immediately before the repeal day are taken to be proceedings pending by or against the Crown,
 - (d) an act, matter or thing done or omitted to be done in relation to the transferred assets, rights or liabilities before the repeal day by, to or in relation to the Guarantee Corporation is, to the extent to which the act, matter or thing has force or effect, taken to have been done or omitted by, to or in relation to the Crown,
 - (e) the Crown has all the entitlements and obligations of the Guarantee Corporation in relation to the transferred assets, rights and liabilities that the Guarantee Corporation would have had but for its dissolution, whether or not the entitlements and obligations were actual or potential on the repeal day.
- (3) The operation of this section and the section dissolving the Guarantee Corporation does not—
 - (a) constitute a breach of contract, trust or confidence or otherwise as a civil wrong, or
 - (b) constitute a breach of a contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) give rise to a remedy by a party to an instrument, or cause or permit the termination of, or exercise of rights under, an instrument, or
 - (d) constitute an event of default under a contract or other instrument.

Schedule 3 Dictionary

section 3

ACN has the same meaning as in the Corporations Act.

alternative indemnity product—see Chapter 5, Part 3.

alternative indemnity product business—see Chapter 5, Part 3.

approved form means the form approved by the Secretary.

authorised officer has the same meaning as in the *Building Compliance and Enforcement Act 2022*.

Authority means the State Insurance Regulatory Authority.

building includes part of a building.

Building Administration Fund means the Building Administration Fund established under section 240.

Building Code of Australia has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

building cover contract means—

- (a) mandatory insurance, or
- (b) a contract or arrangement for the provision of cover using an alternative indemnity product.

building enforcement legislation has the same meaning as in the *Building Compliance and Enforcement Act 2022*.

building product has the same meaning as in the *Building Compliance and Enforcement Act 2022*.

building work—see section 5.

Chapter 5 corporation has the same meaning as in the Corporations Act.

close associate—see section 6.

complying development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

contract price means the total amount payable under—

- (a) a home building work contract or a contract to supply a kit home or a pre-fabricated building (a *primary contract*), including the amount the contractor is entitled—
 - (i) to receive and keep under the contract, and
 - (ii) to receive under the contract for payment to another person, and
- (b) the amount another person is entitled to receive under a separate contract for building work relating to the primary contract.

contracted party—see Chapter 3, Part 2.

contractor—see Chapter 3, Part 2.

corporation has the same meaning as in the Corporations Act.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

correctional complex means premises declared to be a correctional complex by a proclamation in force under the *Crimes (Administration of Sentences) Act 1999*, section 224.

council has the same meaning as in the *Local Government Act 1993*.

data has the same meaning as in the *Data Sharing (Government Sector) Act 2015*.

Department means the Department of Customer Service.

developer has the same meaning as in the *Building Compliance and Enforcement Act 2022*, but does not include—

- (a) a developer in relation to home building work carried out for the construction of 1 or more buildings containing less than 3 self-contained dwellings, or

- (b) a company that owns a building under a company title, or
- (c) another person prescribed by the regulations.

development consent has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

electrical installation has the same meaning as in the *Gas and Electricity (Consumer Safety) Act 2017*.

exercise a function includes perform a duty.

function includes a power, authority or duty.

Home Building Operational Fund means the Home Building Operational Fund established under section 136.

home building work—see section 50.

hospital has the same meaning as in the *Public Health Act 2010*.

insolvent means—

- (a) for an individual—that the individual is insolvent under administration within the meaning of the Corporations Act, or
- (b) for a corporation—that the corporation is a Chapter 5 corporation.

insurance business has the same meaning as in the Insurance Act.

Insurance Guidelines means Insurance Guidelines issued by the Authority under section 131, as in force from time to time.

insurance register—see section 127.

insurer's licence—see section 162(1).

kit home means a set of building components that, when offered for sale, is represented as sufficient for the construction of a home, garage, carport or other structure prescribed by the regulations, according to a plan or instructions provided by the supplier of the set, but does not include the following—

- (a) a set of components for the construction of a moveable dwelling, other than a registrable vehicle, within the meaning of the *Road Transport Act 2013*,
- (b) a set of components for the construction of a home, structure or improvement prescribed by the regulations.

licence register—see section 33.

licensed insurer means an insurer who holds an insurer's licence, and includes the Self Insurance Corporation.

licensed insurers and providers report—see section 179.

licensed provider means a provider of an alternative indemnity product who holds a provider's licence.

major work contract means a contract to carry out home building work if—

- (a) the contract price is more than the prescribed amount, or
- (b) if the contract price is not known—the reasonable market cost of the labour and materials involved in carrying out the home building work is more than the prescribed amount.

manufactured home has the same meaning as in the *Local Government Act 1993*.

moveable dwelling means a tent, or a caravan or other van or other portable device, whether or not on wheels, used for human habitation and includes a conveyance, structure or thing prescribed by the regulations.

