

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

**Building Compliance and Enforcement Bill
2022**

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NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Building Compliance and Enforcement Bill
2022

No , 2022

A Bill for

An Act in relation to compliance with, and the enforcement of, certain building and construction legislation and codes; to repeal the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*; and for other purposes.

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Building Compliance and Enforcement Act 2022*.

2 Commencement

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

3 Objects of Act

The objects of the Act are—

- (a) to provide a single legislative framework for the regulation of building compliance and enforcement, and
- (b) to promote public confidence in the building and construction sector, and
- (c) to promote public confidence in the administration and regulation of the building and construction sector, and
- (d) to promote fair and transparent decision-making in relation to the building and construction sector.

4 Definitions

- (1) The Dictionary in Schedule 2 defines words used in this Act.
- (2) Words defined in the *Building Act 2022* have the same meaning in this Act and in regulations made under this Act, unless a contrary intention appears.

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

5 Meaning of “building enforcement legislation”

In this Act—

building enforcement legislation means the following Acts and the regulations and other instruments made under the Acts—

- (a) this Act,
- (b) the *Building Act 2022*,
- (c) the *Building and Construction Industry Security of Payment Act 1999*,
- (d) the *Building and Development Certifiers Act 2018*,
- (e) the *Building Products (Safety) Act 2017*,
- (f) the *Design and Building Practitioners Act 2020*,
- (g) the *Gas and Electricity (Consumer Safety) Act 2017*.

6 Meaning of “developer” [cf s 4 RAB]

In this Act, a **developer**, in relation to building work, means any of the following persons, but does not include a person excluded from this definition by the regulations—

- (a) the person who contracted or arranged for, or facilitated or otherwise caused, whether directly or indirectly, the building work to be carried out,
- (b) if the building work is the erection or construction of a building—the owner of the land on which the building work is carried out at the time the building work is carried out,

- (c) the principal contractor for the building work within the meaning of the *Building Act 2022*, Chapter 6,
- (d) in relation to building work for a strata scheme—the developer of the strata scheme under the *Strata Schemes Management Act 2015*,
- (e) another person prescribed by the regulations for the purposes of this definition.

7 Meaning of “building work”

- (1) In this Act, ***building work*** means an activity involved in—
 - (a) the construction of a new building or structure, or a change to an existing building or structure, or
 - (b) coordinating or supervising work specified in paragraph (a).
- (2) The regulations may—
 - (a) prescribe additional work that is building work for the purposes of this Act, and
 - (b) exclude work from being building work for the purposes of this Act.
- (3) In the section—
 - building*** includes part of a building.
 - structure*** includes part of a structure.

Part 2 Completion of notifiable building work

Division 1 Preliminary

8 Definitions

In this Part—

expected completion amendment notice—see section 13(1).

expected completion notice—see section 12(1).

expected date—see section 12(2).

notifiable building—see section 9.

9 Meaning of “notifiable building”

- (1) In this Part, *notifiable building* means—
 - (a) a class 2 building under the *National Construction Code*, and
 - (b) a building for which the building work requires a building compliance declaration under the *Design and Building Practitioners Act 2020*.
- (2) A notifiable building includes a building containing a part that is classified as a class 2 building.
- (3) The regulations may—
 - (a) prescribe a building as a notifiable building, including by class of building, and
 - (b) exclude a building from being a notifiable building, including by class of building.
- (4) In this section—

building compliance declaration has the same meaning as in the *Design and Building Practitioners Act 2020*.

10 Application of Part [cf s 6 RAB]

- (1) The exercise of a function under this Part applies only to building work in relation to a notifiable building—
 - (a) that—
 - (i) commences, or is required to commence, in accordance with a construction certificate or a complying development certificate, and
 - (ii) has not been completed or has been completed within the period of 10 years before the exercise of the function, or
 - (b) that—
 - (i) does not require development consent under the *Environmental Planning and Assessment Act 1979*, and
 - (ii) is not excluded from being building work under the *Design and Building Practitioners Act 2020*, section 4(2)(b), unless otherwise provided by the regulations for this section.
- (2) The regulations may provide that a specified provision, or specified provisions, of this Part extend to other classes of buildings under the *National Construction Code*.
- (3) In this section—

complying development certificate means a complying development certificate issued by a certifier under the *Environmental Planning and Assessment Act 1979*, Part 4.

construction certificate means a construction certificate issued by a certifier under the *Building Act 2022*.

11 Levy may be imposed by Secretary [cf s 6A RAB]

- (1) The Secretary may, in accordance with the regulations, impose a levy on a developer in relation to building work.
- (2) The levy must be paid into the Fund.
- (3) The Secretary may require a developer to provide information to the Secretary for the purpose of the Secretary calculating the rate of the levy to be imposed.
- (4) The regulations may deal with the imposition of levies, including in relation to the following—
 - (a) the determination of the rate of levies, including the charging of interest on unpaid levies,
 - (b) providing for the period within which a levy is payable,
 - (c) describing the grounds on which a particular type of levy may be imposed,
 - (d) the developers or class of developers on which a levy may be imposed,
 - (e) the way information under subsection (3) must be provided to the Secretary,
 - (f) the recovery of levies,
 - (g) the waiver, reduction, postponement or refund of a levy by the Secretary.
- (5) The regulations may make provisions about a notice required to be given to, or by, the developer of a notifiable building in relation to an application for an occupation certificate, including the following—
 - (a) when the notice must be given to the developer, including the periods in which the notice is required to be given,
 - (b) the way the notice must be given,
 - (c) the form of the notice,
 - (d) the requirements relating to a developer who receives the notice,
 - (e) information required to be provided by the developer for the purposes of calculating a levy under this section.
- (6) A levy under this section—
 - (a) may be recovered by the Secretary as a debt due to the Crown in a court of competent jurisdiction, and
 - (b) must be paid into the Fund.
- (7) The regulations may prescribe building work, or a class of building work, as being exempt from the requirement for the developer to pay the levy under this section.
- (8) In this section—

Fund means the Building Administration Fund established under the *Building Act 2022*, section 240.

Division 2 Completion of notifiable building work

12 Notification to Secretary of intended completion of building work [cf s 7 RAB]

- (1) A developer in relation to building work must not cause or permit an application to be made for an occupation certificate for a part of a notifiable building for which the building work is carried out unless, at least 6 months, but not more than 12 months,

before the application is made, the developer ensures the Secretary is notified of the proposed application (an *expected completion notice*).

- (2) The expected completion notice must set out the date the developer expects to make the application for the occupation certificate for the building (the *expected date*).
- (3) Despite subsection (1), if, at the commencement of building work for a new building, the developer expects to make the application for the occupation certificate for the building within less than 6 months, the developer must ensure the Secretary is given an expected completion notice within 30 days after the commencement of the building work.
- (4) The expected completion notice must be given in the way approved by the Secretary.
- (5) The regulations may prescribe another person who is taken to be the Secretary for the purposes of giving a notice under this section.
- (6) If there is more than 1 developer in relation to a notifiable building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the expected completion notice to the Secretary.

Maximum penalty—

- (a) for a corporation—
 - (i) 1,000 penalty units, and
 - (ii) for a continuing offence—100 penalty units for each day the offence continues, or
- (b) otherwise—
 - (i) 200 penalty units, and
 - (ii) for a continuing offence—20 penalty units for each day the offence continues.

13 Notification of change to expected date [cf s 8 RAB]

- (1) If a developer becomes aware that circumstances have changed and the developer expects an application for the occupation certificate for a notifiable building or part of a notifiable building to be made on a different date than the expected date specified in an expected completion notice, the developer ensures the Secretary is notified of the new expected date by notice (an *expected completion amendment notice*).
- (2) The expected completion amendment notice must be given—
 - (a) within 7 days of the developer becoming aware of the change in circumstances, and
 - (b) in the way approved by the Secretary.
- (3) The regulations may prescribe another person who is taken to be the Secretary for the purposes of giving a notice under this section.
- (4) This section does not apply if the new expected date is within 60 days after the expected date specified in the expected completion notice given to the Secretary.
- (5) A developer may give more than 1 expected completion amendment notice under this section.
- (6) For a subsequent notice, a reference in this section to the expected date specified in an expected completion notice is taken to be a reference to the new expected date specified in the most recent expected completion amendment notice given by the developer.

- (7) If there is more than 1 developer in relation to a notifiable building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the required expected completion amendment notice to the Secretary.
- Maximum penalty—
- (a) for a corporation—
 - (i) 500 penalty units, and
 - (ii) for a continuing offence—50 penalty units for each day the offence continues, or
 - (b) otherwise—
 - (i) 100 penalty units, and
 - (ii) for a continuing offence—10 penalty units for each day the offence continues.

14 Occupation certificates and strata plan registrations not to occur in certain circumstances [cf s 9 RAB]

- (1) The Secretary may make an order prohibiting the issue of an occupation certificate in relation to a notifiable building and, if relevant, the registration of a strata plan for a strata scheme in relation to a notifiable building (a *prohibition order*).
- (2) A prohibition order may be made if 1 or more of the following apply—
 - (a) the expected completion notice was not given in accordance with section 12,
 - (b) an expected completion amendment notice of a new expected date required to be given to the Secretary—
 - (i) was not given, or
 - (ii) was given less than 6 months before the application for the occupation certificate was made,
 - (c) the Secretary is satisfied that a serious defect in the building exists,
 - (d) a rectification bond required under the terms of an undertaking given by the developer relating to the notifiable building has not been provided to the Secretary,
 - (e) a building bond required under the *Strata Schemes Management Act 2015*, section 207, in relation to the building, has not been given to the Secretary,
 - (f) a developer fails to comply with a direction of an authorised officer under section 28 or 29, in relation to building work of the notifiable building,
 - (g) other circumstances, prescribed by the regulations for the purposes of this section, exist.
- (3) Without limiting subsection (2)(c), the Secretary may be satisfied that a serious defect in a building exists if—
 - (a) a building work rectification order is in force in relation to the building, or
 - (b) a development control order under the *Environmental Planning and Assessment Act 1979* relating to defects in building work is in force in relation to the building.
- (4) A prohibition order remains in force until one of the following occurs—
 - (a) the order is revoked by the Secretary,
 - (b) if a term is prescribed in the order—the term of the order ends.

15 Notice of making of prohibition order [cf s 9 of RAB]

- (1) The Secretary must give the following persons notice if the Secretary makes a prohibition order—
 - (a) the local council for the area where the building work is occurring,
 - (b) if the local council is not the certifier in relation to the building work—the principal certifier,
 - (c) a developer in relation to the building work,
 - (d) if the owner of the land is not the developer—the owner of the land,
 - (e) the Registrar-General,
 - (f) another person prescribed by the regulations.
- (2) The Secretary is not required to give notice to a person if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person.

16 Issue of occupation certificate in contravention of prohibition order [cf s 9 RAB]

- (1) A principal certifier must not issue an occupation certificate in contravention of a prohibition order.
Maximum penalty—
 - (a) for a corporation—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (2) An occupation certificate issued in contravention of a prohibition order is invalid.
- (3) A principal certifier that is a council is exempt from the penalty under subsection (1).

17 Appeals against prohibition orders [cf s 10 RAB]

- (1) A developer in relation to a notifiable building to which a prohibition order applies may appeal against the order to the Land and Environment Court within 30 days of notice of the order being given unless the Land and Environment Court grants leave to appeal after that time.
- (2) The lodging of an appeal does not, except to the extent the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the order.

Part 3 Investigations

Division 1 Preliminary

18 Definitions

In this Part—

authorised officer means—

- (a) the Building Commissioner, or
- (b) a person appointed under Division 2, or
- (c) a police officer.

Authority has the same meaning as in the *Building Act 2022*.

Note— The *Building Act 2022* defines **Authority** as the State Insurance Regulatory Authority.

motor vehicle has the same meaning as in the *Road Transport Act 2013*.

occupier, of premises, means the person who has the management or control of the premises.

plumbing and drainage function—see section 19(2).

plumbing and drainage work has the same meaning as in the *Building Act 2022*, section 11(2).

premises includes—

- (a) a building or structure, or
- (b) land or a place, whether enclosed or built on or not, or
- (c) a mobile plant, motor vehicle, vessel or aircraft.

records includes plans, specifications, maps, reports, books and other documents, whether in electronic form or otherwise.

specify an act, matter or thing includes—

- (a) describe the act, matter or thing, and
- (b) specify a class of acts, matters or things.

vessel means a kind of vessel used in navigation.

