

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.

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public consultation draft

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