National Construction Code means—

- (a) the Building Code of Australia, and
- (b) the *Plumbing Code of Australia* produced and maintained by the Australian Building Codes Board, as in force from time to time.

NSW planning portal means the website with the URL of www.planningportal.nsw.gov.au, or another website, used by the Secretary of the Department of Planning and Environment to provide public access to documents or other information in the NSW planning database.

owner of land means the following, but does not include a person excluded by the regulations—

- (a) every person who jointly or severally, or at law or in equity, is entitled to the land for an estate of freehold,
- (b) for a lot within a strata scheme—the owner of a lot,
- (c) for a development lot or neighbourhood lot within a community scheme—the proprietor in relation to the lot within the meaning of the *Community Land Management Act 2021*,
- (d) for land subject to a strata scheme—the owners corporation constituted for the scheme,
- (e) for land subject to a community scheme, precinct scheme or neighbourhood scheme within the meaning of the *Community Land Management Act 2021*—the association for the scheme,
- (f) every person who jointly or severally, or at law or in equity, is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,
- (g) a home owner within the meaning of the *Residential (Land Lease) Communities Act 2013*,
- (h) other persons prescribed by the regulations.

owners corporation has the same meaning as in the *Strata Schemes Management Act 2015*.

pre-fabricated component means a part of a building that has been fabricated off-site, and excludes items prescribed by the regulations.

protected information—see section 235.

provider's licence—see section 162(3).

registered certifier has the same meaning as in the *Building and Development Certifiers Act 2018*.

Secretary means—

- (a) the Commissioner for Fair Trading, or
- (b) otherwise—the Secretary of the Department.

Self Insurance Corporation means the NSW Self Insurance Corporation constituted by the *NSW Self Insurance Corporation Act 2004*.

Standard Instrument means the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

statutory warranty—see section 75.

strata scheme has the same meaning as in the *Strata Schemes Management Act 2015*.

supply means supply for consideration, but does not include supply for the purposes of resale.

Tribunal means the Civil and Administrative Tribunal established by the *Civil and Administrative Tribunal Act 2013*.

Schedule 4 Amendment of Acts and other instruments

4.1 Building and Construction Industry Security of Payment Act 1999 No 46

Section 4 Definitions

Omit the definition of *owner occupier construction contract* from section 4(1).

Insert instead—

owner occupier construction contract means a construction contract to carry out home building work, within the meaning of the *Building Act 2022*, on the part of the premises in which the party for whom the work is carried out resides or proposes to reside.

4.2 Building and Development Certifiers Act 2018 No 63

[1] Section 4 Definitions

Omit “*Home Building Act 1989*” from the definition of *close associate*.

Insert instead “*Building Act 2022*”.

[2] Section 10 Grant or refusal of registration

Omit “may” from section 10(3). Insert instead “must”.

4.3 Civil and Administrative Tribunal Act 2013 No 2

[1] Schedule 4, clause 3(1) and Schedule 5, clause 4(2)

Omit “*Home Building Act 1989*”. Insert instead “*Building Act 2022*”.

4.4 Design and Building Practitioners Act 2020 No 7

[1] Section 3 Definitions

Omit “professional engineer,” from the definition of *practitioner* in section 3(1).

[2] Section 3(1), definition of “professional engineering work”

Omit the definition.

[3] Section 3(1), definition of “registered practitioner”

Omit “registered professional engineer,”.

[4] Part 3, heading

Omit the heading. Insert instead “**Specialist work**”.

[5] Part 3, Division 1

Omit the Division.

[6] Sections 50(1), 64(a), (c)(i), (d) and (f), 67(b), 104(1)(b) and 107(2)(d)

Omit “, professional engineering work” wherever occurring.

4.5 Design and Building Practitioners Regulation 2021

- [1] **Clauses 14, 15, 31A(3)(c), 31, 33(h), 36(5)(b), 37, 47, Part 5, Part 6, Division 3, 92(2)(e) and (f) and 97**

Omit the provisions.

- [2] **Clause 63 Definitions**

Omit “, registered principal design practitioner or registered professional engineer” from the definitions of *professional indemnity policy* and *registered individual*.

Insert instead “or registered principal design practitioner”.

- [3] **Clause 77 Certain registered practitioners to determine adequate coverage of policy**

Omit “, registered principal design practitioner or registered professional engineer” from clause 77(1) and (2).

Insert instead “or registered principal design practitioner”.

- [4] **Clause 77(1) and (2)(a)–(e)**

Omit “or professional engineer”.

- [5] **Clause 77(3)**

Omit “Divisions 2 or 3 of this Part”. Insert instead “this Part, Division 2”.