19 Purposes for which functions under Part may be exercised [cf s 72 DBPA]

- (1) An authorised officer may exercise the functions conferred by this Part for 1 or more of the following purposes—
 - (a) investigating, monitoring and enforcing compliance requirements imposed under building enforcement legislation,
 - (b) obtaining information or records for purposes connected with the administration of building enforcement legislation,
 - (c) enforcing, administering or executing building enforcement legislation,
 - (d) investigating, monitoring and enforcing compliance with the following in carrying out building work—
 - (i) the governing requirements and the performance requirements of the *National Construction Code*,
 - (ii) the relevant standards,
 - (iii) the approved plans,
 - (e) investigating whether a building has a serious defect,
 - (f) assessing whether—
 - (i) a non-compliance risk exists in relation to a building product, or

- (ii) an intended use of a building product in a building would be unsafe within the meaning of the *Building Products (Safety) Act 2017*,
- (g) determining the location of a building in which a building product has been used for a use that is—
 - (i) prohibited by a building product use ban, or
 - (ii) referred to in a building product supply ban, or
 - (iii) referred to in a building product recall,
- (h) for a function under the *Building Products (Safety) Act 2017*, Part 7, Division 2A—for a purpose for which a building product direction may be given,
 - (i) for the purposes of a building product investigation or a product assessment,
 - (j) for the purposes of investigating, monitoring or enforcing compliance with—
 - (i) the *Strata Schemes Management Act 2015*, section 106(1)–(4), or
 - (ii) the *Community Land Management Act 2021*, section 109(1)–(4).
- (2) An authorised officer may exercise the following functions (a **plumbing and drainage function**)—
 - (a) investigating, monitoring and enforcing compliance with plumbing and drainage work requirements,
 - (b) inspecting plumbing and drainage work,
 - (c) ensuring plumbing and drainage work does not threaten public health and safety.
- (3) In this section—
building product use ban has the same meaning as in the *Building Products (Safety) Act 2017*.
non-compliance risk has the same meaning as in the *Building Products (Safety) Act 2017*.

20 Certain functions of other authorised officers appointed by Authority

An authorised officer appointed by the Authority may obtain information or records under section 28 for purposes relating to a matter that is, or may be, the subject of action against an insurer or provider of—

- (a) an alternative indemnity product within the meaning of the *Building Act 2022*, section 153, or
- (b) a matter that is or may be the subject of an action against a person under the *Building Act 2022*, Chapter 5.

21 Extraterritorial application [cf s 32E BCISPA]

- (1) A notice may be given under this Part to a person in relation to a matter, even if the person is outside the State, or the matter occurs outside the State, if the matter affects or relates to—
 - (a) work carried out in the State that is subject to building enforcement legislation, or
 - (b) related goods and services supplied in the State.
- (2) In this section—
related goods and services has the same meaning as in the *Building and Construction Industry Security of Payment Act 1999*.

Division 2 **Authorised officers**

22 Appointment of authorised officers [cf s 13 RAB]

- (1) The Secretary may appoint the following persons as authorised officers for the purposes of this Part—
 - (a) an employee of the Department,
 - (b) a person who is an investigator under the *Fair Trading Act 1987*,
 - (c) a person who is a council investigation officer under the *Environmental Planning and Assessment Act 1979*, Division 9.2,
 - (d) a person of a class prescribed by the regulations.
- (2) For the purposes of exercising a function under this Part in relation to the *Building Products (Safety) Act 2017*, the Secretary may also appoint the following persons as authorised officers—
 - (a) an employee of the Environment Protection Authority,
 - (b) an employee of the Department of Planning and Environment,
 - (c) an employee of Fire and Rescue NSW,
 - (d) a member of a permanent fire brigade under the *Fire and Rescue NSW Act 1989*,
 - (e) an employee of a council who is an authorised person under the *Local Government Act 1993*.
- (3) The Authority may appoint a person as an authorised officer, authorised in writing, for the purposes of a function specified in section 20.

23 Delegation of functions for plumbing and drainage work [PDA s 21]

- (1) The Secretary may authorise the delegation of a plumbing and drainage function to a local council, joint organisation or county council.
- (2) A local council, joint organisation or county council may subdelegate a plumbing and drainage function to—
 - (a) the general manager of the council or executive officer of the joint organisation, or
 - (b) a person engaged as a contractor by the council or joint organisation whom the council or joint organisation considers has the necessary skills, knowledge or experience to exercise the function.
- (3) In this section—
county council has the same meaning as in the *Local Government Act 1993*.
joint organisation has the same meaning as in the *Local Government Act 1993*.

24 Term of appointment as authorised officer

- (1) A person appointed as an authorised officer holds office for a term specified by the Secretary in the instrument of appointment.
- (2) The Secretary may, by written notice given to an authorised officer—
 - (a) amend the term of the officer's appointment, or
 - (b) revoke the appointment.
- (3) For a person appointed by the Authority under section 22(3), the person holds office for the term specified by the Authority in the instrument of appointment.

25 Scope of authority [cf s 14 RAB]

- (1) An authorisation of a person as an authorised officer may be given—
 - (a) generally, or
 - (b) subject to conditions, limitations or restrictions, or
 - (c) only for limited purposes.
- (2) If an authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

26 Identification [cf s 15 RAB]

- (1) An authorised officer must be provided with an identification card as an authorised officer—
 - (a) for an authorised officer appointed by the Authority—by the Authority, or
 - (b) otherwise—by the Secretary
- (2) An authorised officer must produce the officer's identification card as an authorised officer if—
 - (a) exercising a function under building enforcement legislation, and
 - (b) the person affected by the exercise of the function requests the officer's identification.
- (3) The identification card may be produced in digital or electronic form.
- (4) The Secretary may decide not to issue an identification card to an investigator under the *Fair Trading Act 1987* who is appointed as an authorised officer.
- (5) For an investigator who is not issued a card, the person's certificate of identification as an investigator is taken to be the person's identification card as an authorised officer.
- (6) Failure of an authorised officer to produce identification under this section does not affect the validity of an action taken by the authorised officer.

Division 3 Information gathering powers

27 Exercise in conjunction with other powers [cf s 16 RAB]

A power conferred by this Division may be exercised whether or not a power of entry under Division 4 is being exercised.

28 Power of authorised officers to require information and records [cf s 17 RAB]

- (1) An authorised officer may, by written notice given to a person, direct the person to give to the officer or another authorised officer information or records, or both, the authorised officer requires for an authorised purpose.
- (2) The notice must specify—
 - (a) the way the information or records must be given, and
 - (b) a reasonable time by which the information or records must be given.
- (3) The notice may only require a person to give existing records that—
 - (a) are in the person's possession, or
 - (b) are within the person's power to obtain lawfully.
- (4) The authorised officer to whom the record is given may take copies of the record.

- (5) If a record directed to be given under this Division is in electronic, mechanical or other form, the record must be given in written form, unless otherwise stated in the notice.
- (6) A person must not fail to comply with a direction of an authorised officer made under section.
- Maximum penalty—
- (a) if the direction relates to a class 2–9 building, or a building containing a class 2–9 part,
- (i) for a corporation—
 - (A) 10,000 penalty units, and
 - (B) for a continuing offence—1,000 penalty units for each day the offence continues, or
 - (ii) for an owners corporation, community land association or any other person—
 - (A) 2,000 penalty units, and
 - (B) for a continuing offence—200 penalty units for each day the offence continues, or
- (b) otherwise—
- (i) for a corporation—
 - (A) 3,000 penalty units, and
 - (B) for a continuing offence—300 penalty units for each day the offence continues, or
 - (ii) for an owners corporation, community land association or any other person—
 - (A) 600 penalty units, and
 - (B) for a continuing offence—60 penalty units for each day the offence continues.

29 Power of authorised officers to require answers [cf s 18 RAB]

- (1) This section applies if an authorised officer suspects on reasonable grounds that a person has knowledge of matters in relation to which information is reasonably required for an authorised purpose.
- (2) The authorised officer may direct the person to answer questions about the matters.
- (3) The authorised officer may, by written notice given to the person, direct the person to attend at a specified place and time to answer questions under this section if attendance at the place is reasonably required for the questions to be properly put and answered.
- (4) An authorised officer may, by written notice, direct a corporation to nominate, in writing within the time specified in the notice, a director or other officer of the corporation to be the representative of the corporation for the purpose of answering questions under this section.
- (5) Answers given by a person nominated under subsection (4) bind the corporation.
- (6) The place and time at which a person may be directed to attend must be a place and time that is reasonable in the circumstances.

30 Self-incriminating evidence—corporations

- (1) A corporation is not excused from giving relevant information on the ground that the information may incriminate the corporation or make the corporation liable to a penalty.
- (2) An individual acting as the representative of a corporation is not excused from giving relevant information on the ground that the information may—
 - (a) incriminate the corporation or make the corporation liable to a penalty, or
 - (b) incriminate the individual or make the individual liable to a penalty.
- (3) Relevant information given by a corporation or an individual acting as the representative of a corporation is admissible in evidence against the corporation in criminal proceedings.
- (4) Relevant information given by an individual acting as the representative of a corporation is admissible in evidence against the individual in criminal proceedings unless—
 - (a) the individual objected at the time to giving the relevant information on the ground that it might incriminate the individual, or
 - (b) the individual was not warned at the time that the individual may object to giving the relevant information on the ground that it might incriminate the individual.
- (5) In this section—
give relevant information means give information or records under section 28 or 29.

31 Provision relating to requirement to give records or information or answer questions

- (1) This section applies in relation to information given because of an information requirement about—
 - (a) the issue of a stop work order, or
 - (b) the issue of a building work rectification order in an emergency.
- (2) A person is not guilty of an offence of failing to comply with an information requirement unless the person was warned on that occasion that a failure to comply is an offence.
- (3) A person is not excused from an information requirement on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (4) However, information given by an individual in compliance with an information requirement is not admissible in evidence against the person in criminal proceedings, except proceedings for a relevant offence, if—
 - (a) the person objected at the time on the ground that the information, record or answer might incriminate the person, or
 - (b) the person was not warned that the person may object to giving the information or record or giving the answer on the ground that it might incriminate the person.
- (5) A record given by a person in compliance with an information requirement is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (6) Further information obtained as a result of a record or information given or of an answer given in compliance with an information requirement is not inadmissible on the ground—

- (a) that the record or information or answer had to be given, or
 - (b) that the record or information or answer given might incriminate the person.
- (7) In this section—
- information requirement** means a requirement to give records or information or to answer a question under section 28 or 29.
- relevant offence** means—
- (a) an offence under this Division, or
 - (b) an offence relating to giving false and misleading information or documents.

32 Recording of evidence [cf s 19 RAB]

- (1) An authorised officer may record questions and answers to questions given under this Division if the officer has informed the person questioned that the record is to be made.
- (2) A record may be made using—
 - (a) sound recording apparatus, or
 - (b) audio visual apparatus, or
 - (c) another method determined by the authorised officer.
- (3) A copy of the record must be provided by the authorised officer to the person who is questioned as soon as practicable after the record is made.
- (4) A record may be made under this section despite the provisions of another law.

33 Power to audit certain persons

The Secretary may conduct an audit of—

- (a) a person or body who is registered, licensed, or the holder of an authority under building enforcement legislation, or

Examples—

- 1 An accreditation authority under the *Building and Development Certifiers Act 2018*.
- 2 A professional body of engineers, recognised under the *Design and Building Practitioners Act 2020*.

- (b) a person or body prescribed by the regulations.

34 Investigation of councils acting as certifier [cf s 107 BDCA]

- (1) This section applies to the work and activity of a local council in the council's capacity as a certifier under the *Building and Development Certifiers Act 2018*.
- (2) The Secretary may investigate the work and activities of the local council.
- (3) The Secretary may make a decision to undertake an investigation under this section—
 - (a) on the Secretary's own motion, or
 - (b) following a complaint relating to the local council in the council's capacity as a certifier.
- (4) The Secretary must—
 - (a) prepare a report of the results of the investigation, and
 - (b) send a copy of the report to—
 - (i) the Secretary of the Department of Planning and Environment, and
 - (ii) the local council.

35 Process following report into council as certifier [cf s 107 BDCA]

- (1) A report given to the local council under section 34 must be presented at the next meeting of the local council after the report is received.
- (2) Within 40 days after the local receives the report, the local council—
 - (a) must give written notice to both the Secretary and the Secretary of the Department of Planning and Environment of the things done or proposed to be done to give effect to recommendations in the report, and
 - (b) may make submissions about a matter in the report to the Secretary.
- (3) The Secretary—
 - (a) must take into account submissions received under subsection (2), and
 - (b) may revise the report.
- (4) If the Secretary revises the report, the Secretary must send a copy of the revised report to—
 - (a) the Secretary of the Department of Planning and Environment, and
 - (b) the local council.
- (5) The Secretary must make a copy of the final report publicly available.
- (6) Nothing in this section or section 34 prevents the Secretary from taking disciplinary action against a registered certifier under Part 6 if the Secretary is satisfied, as a result of an investigation under this section, that there may be grounds for taking disciplinary action.

Division 4 Entry to premises

36 Power of authorised officers to enter premises [cf s 20 RAB]

- (1) An authorised officer may enter a premises—
 - (a) at a reasonable hour in the day, or
 - (b) at an hour during which business, including building work, is in progress or is usually carried on at the premises.
- (2) A power to enter premises conferred by this Act authorises entry by foot, vehicle, vessel or aircraft or by another means.
- (3) Entry to premises may be effected with or without the authority of a search warrant.
- (4) When exercising a power of entry under this Division, an authorised officer may be accompanied by assistants the authorised officer considers necessary.
- (5) An assistant may accompany an authorised officer and take all reasonable steps to assist the authorised officer in the exercise of the authorised officer's functions.

37 Entry into residential premises only with permission or warrant [cf s 21 RAB]

- (1) This Division does not empower an authorised officer to enter a part of premises used only for residential purposes without—
 - (a) the permission of the occupier, or
 - (b) the authority of a search warrant.
- (2) However, this section does not limit entry onto common property—
 - (a) under a strata scheme, or
 - (b) in an association property under a scheme.

- (3) In this section—
association property has the same meaning as in the *Community Land Management Act 2021*.

38 Search warrants [cf s 22 RAB]

- (1) An authorised officer under this Act may apply to an issuing officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that—
- (a) a requirement imposed under building enforcement legislation is being or has been contravened at a premises, or
 - (b) there is, in or on a premises, a matter or thing that is connected with an offence under building enforcement legislation, or
 - (c) the following conditions apply—
 - (i) a building product is being supplied in trade or commerce in or from the premises,
 - (ii) a safety risk exists in relation to an intended use of the product in a building, or
 - (d) a breach of the *Community Land Management Act 2021*, section 109(1)–(2) or the *Strata Schemes Management Act 2015*, section 106(1)–(2)—
 - (i) is being, or has been, contravened at premises, or
 - (ii) there is, in or on premises, a matter or thing that is connected with an offence under the provisions.
- (2) An issuing officer to whom an application is made may, if satisfied that there are reasonable grounds, issue a search warrant authorising an authorised officer named in the warrant—
- (a) to enter the premises, and
 - (b) to exercise a function of an authorised officer under this Part.
- (3) The *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 5, Division 4, applies to a search warrant issued under this section.
- (4) Without limiting the generality of the *Law Enforcement (Powers and Responsibilities) Act 2002*, section 71 a police officer—
- (a) may accompany an authorised officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer’s functions under this section.
- (5) In this section—
issuing officer means an authorised officer under the *Law Enforcement (Powers and Responsibilities) Act 2002*.

39 Provision of assistance to authorised officers [cf s 23 RAB]

- (1) An authorised officer may direct the owner or occupier of premises, or a person in or on premises other than a public place, to provide reasonable assistance the authorised officer specifies for the purposes of exercising the authorised officer’s functions under this Division for the premises.
- (2) The direction may be given—
- (a) orally to the person, or
 - (b) by written notice given to the person.

40 Powers that may be exercised on premises [cf s 24 RAB]

- (1) An authorised officer may, at premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for an authorised purpose, including the things specified in subsection (2).
- (2) An authorised officer may do the following—
 - (a) examine and inspect a thing,
 - (b) take and remove samples of a thing,
 - (c) make examinations, inquiries, measurements or tests that the authorised officer considers necessary,
 - (d) take photographs or other recordings that the authorised officer considers necessary,
 - (e) direct a person to produce records for inspection,
 - (f) examine and inspect records,
 - (g) copy records,
 - (h) seize a thing that the authorised officer has reasonable grounds to believe is connected with—
 - (i) an offence against building enforcement legislation,
 - (ii) investigating, monitoring or enforcing compliance with a duty under the *Community Land Management Act 2021*, section 109(1)–(4) or the *Strata Schemes Management Act 2015*, section 106(1)–(4), or
 - (iii) a serious defect in a building,
 - (i) move a seized thing from the place where it is seized or leave it at the place where it is seized and take reasonable action to restrict access to the thing,
 - (j) direct the occupier of the premises where a thing is seized to retain the thing—
 - (i) at the premises, or
 - (ii) at another place under the control of the occupier,
 - (k) open up, cut open or demolish building work, if the authorised officer has reasonable grounds to believe it is necessary because it is—
 - (i) connected with an offence against building enforcement legislation or a serious defect in a building, or
 - (ii) for the purposes of investigating, monitoring or enforcing compliance with a duty under the *Community Land Management Act 2021*, section 109(1)–(4) or the *Strata Schemes Management Act 2015*, section 106(1)–(4),
 - (l) anything else authorised under building enforcement legislation.
- (3) The power to examine and inspect a thing includes a power to use reasonable force to break open or otherwise access a thing, including a floor or wall containing the thing.
- (4) The power to test a thing includes a power to destructively test a thing or a sample of a thing, if that is a reasonable test in the circumstances.
- (5) The power to seize a thing connected with an offence includes a power to seize—
 - (a) a thing in relation to which the offence has been committed, and
 - (b) a thing that will afford evidence of the commission of the offence, and
 - (c) a thing that was used for the purpose of committing the offence.
- (6) The power to open up, cut open or demolish building work may be carried out by an appropriately qualified person at the direction of an authorised officer.

- (7) Subject to subsection (6), the power to do a thing under this section includes a power to arrange for that thing to be done, whether at the premises or elsewhere.
- (8) A power to do a thing under this section in relation to a thing may be exercised without the consent of the owner of the thing.
- (9) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds to believe has been committed.

41 Entry to premises for certain persons in relation to plumbing and drainage functions

- (1) A person delegated a plumbing and drainage function under section 23 may only enter premises with the consent of the occupier of the premises.
Note— A person who is delegated functions under section 23 is not an authorised officer.
- (2) To avoid doubt, this section does not limit an authorised officer exercising powers in relation to a plumbing and drainage function.

42 Inspections and investigations in relation to plumbing and drainage work [s 34 PDA]

- (1) An authorised plumbing and drainage inspector may do anything that in the opinion of the inspector is necessary to be done, including the following—
 - (a) open ground, remove flooring and take the measures necessary to ascertain the character and condition of the premises and of a pipe, sewer, drain or fitting,
 - (b) require the opening, cutting into or pulling down of work if the authorised plumbing and drainage inspector has reason to believe or suspect that anything on the premises has been done in contravention of the *Building Act 2022* or the regulations under that Act, in relation to plumbing and drainage work,
 - (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or marks,
 - (d) take samples or photographs in connection with an inspection,
 - (e) take into or onto the premises persons, equipment and materials the authorised plumbing and drainage inspector reasonably requires.
- (2) This section does not limit the powers of an authorised officer under this Division.
- (3) In this section—
authorised plumbing and drainage inspector means—
 - (a) an authorised officer exercising a plumbing and drainage function, and
 - (b) a person delegated a plumbing and drainage function under section 23.

Division 5 Miscellaneous

43 Dealing with seized things

- (1) An authorised officer who seizes a thing under this Part on premises must issue the person apparently in charge of the premises a written receipt for the thing seized.
- (2) An authorised officer may retain a thing seized under this Part until the completion of proceedings, including proceedings on appeal, in which the thing may be evidence.
- (3) A person aggrieved by the seizure of a thing under this Part may make an application to the court in which proceedings referred to in subsection (2) are commenced that the authorised officer may not retain the thing seized.
- (4) The court may, on the application of the aggrieved person, make an order that subsection (2) ceases to have effect in relation to the thing seized.

44 Power to destroy seized things

- (1) An authorised officer may destroy or dispose of a thing seized under section 43 after the completion of proceedings, including proceedings on appeal, in which the thing may be used in evidence.
- (2) If the authorised officer destroys or disposes of the thing—
 - (a) the authorised officer must immediately tell the person who owned the thing immediately before its seizure, and
 - (b) the thing becomes property of the State immediately after the authorised person exercises the power, and
 - (c) compensation is not recoverable against a person for the destruction or disposal of the thing.
- (3) However, subsection (2)(a) does not apply if—
 - (a) the authorised officer is not able to find the person after making reasonable inquiries, or
 - (b) it is impracticable or would be unreasonable to comply with that paragraph.
- (4) This section does not limit an authorised officer's power to destroy a thing occurring in the exercise of another power for an authorised purpose.

45 Seizure and forfeiture of building products

Nothing in this Part limits Part 7, Division 4, Subdivision 2 of the *Building Products (Safety) Act 2017*.

46 Taking possession of records to be used as evidence [cf s 25 RAB]

- (1) If an authorised officer takes possession of records under this Part for the purpose of obtaining evidence or protecting evidence from destruction, the records may be retained by the Secretary until the completion of proceedings, including proceedings on appeal, in which the records may be evidence.
- (2) The person from whom the records are taken must be provided, within a reasonable time after the records are taken, with a copy of the records certified by an authorised officer as a true copy.
- (3) A copy of records provided under this section is, as evidence, of equal validity to the records from which the certified copy was made.

47 Obstruction of authorised officers [cf s 26 RAB]

- (1) A person must not obstruct, hinder or interfere with an authorised officer in the exercise of the authorised officer's functions under this Part.
Maximum penalty—
 - (a) for a corporation—1,000 penalty units, or
 - (b) for an owners corporation, association or any other person—200 penalty units.
- (2) In this section—
association has the same meaning as in the *Community Land Management Act 2021*.
authorised officer includes a person delegated a plumbing and drainage function under section 23.

48 Failure to comply with direction [cf s 27 RAB]

A person must not, without reasonable excuse, fail to comply with a direction of an authorised officer.

Maximum penalty—

- (a) if the direction relates to a class 2–9 building, or a building containing a class 2–9 part,
 - (i) for a corporation—
 - (A) 10,000 penalty units, and
 - (B) for a continuing offence—1,000 penalty units for each day the offence continues, or
 - (ii) for an owners corporation, community land association or any other person—
 - (A) 2,000 penalty units, and
 - (B) for a continuing offence—200 penalty units for each day the offence continues, or
- (b) otherwise—
 - (i) for a corporation—
 - (A) 3,000 penalty units, and
 - (B) for a continuing offence—300 penalty units for each day the offence continues, or
 - (ii) for an owners corporation, community land association or any other person—
 - (A) 600 penalty units, and
 - (B) for a continuing offence—60 penalty units for each day the offence continues.

Division 6 Investigation cost notice

49 Definition

In this Division—

investigation cost notice—see section 50(2).

50 Investigation cost notices

- (1) This section applies if—
 - (a) an investigation is conducted under this Part, and
 - (b) the investigation reasonably requires the Secretary to incur exceptional costs and expenses to determine the existence or extent of a breach of this Act or the regulations, and
 - (c) as a result of the investigation, the Secretary is satisfied that a person has breached this Act or the regulations.
- (2) The Secretary may give the person a written notice (an *investigation cost notice*) requiring the person to pay some or all of the exceptional costs and expenses.
- (3) An investigation cost notice must specify—
 - (a) the basis on which the exceptional costs and expenses were incurred, and
 - (b) the amount required to be paid, and
 - (c) either—
 - (i) if the regulations prescribe a period to be allowed for payment—the period prescribed by the regulations, or
 - (ii) otherwise—a reasonable period within which the amount must be paid.

- (4) The Secretary may recover an unpaid amount specified in an investigation cost notice as a debt in a court of competent jurisdiction.
- (5) If a person to whom an investigation cost notice is given complies with the notice but was not the person responsible for the relevant breach of the Act or the regulations (the *responsible person*), the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the responsible person.
- (6) The regulations may make provision about the following—
 - (a) the giving of investigation cost notices,
 - (b) the form of investigation cost notices,
 - (c) maximum amounts that may be required to be paid under investigation cost notices,
 - (d) matters in relation to which amounts may or may not be required to be paid under investigation cost notices.
- (7) In this section—

exceptional costs and expenses means—

 - (a) for an investigation of a kind that is not regularly conducted—substantial costs or expenses incurred in the investigation, and
 - (b) for an investigation of a kind that is regularly conducted—substantial costs or expenses that would not ordinarily be incurred in an investigation of that kind, including—
 - (i) costs or expenses incurred by commissioning work from a third party, and
 - (ii) other costs or expenses specified by the regulations for this section.