- [6] **Clause 101 Secretary may permit or cancel deemed registration**

Omit “, building practitioner or professional engineer” from clause 101(3).

Insert instead “or building practitioner”.

- [7] **Schedule 1 Classes of registration**

Omit clause 4.

- [8] **Schedule 1, clause 5(3)**

Omit “or professional engineering work” from the definition of *type of work*.

- [9] **Schedule 1, Part 2, Division 4**

Omit the Division.

- [10] **Schedule 2 Qualifications, experience, knowledge and skills**

Omit clause 1, definition of *relevant*, paragraph (d).

- [11] **Schedule 2, clauses 2(2A) and 3(c) and (d) and Part 5**

Omit the provisions.

Drafting note 4.1 Amendments to clauses 8, 9, 11, 12, 13, 18, 19, 20, 21 to require a person to be licensed under the Building Act.

- [12] **Schedule 3 Continuing professional development**

Omit clause 5.

[13] Schedule 4 Code of practice

Omit Part 2, Division 2.

[14] Schedule 5 Penalty notice offences

Drafting note 4.2 Remove offences moved out of DBP

[15] Schedule 7 Fees

Omit the matter relating to **Professional engineer** and **Recognised professional engineering body**, including the headings.

[16] Dictionary

Insert in alphabetical order—

professional engineering work has the same meaning as in the *Building Act 2022*.

4.6 Environmental Planning and Assessment Act 1979 No 203

[1] Section 1.6 Exempt development

Omit “Part 6 (Building and subdivision certification)” from section 1.6(1)(d).

Insert instead “the *Building Act 2022*, Part *”.

[2] Section 4.26 Carrying out of complying development

Insert after section 4.26(1)—

- (1A) If the complying development relates to building work for which standards are specified under the *Building Act 2022*, the complying development certificate must set out the standards of building work that apply to the development.

[3] Section 4.27 What is a “complying development certificate”?

Omit section 4.27(1). Insert instead—

- (1) A complying development certificate is a certificate stating—
- (a) that specified development is complying development, and
 - (b) that if the development is carried out as specified in the certificate, the development will comply with all of the following—
 - (i) the development standards applicable to the development,
 - (ii) the standards of building work specified for the development under the *Building Act 2022*,
 - (iii) other requirements prescribed by the regulations, and
 - (c) for development involving the erection of a building—the classification of the building in accordance with the *Building Code of Australia*.

[4] Section 4.28 Process for obtaining complying development certificates

Insert at the end of section 4.28(3)(c)—
 , and

- (d) whether or not the proposed development complies with the standards of building work, if any, specified for the development under the *Building Act 2022*.

[5] Part 6 Building and subdivision certification

Omit the Part.

[6] Section 9.46 Orders of the Court

Insert after section 9.46(3)—

- (3A) The Court may, by order, declare that a certificate issued under the *Building Act 2022*, Chapter 6, other than an occupation certificate, is invalid if—
 - (a) proceedings for the order are brought within 3 months after the issue of the certificate, and
 - (b) the plans and specifications or standards of building work or subdivision work specified in the certificate are not consistent with the development consent for the building work or subdivision work.

Drafting note 4.3 Provisions brought into Building Bill - Part 6 (other than Div 6.7 and s 6.35), Div 8.4 and s 8.26

Check civil enforcement powers in Div 9.5 generally in relation to certificates - PCO prefer to apply Div 9.5 to the issue of certificates under the Building Bill rather than replicate those provisions in the BCE Bill.

4.7 Environmental Planning and Assessment Regulation 2021

[1] Section 69, heading

Omit the heading. Insert instead—

69 Compliance with other legislation and the BCA

[2] Section 69(1) and (2)

Omit the subsections. Insert instead—

- (1) It is a condition of a development consent for development involving building work that—
 - (a) the work must be carried out in accordance with the requirements of—
 - (i) the *Building Code of Australia*, and
 - (ii) the *Design and Building Practitioners Act 2020*, and
 - (b) for building work that requires mandatory insurance within the meaning of the *Building Act 2022*—the mandatory insurance must be in force before the building work authorised to be carried out by the consent commences.

[3] Sections 71, 147, 150 and 158

Omit the sections.

[4] Section 146, heading

Omit the heading. Insert instead—

146 Compliance with other legislation and the BCA

[5] Section 146(1)(a)

Omit the paragraph. Insert instead—

- (a) the work must be carried out in accordance with the requirements of—
 - (i) the *Building Code of Australia*, and
 - (ii) the *Design and Building Practitioners Act 2020*,

4.8 Licensing and Registration (Uniform Procedures) Act 2002 No 28

[1] Schedule 1, heading

Omit “of Act”.

[2] Schedule 1

Omit the matter relating to the *Home Building Act 1989*, including the heading.

DRAFT