51 Appeals against investigation cost notices

- (1) A person to whom an investigation cost notice is given may appeal against the notice to the Land and Environment Court within 30 days after the notice is given to the person unless the Land and Environment Court grants leave for the appeal to be made at a later time.
- (2) On hearing an appeal against an investigation cost notice, the Land and Environment Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order the Land and Environment Court considers appropriate in relation to the notice.
- (3) In deciding the appeal, the Court may consider the following—
 - (a) the nature and conduct of the investigation,
 - (b) the nature of the breach of this Act or the regulations determined to have occurred as a result of the investigation,
 - (c) the expenses to which the notice relates and the basis on which the expenses were incurred,
 - (d) another matter the Court consider relevant.

Part 4 Remedial actions

Division 1 Remedial actions for certain legislation

52 Definition

In this Part—

relevant building enforcement legislation means building enforcement legislation other than the *Building Products (Safety) Act 2017*.

53 Undertakings [cf s 28 of RAB]

- (1) The following persons or bodies may enter into an undertaking under this section—
 - (a) the holder of a licence under the *Building Act 2022*,
 - (b) a registered certifier under the *Building and Development Certifiers Act 2018*,
 - (c) a registered practitioner under the *Design and Building Practitioners Act 2020*.
 - (d) a developer,
 - (e) an owners corporation,
 - (f) an association.
- (2) The Secretary may accept a written undertaking from a person or body relating to the following—
 - (a) the carrying out of the following—
 - (i) building work,
 - (ii) specialist work,
 - (iii) professional engineering work,
 - (iv) certification work,
 - (b) the conduct of the person's or the body's business,
 - (c) the following under the *Design and Building Practitioners Act 2020*—
 - (i) the preparation of regulated designs,
 - (ii) carrying out building work or specialist work within the meaning of that Act,
 - (iii) providing compliance declarations.
- (3) Without limiting subsection (2), the Secretary may accept a written undertaking given by a person or body that the person or body will do 1 or more of the following—
 - (a) take action to prevent or remedy a contravention of relevant building enforcement legislation,
 - (b) take action to carry out maintenance and repair work in relation to a breach of a statutory duty under—
 - (i) the *Strata Schemes Management Act 2015*, section 106, or
 - (ii) the *Community Land Management Act 2021*, section 109,
 - (c) take action to resolve a building dispute,
 - (d) provide the Secretary with a rectification bond that the Secretary may claim or realise to meet the costs of eliminating, minimising or remediating a serious defect or a potential serious defect in a building.
- (4) If an undertaking requires a person to provide a rectification bond, the undertaking must include—

- (a) the circumstances in which the rectification bond may be claimed or realised, and
 - (b) the procedure for claiming or realising the rectification bond.
- (5) A person who contravenes an undertaking accepted by the Secretary commits an offence.
- Maximum penalty—
- (a) for corporation—1,500 penalty units, or
 - (b) for an individual—300 penalty units.
- Note**— See section 167 in relation to the imposition of multiple monetary penalties, including claiming or realising a rectification bond.
- (6) An offence against subsection (5) is an executive liability offence.
- (7) In this section—
- association** has the same meaning as in the *Community Land Management Act 2021*.
- building dispute** has the same meaning as in the *Building Act 2022*, Chapter 4.

54 Variation or withdrawal of undertaking

- (1) A person who entered into an undertaking may, with the written agreement of the Secretary—
- (a) vary the undertaking, or
 - (b) withdraw the undertaking.
- (2) The Secretary may—
- (a) vary an undertaking, with the written agreement of the person who entered into the undertaking, or
 - (b) withdraw the Secretary's acceptance of an undertaking, by written notice served on the person who entered into the undertaking.
- (3) The provisions of an undertaking may not be varied to provide for a different subject matter.
- (4) An undertaking ceases to have effect if—
- (a) the undertaking is withdrawn by the person who entered into the undertaking, or
 - (b) acceptance of the undertaking is withdrawn by the Secretary.
- (5) In this section—
- undertaking** means an undertaking under section 53.

55 Applying for orders to restrain or remedy contraventions [s 31 RAB]

- (1) The Secretary may apply to the Land and Environment Court for an order to remedy or restrain a breach of—
- (a) relevant building enforcement legislation, or
 - (b) the *Strata Schemes Management Act 2015*, section 106(1)–(4), or
 - (c) the *Community Land Management Act 2021*, section 109(1)–(4).
- (2) The application may be made whether or not proceedings have been instituted for an offence.
- (3) An order may be made without the Secretary being required to show a likelihood of damage.

- (4) The Land and Environment Court may grant an interim order pending determination of the application if, in the opinion of the Land and Environment Court, it is desirable to grant the order.
- (5) When the Secretary applies for the grant of an order under this section, the Land and Environment Court must not require the Secretary or another person, as a condition of granting an interim order, to give an undertaking as to damages.
- (6) If the Land and Environment Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Land and Environment Court, be committed, the Land and Environment Court may make the orders the Land and Environment Court thinks fit to remedy or restrain the breach.

56 Complaints and investigations of licence or registration holders [s 32 RAB]

- (1) The Secretary may, whether or not the Secretary has received a complaint, investigate the following—
 - (a) a current or former licence or registration holder under relevant building enforcement legislation,
 - (b) buildings or building products,
 - (c) the carrying out of work under building enforcement legislation,
 - (d) developers and former developers of buildings,
 - (e) a breach of a statutory duty under—
 - (i) the *Strata Schemes Management Act 2015*, section 106(1)–(4), or
 - (ii) the *Community Land Management Act 2021*, section 109(1)–(4), or
 - (f) another matter that may constitute a breach of relevant building enforcement legislation, or
 - (g) another person prescribed by the regulations.
- (2) The Secretary may require that a complaint made to the Secretary about a matter referred to in subsection (1) be in a form approved by the Secretary.
- (3) However, the Secretary is not required to investigate a matter.
- (4) This section does not limit other powers the Secretary may have under building enforcement legislation or another Act or law to receive a complaint or investigate a matter.

Division 2 Stop work orders

57 Application of Division

This Division applies to the following persons—

- (a) for building work carried out under relevant building enforcement legislation, other than the *Design and Building Practitioners Act 2020*—
 - (i) the owner of land on which building work is occurring, or
 - (ii) a person apparently engaged in the building work, or
 - (iii) a developer,
- (b) for building work or specialist work within the meaning of the *Design and Building Practitioners Act 2020*—
 - (i) a person carrying out the work,
 - (ii) the owner of the land on which the work is being carried out.

58 Stop work orders [cf s 29 RAB]

- (1) The Secretary may, by written order given to a person, order the person to ensure that the building work stops (a *stop work order*).
- (2) For a stop work order given to a person specified in section 57(a), the Secretary may only give the stop work order if the Secretary is of the opinion that the building work relating to the person is, or is likely to be, carried out in a way that could result in—
 - (a) significant harm or loss to the public, or
 - (b) significant harm or loss to occupiers or potential occupiers of the building to which the work relates, or
 - (c) significant damage to—
 - (i) property on the land, or
 - (ii) property on land adjoining the land on which building work is occurring, or
 - (d) significant harm or loss to occupiers of premises adjoining the land on which the building work is occurring.
- (3) For a stop work order given to a person specified in section 57(b), the Secretary may give a stop work order if the Secretary is of the opinion that—
 - (a) the work is being, or is likely to be, carried out in contravention of the *Design and Building Practitioners Act 2020*, and
 - (b) the contravention could result in—
 - (i) significant harm or loss to the public, or
 - (ii) significant harm or loss to occupiers or potential occupiers of the building to which the work relates, or
 - (iii) significant damage to property.
- (4) A person must not fail to comply with a stop work order.
Maximum penalty—
 - (a) for a corporation—
 - (i) 3,000 penalty units, and
 - (ii) for a continuing offence—300 penalty units for each day the offence continues, or
 - (b) otherwise—
 - (i) 600 penalty units, and
 - (ii) for a continuing offence—60 penalty units for each day the offence continues.
- (5) An offence against subsection (4) is an executive liability offence.

59 Conditions of stop work order

- (1) A stop work order may be—
 - (a) unconditional, or
 - (b) subject to conditions.
- (2) The Secretary may, by written notice given to the person subject to the stop work order—
 - (a) impose a condition on the order, or
 - (b) revoke or vary a condition of the order.

60 Duration of stop work order

- (1) A stop work order takes effect—
 - (a) on the day the order is given to the relevant person, or
 - (b) if a later date is specified in the order—on the day specified in the order.
- (2) A stop work order remains in force until one of the following occurs—
 - (a) the order is revoked by the Secretary,
 - (b) if a term for the order to end is specified—the term of the order ends,
 - (c) the period of 12 months from the day on which the order takes effect ends.

61 Notice of stop work order

- (1) The Secretary must give the following persons notice of the making of a stop work order—
 - (a) the local council for the area where the building work is occurring,
 - (b) if the local council is not the certifier in relation to the building work—the principal certifier.
- (2) The Secretary is not required to give notice to a person if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person.

62 Appeals against stop work orders [s 30 RAB]

- (1) A person given a stop work order under this Division may appeal against the order to the Land and Environment Court within 30 days of the notice of the order being given, unless the Land and Environment Court grants leave for an appeal to be made after that time.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the order appealed against.

Division 3 Building product undertakings [Part 5 BPSA]

63 Definition

In this Division—

building product undertaking—see section 64(1).

64 Secretary may accept undertakings

- (1) The Secretary may accept a written undertaking (a *building product undertaking*) given by a person if the person has contravened, or the Secretary suspects that the person has contravened or is likely to contravene, a requirement imposed under this Act that relates to the *Building Products (Safety) Act 2017*.
- (2) The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking.

65 When building product undertaking takes effect

A building product undertaking takes effect and becomes enforceable—

- (a) when notice of the Secretary's decision to accept the undertaking is given to the person who made the undertaking, or
- (b) on a date, later than the date the notice is given, specified by the Secretary.

66 Contravention of building product undertaking

- (1) A person must not contravene a building product undertaking given by the person that is in effect.

Maximum penalty—

- (a) for a corporation—
- (i) 10,000 penalty units, and
 - (ii) for a continuing offence—1,000 penalty units for each day the offence continues, or
- (b) otherwise—
- (i) 2,000 penalty units, and
 - (ii) for a continuing offence—400 penalty units for each day the offence continues.
- (2) An offence against subsection (1) is an executive liability offence.

67 Order requiring compliance with building product undertaking

- (1) The Secretary may apply to the Supreme Court for an order if a person contravenes a building product undertaking.
- (2) If the Supreme Court is satisfied that the person who gave the building product undertaking has contravened the undertaking, the Supreme Court may make 1 or both of the following orders—
- (a) an order directing the person to comply with the undertaking,
 - (b) an order discharging or varying the undertaking.
- (3) In addition to the orders referred to in subsection (2), the Supreme Court may make any other order the Supreme Court considers appropriate in the circumstances, including orders directing the person to pay to the State—
- (a) the costs of the proceedings, and
 - (b) the reasonable costs of the Secretary in monitoring compliance with the building product undertaking in the future.
- (4) Nothing in this section affects the liability for an offence of a person who contravenes a building product undertaking.

68 Variation or withdrawal of building product undertaking

- (1) A person who gives a building product undertaking may, with the written agreement of the Secretary—
- (a) vary the undertaking, or
 - (b) withdraw the undertaking.
- (2) The Secretary may—
- (a) vary a building product undertaking, with the written agreement of the person who gave the undertaking, or
 - (b) withdraw the Secretary's acceptance of a building product undertaking, by written notice served on the person who gave the undertaking.
- (3) The provisions of a building product undertaking may not be varied to provide for a different alleged contravention.
- (4) A building product undertaking ceases to have effect if—
- (a) the undertaking is withdrawn by the person who gave the undertaking in accordance with this section, or

- (b) acceptance of the undertaking is withdrawn by the Secretary.

69 Proceedings for alleged contravention

- (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act or the *Building Products (Safety) Act 2017* may be brought against a person if a building product undertaking is in effect in relation to the contravention.
- (2) No proceedings may be brought for a contravention or alleged contravention of this Act or the *Building Products (Safety) Act 2017* against a person who has—
 - (a) given a building product undertaking in relation to the contravention, and
 - (b) completely discharged the building product undertaking.
- (3) The Secretary may accept a building product undertaking in relation to a contravention or alleged contravention before proceedings in relation to the contravention have been finalised.
- (4) If the Secretary accepts a building product undertaking before the proceedings are finalised, the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.

70 Register of undertakings

- (1) The Secretary must maintain a register that includes the following in relation to each building product undertaking accepted under this Part—
 - (a) a copy of the undertaking,
 - (b) a copy of each variation of the undertaking,
 - (c) the name and address of the person who gave the undertaking,
 - (d) the date of the undertaking.
- (2) The register must be amended to remove information relating to undertakings that have been withdrawn.
- (3) The register must be made available, free of charge, on a NSW Government website.

Division 4 Compliance notices

71 Persons who may be given compliance notice

- (1) A compliance notice may be given to a person who is—
 - (a) a developer, or
 - (b) apparently engaged in the work to which the notice applies, or
 - (c) responsible for the building or work, or
 - (d) an owners corporation or association.
- (2) In this section—
association has the same meaning as in the *Community Land Management Act 2021*.

72 Authorised officer may give compliance notice

- (1) An authorised officer may give a person a compliance notice if—
 - (a) a dispute has been raised with the Secretary—
 - (i) about work that is, or is required to be, the subject of a contract under the *Building Act 2022*, and
 - (ii) the dispute is about the work being incomplete, defective or causing damage to a building or structure, or

- (b) the authorised officer reasonably believes that the person has—
 - (i) contravened building enforcement legislation and the contravention relates to building work or specialist work, or
 - (ii) breached the *Strata Schemes Management Act 2015*, section 106(1)–(4) or the *Community Land Management Act 2021*, section 109(1)–(4).
- (2) For the purposes of subclause (1)(b), a contravention that relates to the carrying out of building work includes non-compliance with the following—
 - (a) the approved plans for the building work,
 - (b) the National Construction Code,
 - (c) the building work standards prescribed under building enforcement legislation,
 - (d) standards or methodologies required to be complied with relevant to regulated work under the *Building Act 2022*,
 - (e) another matter prescribed by the regulations.
- (3) A compliance notice may only be issued in relation to work that was completed within the period of 3 years from when the Secretary became aware of the contravention or dispute.
- (4) A compliance notice must not be issued in relation to work for which a building work rectification order may be issued.
- (5) In this section—
regulated work has the same meaning as in the *Building Act 2022*, Chapter 2.

73 Elements of compliance notice

- (1) A compliance notice must state the reasons for the giving of the notice.
- (2) The compliance notice may do the following—
 - (a) require a person to take action, specified in the notice, to remedy the contravention or breach,
 - (b) describe the standard of work required to remedy the contravention,
 - (c) require work to be carried out by an appropriately qualified or licensed professional,
 - (d) require that a person make good a building or work that has been damaged as a result of the person carrying out building work,
 - (e) require the provision of documentary evidence to demonstrate compliance with the notice.
- (3) If the compliance notice has been given in relation to a dispute, the compliance notice may specify conditions about the payment of money due under a contract for the work to be complied with by the party who raised the dispute, before the requirements of the notice are complied with.
- (4) The compliance notice may specify the period in which a person must comply with the notice, including multiple periods to allow for different stages for compliance.

74 Amendment and revocation of compliance notice

- (1) An authorised officer may amend a compliance notice if the person given the notice agrees to the amendment.
- (2) An authorised officer may revoke a compliance notice.

75 Revocation of compliance notice

- (1) A compliance notice is revoked if—
 - (a) the notice has been complied with, or
 - (b) the matter becomes the subject of a building claim.
- (2) An authorised officer must provide a written notice to the person given a compliance notice confirming the revocation of the compliance notice when the notice has been complied with.
- (3) Failure of an authorised officer to provide the written notice does not affect the revocation of the notice.

76 Offence for failure to comply with compliance notice

A person given a compliance notice must not fail to comply with the notice.

Maximum penalty—

- (a) for a corporation—
 - (i) 1,000 penalty units, and
 - (ii) 100 penalty units for each day the offence continues, or
- (b) for an owners corporation, community land association or another person—
 - (i) 200 penalty units, and
 - (ii) 20 penalty units for each day the offence continues.

77 Regulations

The regulations may make provisions about the following—

- (a) information that must be included a compliance notice,
- (b) the procedures for giving a compliance notice.

Division 5 Plumbing and drainage work direction [PDA s 14]

78 Definitions

In this Division—

authorised person includes a person delegated a function under section 23.

certificate of compliance means a certificate of compliance required to be given under the *Building Act 2022*.

plumbing and drainage work direction means a direction given under section 80.

responsible person—see section 79.

79 Meaning of “responsible person” for Division

For this Division, a **responsible person** for plumbing and drainage work the subject of a certificate of compliance is a person who—

- (a) holds a licence under the *Building Act 2022* authorising the person to do specialist work that is plumbing and drainage work, and
- (b) gives the Secretary the certificate of compliance in relation to the plumbing and drainage work that the person is authorised to do or to supervise, in accordance with the *Building Act 2022*.

80 Defective or uninspected plumbing and drainage work

- (1) An authorised person may, by written notice given to a responsible person, direct the responsible person to do any of the following in relation to plumbing and drainage work—
 - (a) to repair, as specified by the authorised person, work done otherwise than in a proper and skilful way, or
 - (b) if the work does not comply with standards or methodologies required to be complied under the *Building Act 2022*—comply with the *Plumbing Code of Australia*, or
 - (c) to repair, as specified by authorised person, a defective fitting used in work done, or
 - (d) if a fitting used in the work is not an authorised fitting—to replace the fitting with an authorised fitting, or
 - (e) if the Secretary considers, on reasonable grounds, that there is a risk to public health—
 - (i) to disconnect the supply of water to premises, or part of premises, or
 - (ii) to disconnect a sanitary plumbing system or sanitary drainage system from a sewer, or
 - (f) to uncover all or part of the work to allow the Secretary to inspect the work if—
 - (i) the responsible person failed to notify the Secretary when the work was ready for inspection in accordance with the *Building Act 2022*, section 210, or
 - (ii) the work was not accessible and ready to be inspected during the inspection period referred to in that section, or
 - (g) if the responsible person has failed to comply with the *Building Act 2022*, section 206, 211 or 212—to give to the Secretary notice or another document required to be given under the section, or
 - (h) to disconnect plumbing or drainage installed by the responsible person that is connected to other plumbing and drainage work that has been previously installed in contravention of—
 - (i) the *Building Act 2022*, or
 - (ii) for work completed before the commencement of this Act—the *Plumbing and Drainage Act 2011*, or
 - (i) if the responsible person has failed to comply with the *Building Act 2022*, section 210(5)(b)—to re-notify the Secretary when the work will be ready for inspection.
- (2) To avoid doubt, a single written notice may contain more than 1 direction under this section.
- (3) The *Building Act 2022*, section 210(2)–(6) applies to a re-notification in accordance with a direction under subsection (1)(i) in the same way as those provisions apply to a notification under the *Building Act 2022*, section 210(1).
- (4) In this section—

authorised fitting has the same meaning as in the *Building Act 2022*, section 214.

sanitary drainage system has the same meaning as in the *Building Act 2022*, section 11.

sanitary plumbing system has the same meaning as in the *Building Act 2022*, section 11.

81 Offence for non-compliance with plumbing and drainage direction

- (1) A responsible person given a plumbing and drainage direction must comply with the direction within the period specified in the written notice, unless the responsible person has a reasonable excuse.
Maximum penalty—
 - (a) for a corporation—
 - (i) 1,000 penalty units, and
 - (ii) 100 penalty units each day the offence continues, or
 - (b) otherwise—
 - (i) 200 penalty units, and
 - (ii) 20 penalty units for each day the offence continues.
- (2) It is a defence to a prosecution under subsection (1) in relation to a direction under section 80(1)(f) if the responsible person establishes that the responsible person took all reasonable steps to ensure the plumbing and drainage work, or the part of the plumbing and drainage work, was uncovered in accordance with the direction.

82 Offence for continuing work before complying with plumbing and drainage direction

If a direction is given to a responsible person before a certificate of compliance is given for the plumbing and drainage work, the responsible person must comply with the direction before continuing the work.

Maximum penalty—100 penalty units.

83 Effect of plumbing and drainage direction

- (1) A plumbing and drainage direction ceases to have effect if the plumbing and drainage work the subject of the direction is the subject of an order made by the Civil and Administrative Tribunal under the *Building Act 2022*.
- (2) A direction is of no effect if the direction is issued more than 3 years after the plumbing and drainage work to which it relates has been completed.
- (3) For the purposes of subsection (2), plumbing and drainage work is completed by a responsible person when the responsible person—
 - (a) completes, in accordance with the *Building Act 2022*, the whole of the plumbing and drainage work that the person was engaged to carry out, and
 - (b) gives notice under the *Building Act 2022*, section 210(1), and
 - (c) the period during which the plumbing and drainage work must be available for inspection by the Secretary has ended.

84 Revocation of plumbing and drainage direction

If a plumbing and drainage direction requires the carrying out of plumbing and drainage work, the direction is revoked when a certificate of compliance is provided for specialist work that is plumbing and drainage work.

85 Relationship to other remedial action

To avoid doubt, a plumbing and drainage direction does not prevent an authorised officer from taking other action, including giving a compliance notice or a building work rectification order in relation to plumbing and drainage work.

Part 5 Rectification of serious defects and resolving disputes

Division 1 Preliminary

86 Definitions

In this Part—

compliance cost notice—see section 106(1).

responsible person, in relation to building work, means—

- (a) the developer for the building work,
- (b) another person responsible for the building work.

Division 2 Building work rectification orders

87 Power to order rectification [cf s 33 and 34 of RAB Act]

- (1) The Secretary may, by written notice given to a responsible person, make an order (a *building work rectification order*) if the Secretary has a reasonable belief that—
 - (a) the building work is or was carried out in a way that could result in a serious defect, or
 - (b) the building has a serious defect.
- (2) The building work rectification order must provide that the responsible person do either or both of the following, as specified in the order, to eliminate, minimise or remediate the serious defect or potential serious defect—
 - (a) carry out building work or refrain from carrying out building work, or
 - (b) ensure building work is carried out or refrained from being carried out.
- (3) A building work rectification order is taken to meet the requirement under subsection (2) if the order—
 - (a) specifies the standard that the building work is required to meet, or
 - (b) indicates the nature of the building work that, if carried out, would satisfy the standard.
- (4) If the building work rectification order specifies the standard to be met under subsection (3), the order may require the responsible person to—
 - (a) submit particulars of the work the person intends to carry out to meet the standard, or
 - (b) require the person to engage a suitably qualified person or specialist to prepare a report on how the standard will be met.
- (5) A person is not required to obtain consent or approval under the *Building Act 2022* or the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a building work rectification order.
- (6) A person must not fail to comply with an order in force under this section.
Maximum penalty—
 - (a) for a corporation—
 - (i) 3,000 penalty units, and
 - (ii) for a continuing offence—300 penalty units for each day the offence continues, or,
 - (b) for an individual—
 - (i) 600 penalty units, and

- (ii) for a continuing offence—60 penalty units for each day the offence continues.

- (7) An offence against subsection (6) is an executive liability offence.

88 Requirement for consent of Minister

A building work rectification order may not be given in relation to the following land, unless the Minister's written consent has first been obtained—

- (a) vacant Crown land under the *Crown Land Management Act 2016*,
- (b) Crown managed land under the *Crown Land Management Act 2016*.

89 Administration of building work rectification orders

- (1) A building work rectification order may be—
 - (a) unconditional, or
 - (b) subject to conditions, including a condition requiring notification to the Secretary of compliance with the order.
- (2) The Secretary may, by written notice given to a responsible person the subject to a building work rectification order—
 - (a) impose a condition on the order, or
 - (b) modify the order, including a modification of the period specified for compliance with the order, or
 - (c) revoke or vary a condition of the order.
- (3) A building work rectification order remains in force until the order is revoked by the Secretary.

90 Giving and taking effect of orders [cf s 35 of RAB Act]

- (1) A building work rectification order—
 - (a) is given by serving a copy of the order on the responsible person the subject of the order, and
 - (b) takes effect from—
 - (i) the time of service, or
 - (ii) if a later time is specified in the order—the later time specified in the order.
- (2) The copy of the building work rectification order must be accompanied by a notice stating—
 - (a) that the responsible person the subject of the order may appeal to the Land and Environment Court against the order, and
 - (b) the period within which an appeal may be made.

Note— Under section 103(2), an appeal must be made within 30 days after the building work rectification order is given to the developer unless the Land and Environment Court grants leave for it to be made after that time.

91 Reasons for orders to be given [cf s 36 of RAB Act]

- (1) The Secretary must give the responsible person the subject of the building work rectification order the reasons for the order.
- (2) The reasons may be given—
 - (a) in the building work rectification order, or
 - (b) in a separate document.

- (3) The reasons must be given—
 - (a) when the building work rectification order is given, or
 - (b) if the order is declared an emergency order—within 7 days of giving the order.

92 Notice to be given to other persons and bodies of order [cf s 37 of RAB Act]

- (1) The Secretary must give the following persons notice of the making of a building work rectification order—
 - (a) the local council for the area where the building work is occurring,
 - (b) if the local council is not the certifier in relation to the building work—the principal certifier,
 - (c) if the owner of the land in relation to the order is not the person to whom the proposed order must be directed—the owner of the land,
 - (d) the Registrar-General,
 - (e) if the order relates to a strata building—the owners corporation for the building,
 - (f) another person prescribed by the regulations.
- (2) If an owners corporation is given notice under subsection (1), the owners corporation must give written notice to the owners of lots in the strata scheme of the receipt of the notice within 14 days after receiving the notice.
Maximum penalty—5 penalty units.
- (3) The Secretary is not required to give notice to a person under subsection (1) if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person.

93 Period for compliance with order [cf s 39 of RAB Act]

- (1) A building work rectification order must specify a reasonable period within which the order must be complied with.
- (2) However, a building work rectification order may require immediate compliance —
 - (a) in circumstances which the Secretary believes constitutes a serious risk to health or safety, or
 - (b) if the Secretary declares the order is an emergency order.

94 Continuing effect of orders [cf s 40 of RAB Act]

- (1) A building work rectification order that specifies a time by which, or period within which, the order must be complied with continues to have effect until the order is complied with even though the time has passed or the period has expired.
- (2) This section does not apply to the extent that a requirement under a building work rectification order is revoked.

95 Occupier of land may be required to permit developer to carry out work [cf s 41 of RAB Act]

- (1) If the Secretary makes a building work rectification order, the Secretary may order the occupier on the land to which the order relates to permit the responsible person to carry out specified work on the land, being work that is, in the Secretary's opinion, necessary to enable compliance with requirements under—
 - (a) building enforcement legislation, or
 - (b) the building work rectification order.

- (2) An order applying to the occupier of land under subsection (1) must be served on the occupier.
- (3) The occupier of land must, within 28 days after the order is served, permit the responsible person to carry out the work specified in the order.
- (4) The occupier of land must not, without reasonable excuse, refuse or fail to comply with an order under this section.
Maximum penalty—
 - (a) for a corporation—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (5) The responsible person is not guilty of an offence arising from a failure to comply with the requirements of building enforcement legislation or a building work rectification order if the occupier of the land refused to permit the responsible person to carry out the work specified in the order.
- (6) Subsection (5) applies only if the responsible person satisfies the Land and Environment Court that the responsible person has, in good faith, tried to comply with the requirements.
- (7) In this section—
occupier, of land, means the person who has the management or control of the land.

96 Failure to comply with order—carrying out of work by Secretary [cf s 42 of RAB Act]

- (1) If a responsible person the subject of a building work rectification order fails to comply with the terms of the order, the Secretary may do anything that is necessary or convenient to give effect to the order, including carrying out work required by the order.
- (2) If the Secretary gives effect to a building work rectification order by demolishing a building, the Secretary may remove materials relating to the demolition.
- (3) The materials removed are forfeited to the Secretary and may be sold, destroyed or otherwise disposed of as the Secretary sees fit.
- (4) Expenses incurred under this section by the Secretary, and all associated costs, may be recovered by the Secretary in a court of competent jurisdiction as a debt due to the Secretary by the responsible person.
- (5) The expenses must be reduced by the amount of proceeds from a sale under this section.
- (6) Nothing in this section affects an owner's right to recover an amount from a lessee or other person liable for the expenses.
- (7) The recovery of costs and expenses by the Secretary under this section does not include the costs and expenses of court proceedings.
- (8) Nothing in this section prevents the Secretary from receiving costs as between party and party in relation to the proceedings.

97 Use of building work rectification orders in proceedings [cf s 43 of RAB Act]

- (1) A building work rectification order brought to the attention of the following courts or tribunals in proceedings must be considered—
 - (a) the Civil and Administrative Tribunal for the purposes of determining a building claim under the *Building Act 2022*, Chapter 4, Part 1,
 - (b) any other court in proceedings relating to the building work the subject of the order.

- (2) Nothing in this section binds the court or tribunal.

98 Declaration of emergency for building work rectification order

- (1) Without limiting section 87, if the Secretary declares that the building work rectification order is an emergency order, Division 3 does not apply for the order.
- (2) The Secretary may only declare an order is an emergency order if there is a risk to the public, health and safety of persons or property and, because of the risk, urgent action is required.

Division 3 Natural justice requirements

99 Notice to be given of proposed order to person who will be subject to order [cf s 44 of RAB Act]

- (1) Before making a building work rectification order, the Secretary must give notice to the responsible person to whom the proposed order is directed of the following—
- (a) the intention to make the order,
 - (b) the terms of the proposed order,
 - (c) the period proposed to be specified for compliance with the order,
 - (d) that the person to whom the order is proposed to be given may make written representations to the Secretary about—
 - (i) the reasons the order should not be given, or
 - (ii) the terms of the order, or
 - (iii) the period for compliance with the order.
- (2) Subsection (1)(d) does not limit the matters about which the person may make written representations.
- (3) The notice may provide that the written representations are to be made to the Secretary on or before a nominated date, being a date that is reasonable in the circumstances.

100 Notice to be given to other persons and bodies of proposed order [cf s 45 and 46 of RAB]

- (1) The Secretary must give the following persons notice of the Secretary's intention to make a building work rectification order—
- (a) the local council for the area where the building work is occurring,
 - (b) if the local council is not the certifier in relation to the building work—the principal certifier,
 - (c) if the owner of the land the subject of the proposed order is not the responsible person to whom the proposed order is to be directed—the owner of the land,
 - (d) if the order relates to a strata building—the owners corporation for the building,
 - (e) another person prescribed by the regulations.
- (2) If an owners corporation is given notice of the Secretary's intention to make a building work rectification order under subsection (1), the owners corporation must give written notice to the owners of lots in the strata scheme of the receipt of the notice within 14 days after receiving the notice.
- Maximum penalty—5 penalty units.

- (3) The Secretary is not required to give notice to a person under subsection (1) if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person.
- (4) A person who is given notice under this section may make written representations about the proposed order in accordance with the notice.

101 Consideration of representations [cf s 47 of RAB]

The Secretary is required to consider a written representations made under this Division.

102 Procedure after consideration of written representations [cf s 48 of RAB]

- (1) After considering written representations made about the proposed building work rectification order, the Secretary may decide—
 - (a) to make an order in accordance with the proposed order, or
 - (b) to make an order in accordance with modifications made to the proposed order, or
 - (c) not to make an order.
- (2) If the Secretary decides to make a building work rectification order in accordance with modifications made to the proposed order, the Secretary is not required to give notice under this Division of the proposed order as modified.

Division 4 Appeals

103 Appeals in relation to orders [cf s 49 of RAB]

- (1) A responsible person the subject of a building work rectification order may appeal to the Land and Environment Court against the order.
- (2) The appeal must be made within 30 days after the building work rectification order is given to the responsible person unless the Land and Environment Court grants leave to appeal after that time.
- (3) On hearing an appeal, the Land and Environment Court may—
 - (a) revoke the building work rectification order, or
 - (b) modify the building work rectification order, or
 - (c) substitute the building work rectification order with another order that the Secretary could have given, or
 - (d) find that the building work rectification order is sufficiently complied with, or
 - (e) make an order about compliance with the building work rectification order the Land and Environment Court thinks fit, or
 - (f) make another order about the building work rectification order the Land and Environment Court thinks fit.

104 Effect of appeal on order [cf s 50 of RAB]

If an appeal is duly made to the Land and Environment Court against a building work rectification order, the appeal does not effect a stay of the order.

Division 5 Compliance cost notices

105 Circumstances for giving compliance cost notice

If the Secretary makes a building work rectification order, the Secretary may, at the time the order is given to the responsible person the subject of the order or, at a later date, serve a compliance cost notice on the responsible person.

106 Issue of compliance cost notices [cf s 51 of RAB]

- (1) A *compliance cost notice* is a written notice requiring a responsible person the subject of a building work rectification order to pay all or any reasonable costs and expenses incurred by the Secretary, including remuneration and other staff expenses, in connection with—
 - (a) monitoring action under the building work rectification order, and
 - (b) ensuring that the building work rectification order is complied with, and
 - (c) the investigation that lead to the giving of the building work rectification order, including specialist advice required to determine—
 - (i) whether the order was required, and
 - (ii) the contents of the order, and
 - (d) the preparation of the building work rectification order, and
 - (e) other matters associated with the building work rectification order.
- (2) A compliance cost notice must specify the amount required to be paid and either—
 - (a) a reasonable period within which the amount must be paid, or
 - (b) if the regulations prescribe the period to be allowed for payment—the period prescribed by the regulations.
- (3) The Secretary may recover unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (4) If the responsible person complies with the notice but was not the person responsible for the situation giving rise to the issue of the notice, the responsible person may recover the cost of complying with the notice as a debt in a court of competent jurisdiction from the person responsible for the situation giving rise to the issue of the notice.
- (5) The regulations may make provision about the following—
 - (a) the issue of compliance cost notices,
 - (b) the form of compliance cost notices,
 - (c) limiting the amounts that may be required to be paid under a compliance cost notice or the matters for which costs and expenses may be required to be paid under a notice.

107 Appeals concerning compliance cost notices [cf s 52 of RAB]

- (1) A person served a compliance cost notice under this Division may appeal against the notice to the Land and Environment Court within 30 days after the notice is served on the person unless the Land and Environment Court grants leave to appeal after that time.
- (2) If an appeal is lodged against a building work rectification order in relation to which a compliance cost notice has been issued—
 - (a) an appeal may be lodged against the compliance cost notice in the same way as, and at the same time as, the appeal against the building work rectification order, and

- (b) the Land and Environment Court may deal with the appeal against the compliance cost notice at the same time the Land and Environment Court deals with the appeal against the building work rectification order.
- (3) On hearing an appeal against a compliance cost notice, the Land and Environment Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order about the notice that the Land and Environment Court thinks fit.

Division 6 Miscellaneous

108 Combined orders [cf s 53 RAB]

The Secretary may include 2 or more building work rectification orders in the same instrument.

109 Orders may be given to 2 or more persons [cf s 54 RAB]

If appropriate in the circumstances, a building work rectification order may direct 2 or more people—

- (a) to do a thing specified in the order jointly, or
- (b) to both or all refrain from doing a thing specified in the order.

110 Notice in respect of building work caused to be carried out by more than 1 responsible person [cf s 55 RAB]

- (1) If there are 2 or more responsible persons in relation to building work—
 - (a) a building work rectification order is not invalid merely because it was not given to all of the responsible persons, and
 - (b) any of the responsible persons may comply with a building work rectification order without affecting the liability of the other responsible persons to pay for or contribute towards the cost of complying with the order.
- (2) Nothing in this Division affects the right of a responsible person to recover from another responsible person all or any of the expenses incurred by the responsible person in complying with a building work rectification order.

Part 6 Disciplinary action

Division 1 Preliminary

111 Definitions

In this Part—

intentional phoenix activity—see section 113.

relevant building enforcement legislation means the following Acts and the regulations and other instruments made under the Acts—

- (a) this Act,
- (b) the *Building Act 2022*,
- (c) the *Building and Development Certifiers Act 2018*,
- (d) the *Design and Building Practitioners Act 2020*,
- (e) the *Gas and Electricity (Consumer Safety) Act 2017*.

show cause notice means a notice given under section 121.

112 Application of Part to former licence holders and others [cf s 50 HBA]

- (1) In this Part, a reference—
 - (a) to a relevant licence holder includes a reference to an individual, or a partnership or corporation, who or that ceased to be a relevant licence holder within the relevant period, and
 - (b) to a member of a partnership includes a reference to an individual or a corporation who or which ceased to be a member within the relevant period, and
 - (c) to an officer of a corporation includes a reference to an individual who ceased to be an officer within the relevant period.
- (2) In this section, a reference to a relevant licence holder includes a person who held an instrument—
 - (a) granted or issued under—
 - (i) the *Builders Licensing Act 1971*, or
 - (ii) the *Building Professionals Act 2005*, or
 - (iii) the *Plumbers, Gasfitters and Drainers Act 1979*, or
 - (iv) the *Electricity Act 1945*, and
 - (b) declared by the regulations as equivalent to a licence, registration or other authority to which this section applies.
- (3) A reference in this Part to a relevant licence holder extends to the following persons—
 - (a) nominated directors of a corporation that is a relevant licence holder,
 - (b) an individual involved in the management of a corporation that is a relevant licence holder,
 - (c) a person who is in a position to influence the corporation that is a relevant licence holder, in relation to the commission of a corporate offence.
- (4) In this section—

relevant period means the period of 5 years before a complaint is made under this Part.

113 Meaning of “intentional phoenix activity”

- (1) In this Act, a person is involved in *intentional phoenix activity* if the person is a director of a body corporate (the *first body corporate*) and is directly or indirectly involved in—
 - (a) liquidating or otherwise dealing with the first body corporate with the intention of avoiding the payment of debts of the first body corporate, including taxes, employee entitlements and amounts due to creditors, and
 - (b) establishing the registration, control or management of another body corporate (the *second body corporate*) with the intention that the second body corporate will—
 - (i) continue business activities similar to the business activities of the first body corporate and using assets of the first body corporate, and
 - (ii) be under the control or management of persons who are, or are close associates of, persons who had control or management of the first body corporate before the liquidation or other dealing mentioned in paragraph (a).
- (2) In this section—
close associate has the same meaning as in the *Building Act 2022*.

114 Duty to take reasonable steps to avoid business association

- (1) A relevant licence holder must take reasonable steps to ensure that persons with whom the holder enters or maintains a business association are not, or have not been, involved in intentional phoenix activity in an industry relating to building or construction.
- (2) In this section—
business association includes the following—
 - (a) a contract, arrangement or understanding entered into in a relevant licence holder’s capacity as the holder of a particular licence,
 - (b) a relationship mentioned in the *Building Act 2022*, section 6(1)(a), (b) or (f).

Division 2 Grounds for disciplinary action

115 Grounds for taking disciplinary action—general

- (1) The Secretary may take disciplinary action under this Part against a relevant licence holder on the following grounds—
 - (a) the holder is not a fit and proper person to hold the licence,
 - (b) the holder has failed to comply with a condition of the licence,
 - (c) the holder has failed to comply with a notice, direction or other order under building enforcement legislation,
 - (d) the holder has failed to comply with an order of a court or the Civil and Administrative Tribunal,
 - (e) the Secretary has become aware of information about the holder that, if known at the time the application for the licence was determined, would have been grounds for refusing the application,
 - (f) the holder has committed an offence against relevant building enforcement legislation or the *Crimes Act 1900*, section 307A or 307B, whether or not an information has been laid for the offence,
 - (g) the holder has contravened an undertaking accepted by the Secretary under Part 4,

- (h) the holder is guilty of improper conduct, relevant to the holder's licence,
 - (i) the holder has failed to take the reasonable steps required under section 114(1),
 - (j) the holder has contravened a provision of building enforcement legislation, whether or not the holder is prosecuted or convicted for the contravention,
 - (k) the holder has engaged in conduct in relation to the licence that has fallen short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent person holding a licence held by the holder,
 - (l) the holder has contravened a law of this or another Australian jurisdiction, whether or not the contravention is an offence and whether or not the holder prosecuted or convicted for the contravention, about any of the following—
 - (i) the work authorised to be carried out under the licence or under an equivalent licence,
 - (ii) registration or an equivalent authorisation,
 - (iii) fraud or dishonesty,
 - (m) the holder has contravened a requirement imposed by or under the *Building Products (Safety) Act 2017*, whether or not the holder is convicted of an offence for the contravention,
 - (n) the holder has been convicted of an offence under—
 - (i) the *Workers Compensation Act 1987*, or
 - (ii) the *Workplace Injury Management and Workers Compensation Act 1998*,
 - (o) the holder has wilfully misled or obstructed the Secretary or an authorised officer in the exercise of a function under this Act,
 - (p) another ground prescribed by the regulations, for a licence holder or a class of licence holders under building enforcement legislation.
- (2) For this section, improper conduct means conduct prescribed by the regulations to be improper.
- (3) Despite the generality of this section, improper conduct prescribed by the regulations may apply generally or by reference to specified classes of licence or conduct, the type of person that holds the licence, or other factors.

116 Grounds for taking disciplinary action—partnerships and corporations

- (1) The Secretary may take disciplinary action under this Part against a relevant licence holder on the following grounds—
- (a) for a holder that is a partnership—
 - (i) a member of the partnership, or an officer of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation, or
 - (ii) a member of the partnership, or an officer of a corporation that is a member of the partnership, is guilty of improper conduct,
 - (b) for a holder that is a corporation—an officer of the corporation is not a fit and proper person to be an officer of the corporation.

117 Grounds for taking disciplinary action for licence under Building Act [s 56 HBA]

- (1) The Secretary may take disciplinary action under this Part against a licence holder under the *Building Act 2022* on the following grounds—

- (a) the relevant licence holder does not meet the standards of financial solvency determined by the Secretary to be appropriate for the licence,
 - (b) in the opinion of the Secretary, there is a risk to the public that the relevant licence holder will be unable, whether or not for a reason relating to the financial solvency of the holder, to carry out work that the holder has contracted to do, whether before or after the commencement of this paragraph,
 - (c) the holder has breached a statutory warranty,
 - (d) the relevant licence holder has failed to give a notification required under the *Building Act 2022* in relation to a critical stage inspection,
 - (e) the holder—
 - (i) does the building work otherwise than with due care and skill, or
 - (ii) knowingly uses faulty or unsuitable materials in the course of doing the work,
 - (f) in relation to the carrying out of professional engineering work, the holder has contravened a law of this or another Australian jurisdiction, whether or not the contravention is an offence and whether or not the holder is prosecuted or convicted for the contravention,
 - (g) the holder has wilfully disregarded matters to which the holder is required to have regard to when carrying out professional engineering work,
 - (h) the holder has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the holder under a law of this or another Australian jurisdiction in relation to the carrying out of professional engineering work, or work authorised to be carried out under an equivalent authorisation.
- (2) In this section—
statutory warranty has the same meaning as in the *Building Act 2022*.

118 Grounds for taking disciplinary action—registered practitioners [s 64 DBPA]

- (1) The Secretary may take disciplinary action against a registered practitioner on one or more of the following grounds—
- (a) the practitioner has contravened a law of this or another Australian jurisdiction, whether or not the contravention is an offence and whether or not the practitioner is prosecuted or convicted for the contravention, in relation to—
 - (i) the preparation of regulated designs or the carrying out of building work or specialist work or work authorised to be carried out under an equivalent authorisation, or
 - (ii) the provision of a compliance declaration, or
 - (iii) registration or an equivalent authorisation,
 - (b) the practitioner has wilfully disregarded matters to which the practitioner is required to have regard to when preparing regulated designs or carrying out building work or specialist work or when providing a compliance declaration,
 - (c) the practitioner has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the practitioner by or in accordance with a law of this or another Australian jurisdiction in relation to the preparation of regulated designs or the carrying out of building work or specialist work or work authorised to be carried out under—
 - (i) an equivalent authorisation, or
 - (ii) the provision of a compliance declaration.
- (2) In this section—

building work has the same meaning as in the *Design and Building Practitioner Act 2020*.

registered practitioner has the same meaning as in the *Design and Building Practitioner Act 2020*.

specialist work has the same meaning as in the *Design and Building Practitioner Act 2020*.

119 Grounds for taking disciplinary action—registered certifiers [s 45 BDCA]

- (1) The Secretary may take disciplinary action against a registered certifier on any one or more of the following grounds—
 - (a) the registered certifier has engaged in conduct in connection with the carrying out of certification work that has fallen short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent registered certifier,
 - (b) the registered certifier has contravened a law of this or another Australian jurisdiction, whether or not the contravention is an offence and whether or not the registered certifier is prosecuted or convicted for the contravention, about any of the following—
 - (i) the carrying out of certification work or work authorised to be carried out under an equivalent authorisation,
 - (ii) registration or an equivalent authorisation,
 - (iii) fraud or dishonesty,
 - (c) the registered certifier has carried out certification work in a partial way or in a way that is not in the public interest,
 - (d) the registered certifier has wilfully disregarded matters to which the registered certifier is required to have regard in the carrying out of certification work.
- (2) In this section—

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

120 Operation of Division

To avoid doubt, sections 116–119 do not operate to limit the grounds on which the Secretary may take disciplinary action under section 115.

Division 3 Show cause

121 Notice to show cause [cf s 65 DBPA]

- (1) This section applies if the Secretary is of the opinion that there may be grounds for taking disciplinary action under this Part.
- (2) The Secretary may, by written notice given to the relevant licence holder, invite the holder to show cause why the holder should not be dealt with under this Part.
- (3) The notice must—
 - (a) state the grounds on which the relevant licence holder is required to show cause, and
 - (b) specify the period, being at least 14 days, during which the relevant licence holder may make submissions in relation to the notice.
- (4) The relevant licence holder may, within the period specified in the notice—
 - (a) make oral or written submissions to the Secretary, and

- (b) provide evidence about the matters to which the notice relates.
- (5) The Secretary may conduct an inquiry or make an investigation about—
 - (a) the matters to which the notice relates, and
 - (b) the submissions made, if any, and
 - (c) the evidence adduced, if any, by or on behalf of the relevant licence holder.
- (6) The Secretary must, before determining whether or not to take disciplinary action under this Part, take into consideration a submission made by the relevant licence holder.

122 Power to suspend licence when show cause notice service [s 61A HBA]

- (1) This section applies if—
 - (a) a show cause notice has been given to a relevant licence holder, and
 - (b) the Secretary is of the opinion that, if the relevant licence holder continued to carry out the work in relation to which the notice was issued, there would be a serious risk to public safety.
- (2) The Secretary may, by written notice given to a relevant licence holder, suspend the relevant licence holder's licence pending a determination by the Secretary of whether to take disciplinary action against the holder.
- (3) The Secretary may only suspend a licence under this section if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the licence.
- (4) The suspension may not be imposed for a period of more than 60 days after the show cause notice is given to the holder.
- (5) The period of the suspension must be specified in the notice.
- (6) The Secretary is not required to give a relevant licence holder an opportunity to be heard before taking action against the holder under this section.
- (7) The Secretary may revoke the suspension by written notice given to the suspended person.
- (8) This section does not limit or otherwise affect a power to suspend an authority under the *Fair Trading Act 1987*, section 79A.

123 Immediate action in the public interest

- (1) Despite sections 121 and 122, the Secretary may take immediate disciplinary action against a relevant licence holder, without following the steps required under those sections, if the Secretary is of the opinion that it is in the public interest.
- (2) This section does not limit the Secretary's power to take further disciplinary action under this Part.

124 Disciplinary action that may be taken by Secretary [cf 48 BDCA]

- (1) The Secretary may, if satisfied that 1 or more of the grounds for taking disciplinary action against a relevant licence holder has been established, do 1 one or more of the following—
 - (a) decide to take no further action against the holder,
 - (b) caution the holder,
 - (c) reprimand the holder,

- (d) for a person who holds a licence under the *Building and Construction Industry Security of Payment Act 1999*—make a decision requiring the registered certifier to pay to the Secretary a penalty, within a specified time, of—
 - (i) for a body corporate—an amount of not more than \$220,000, or
 - (ii) for an individual—an amount of not more than \$110,000,
- (e) impose a condition on the licence, including a condition requiring the holder to undertake specified education or training relating to a particular type of work or business practice within a specified time,
- (f) suspend or cancel the licence of the relevant licence holder under the Act or instrument the licence was issued under,
- (g) disqualify the relevant licence holder, either temporarily or permanently, from—
 - (i) holding a licence under relevant building enforcement legislation, or
 - (ii) being a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a licence, or
 - (iii) being an officer of a corporation that is the holder of a licence.
- (2) If the relevant licence holder is a partnership or corporation, the Secretary may take a disciplinary action specified in subsection (1) against the following individuals—
 - (a) a member of the partnership,
 - (b) an officer of a corporation that is a member of the partnership,
 - (c) an officer of the corporation.
- (3) The Secretary may take disciplinary action under subsection (2) in addition to, or instead of, taking disciplinary action under subsection (1).
- (4) This Part applies to disciplinary action taken under subsection (2) in the same way it applies to disciplinary action taken under subsection (1) and references in this Part to a relevant licence holder extend to the individuals referred to in subsection (2).
- (5) In deciding the disciplinary action to take, the Secretary—
 - (a) must take into account other disciplinary action taken against the person under this Part, and
 - (b) may take into account a written undertaking that the person proposes to give under Part 4.
- (6) The Secretary must provide a written statement of a decision made under this section to the relevant licence holder as soon as is reasonably practicable after the decision is made.
- (7) The statement must specify—
 - (a) the decision that has been made, and
 - (b) if relevant, the date or time on which the decision takes effect, and
 - (c) the grounds for the decision.
- (8) To avoid doubt, a demerit point incurred under Part 7 is not a disciplinary action that may be decided by the Secretary.
Note— Part 7 establishes an automatic demerit point scheme in relation to offences under building enforcement legislation.

Division 4 Miscellaneous

125 Enforcement of monetary penalties and payment of costs [cf s 67 HBA]

- (1) This section applies if the Secretary decides to impose a monetary penalty under this Act.
- (2) If the decision to impose a monetary penalty has taken effect and the amount required to be paid has not been paid to the Secretary—
 - (a) a licence granted under relevant building enforcement legislation and held by the person required to pay the penalty is taken to be—
 - (i) suspended until the amount is paid to the Secretary, or
 - (ii) if the amount is not paid to the Secretary before the licence would, but for this paragraph, expire—cancelled, and
 - (b) the amount may be recovered by the Secretary as a debt in a court of competent jurisdiction.
- (3) The Secretary may agree in writing to extend the time for payment of the amount.
- (4) If the Secretary agrees to extend the time for payment, subsection (2) does not have effect in relation to the person during the extension of time.
- (5) The Secretary's failure to enter into an agreement to extend the time for payment cannot be reviewed by the Civil and Administrative Tribunal in an application for an administrative review made under this Act.

126 Liability for offences not affected

- (1) A decision to take disciplinary action against a person under this Part does not affect the liability of the person for an offence against a provision of this or another Act or of a regulation made under this or another Act.
- (2) The Secretary is not prevented from taking disciplinary action under this Part merely because the relevant licence holder is subject to criminal or civil proceedings that relate to the same matters or incident to which the disciplinary action relates.

127 Protection if complaint lodged [c s 69 HBA]

- (1) A licensed insurer or licensed provider under a building cover contract who makes a complaint in relation to a person covered by the contract in relation to 1 of the grounds for taking disciplinary action referred to in this Part is not liable for any loss, damage or injury suffered by the person covered by the contract or another person because the complaint is made.
- (2) In this section—

building cover contract has the same meaning as in the *Building Act 2022*.

licensed insurer has the same meaning as in the *Building Act 2022*.

licensed provider has the same meaning as in the *Building Act 2022*.

Part 7 Demerit points scheme

Division 1 Preliminary

128 Definitions

In this Part—

demerit offence means an offence for which demerit points are incurred, prescribed by the regulations under section 133.

demerit points register—see section 135.

remedial action means an action taken under Division 4.

129 Purpose of Part

The purpose of this Part is to provide for a demerit points scheme to—

- (a) deter licence holders from committing offences under building enforcement legislation, and
- (b) provide for sanctions against repeated contraventions of offences under building enforcement legislation, and
- (c) minimise the risk of further harm by licence holders committing offences under building enforcement legislation.

130 Committing demerit offence

- (1) For this Part, a person commits a demerit offence if the act or circumstance giving rise to the offence occurred or existed on or after the commencement of this Part, and—
 - (a) a court convicts the person for the offence, including—
 - (i) whether or not the court imposes a penalty in relation to the offence,
 - (ii) after electing for the matter to be dealt with by the court instead of under the statutory provision providing for the penalty notice, or
 - (iii) after the determination of the appeal of an earlier conviction,
 - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the person charged with the offence in relation to the offence, or
 - (c) an amount is paid under a penalty notice in relation to the offence, or
 - (d) disciplinary action is taken against a person which involves a monetary penalty and the monetary penalty is paid, or
 - (e) a penalty notice enforcement order under the *Fines Act 1996* is made against the person for the offence.
- (2) However, a demerit point under this Part that is based on a conviction, penalty notice or penalty notice enforcement order is revoked and remedial action taken as the result of the demerit point ceases to have effect if—
 - (a) the conviction is overturned on appeal, or
 - (b) the person elects, after an amount is paid under the penalty notice, to have the offence dealt with by a court, or
 - (c) the penalty notice, or the penalty notice enforcement order to the extent that it applies to the penalty notice, is withdrawn or annulled.

131 Effect of appeals against convictions

- (1) An appeal against a conviction for a demerit offence does not operate to prevent—

- (a) a demerit point being incurred as a result of the commission of the offence, or
 - (b) the taking of remedial action in relation to the demerit point.
- (2) However, the appeal does operate to suspend the taking or operation of remedial action until the appeal is determined or withdrawn.

Note— If the appeal is successful and the conviction is overturned, a demerit point based on the conviction is revoked and remedial action taken as a result of the demerit point ceases to have effect.

132 Effect of electing to have matter dealt with by court

- (1) This section applies to a person who makes an election to have a matter dealt with by a court instead of under the provision providing for the issue of the penalty notice.
- (2) The election does not operate to prevent—
- (a) a demerit point being incurred as a result of the commission of the offence, or
 - (b) the taking of remedial action in relation to the demerit point.
- (3) However, the election does operate to suspend the taking or operation of remedial action until the matter is dealt with by the court.

Division 2 Incurring demerit points

133 Demerit points incurred for demerit offences

- (1) The regulations may prescribe the following—
- (a) offences under building enforcement legislation that are demerit offences,
 - (b) the number of demerit points incurred for an offence, including a different number of demerit points incurred for an individual or corporation.
- (2) The regulations must not prescribe an offence to be a demerit offence if the offence has a maximum penalty of less than—
- (a) for a corporation—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (3) The regulations may make provision for the application of this scheme for a licence holder that is not an individual, including the individuals required to undertake remedial action on behalf of the licence holder for the number of demerit points incurred.

134 Notice of demerit points incurred

- (1) The Secretary must give written notice about a demerit point incurred against a relevant licence holder to the licence holder.
- (2) If the relevant licence holder is a partnership or corporation, the Secretary must give the notice to the following individuals—
- (a) a member of the partnership,
 - (b) an officer of a corporation that is a member of the partnership,
 - (c) an officer of the corporation.
- (3) The notice must specify the following information—
- (a) the details of the demerit offence,
 - (b) the date on which the demerit point came into force,
 - (c) the date on which the demerit point will expire, if not removed earlier,

- (d) the total number of demerit points in force against the person after the incurring of the demerit point,
- (e) if, because of the total number of demerit points in force in relation to the person, the Secretary must take remedial action—the remedial action that the Secretary must take,
- (f) other matters prescribed by the regulations for the purposes of this section.

Division 3 Demerit points register

135 Demerit points register

- (1) The Secretary must maintain a register of demerit points (the *demerit points register*) in accordance with this Part and the regulations.
- (2) For demerit points are incurred against a relevant licence holder under section 133, the Secretary must record the number of demerit points incurred for the holder in the demerit points register.
- (3) The Secretary must record in the demerit points register the following details for each relevant licence holder, in relation to whom 1 or more demerit points are in force—
 - (a) the details of the holder,
 - (b) the total number of demerit points in force for the holder from time to time,
 - (c) the day on which each demerit point was committed,
 - (d) the day on which each demerit point expires, unless earlier removed,
 - (e) other details prescribed by the regulations for the purpose of this section.

136 Secretary may publish details from demerit points register

The Secretary may publish information contained in the demerit points register on a public website maintained by the Department.

137 When demerit points come into force or expire

- (1) A demerit point incurred against a relevant licence holder comes into force on the day on which the demerit offence was committed.
- (2) A demerit point expires on the earlier of the following days—
 - (a) the day that is 3 years after the day on which the demerit point comes into force,
 - (b) if the demerit point is removed under section 144(1)(a)—the day the demerit point is removed.
- (3) The expiration or removal of a demerit point does not affect the continued operation of remedial action taken as a result of the demerit point being incurred.

Division 4 Remedial action for accumulation of demerit points

138 Remedial action—accumulation of 10–14 demerit points

- (1) If, during a 3 year period, at least 10, but not more than 14, demerit points are in force against a person—
 - (a) the Secretary must reprimand the person, and
 - (b) the person must undertake a course of training or instruction the Secretary considers appropriate.
- (2) The Secretary may waive the requirement to undertake a course of training or instruction if there is no suitable course available.

139 Remedial action—accumulation of 15–29 demerit points

If, during a 3 year period, at least 15, but not more than 29, demerit points are in force against a person—

- (a) the Secretary must reprimand the person, and
- (b) the licence held by the person is suspended for 6 months from the date specified in the notice given under section 141.

140 Remedial action—accumulation of 30 or more demerit points

If, during a 3 year period, 30 or more demerit points are in force against a person—

- (a) the Secretary must reprimand the person, and
- (b) the licence held by the person is cancelled, and
- (c) the person is disqualified from holding a licence under building enforcement legislation for 12 months from the date specified in the notice given under section 141.

141 Notice of remedial action

- (1) The Secretary must give the following persons written notice of the remedial action taken under this Part—
 - (a) the person against whom remedial action is proposed to be taken,
 - (b) if the relevant licence holder is a partnership or corporation—
 - (i) a member of the partnership,
 - (ii) an officer of a corporation that is a member of the partnership,
 - (iii) an officer of the corporation,
 - (c) another person prescribed by the regulations for the purposes of this section.
- (2) The notice must specify the following information—
 - (a) the number of demerit points in force in relation to the person,
 - (b) the following details of the remedial action, if relevant to the reprimand—
 - (i) the details of a reprimand of a person,
 - (ii) the period of a suspension of the licence, registration or other authority,
 - (iii) the period of a disqualification of a person,
 - (iv) the date on which a suspension or disqualification starts,
 - (v) the date on which a suspension or disqualification ends,
 - (vi) the date on which a course of training or instruction must be completed,
 - (vii) any other details prescribed by the regulations for the purposes of this section.

142 Remedial action—course of training or instruction

- (1) A person required to take a course of training or instruction under this Division must provide evidence of the successful completion of the training or instruction to the Secretary.
- (2) If a person fails to successfully complete the course of training or instruction by the date stated in the notice, the person's licence is suspended on that date, until the course of training or instruction is successfully completed.
- (3) The Secretary may extend the date for completion of the course of training or instruction, or reinstate a licence suspended under section 139, if the person provides evidence to the Secretary about extraordinary circumstances which prevented the person completing the course by the date specified in the notice.

Examples of extraordinary circumstances— financial hardship, emergency, the provider being unable to provide the course of training or instruction.

Division 5 Removal and reinstatement of demerit points

143 Application to remove demerit points

- (1) A relevant licence holder may apply to the Secretary to remove a demerit point that is in force against the relevant licence holder.
- (2) However, the relevant licence holder may not apply under this section to remove a demerit point within the period of 12 months immediately after the demerit point was incurred.
- (3) The application must—
 - (a) be in the form approved by the Secretary, and
 - (b) be accompanied by—
 - (i) the fee, if any, prescribed by the regulations, and
 - (ii) the information or particulars prescribed by the regulations, and
 - (c) comply with any other requirements prescribed by the regulations.
- (4) The Secretary must—
 - (a) give a copy of the application to each person prescribed by the regulations for the purposes of this subsection, and
 - (b) give each person a reasonable opportunity to make submissions in relation to the application.

144 Deciding application to remove demerit points

- (1) In deciding an application made to remove demerit points, the Secretary may—
 - (a) remove the demerit point, or
 - (b) refuse to remove the demerit point.
- (2) The Secretary may decide to remove the demerit point only if the Secretary is satisfied—
 - (a) remedial action in relation to the demerit point has been complied with, and
 - (b) the relevant licence holder has implemented measures, or undertaken a course of training or instruction, to manage or reduce the risks that contributed to the commission of the demerit offence for which the demerit point was incurred, and
 - (c) a demerit point offence has not, since the demerit point was incurred, been contravened by the person who committed the demerit offence in relation to which the demerit point was incurred, and
 - (d) removing the demerit point is consistent with the purpose of the demerit points scheme.
- (3) The regulations may also prescribe—
 - (a) matters the Secretary must consider in deciding the application, and
 - (b) mandatory or discretionary grounds for refusing to grant the application.
- (4) The Secretary must, as soon as practicable after making the decision, give the applicant written notice of the following—
 - (a) the decision,
 - (b) the reasons for the decision,

- (c) any right of review in relation to the decision.
- (5) If a demerit point is removed by the Secretary under this section, a remedial action taken as a result of the demerit point continues to have effect despite the removal unless the Secretary decides otherwise.

145 Reinstatement of demerit points

- (1) This section applies if the Secretary is satisfied a demerit point was removed under section 144(1)(a) on the basis of false, misleading, inaccurate or incomplete information provided by a relevant licence holder.
- (2) The Secretary may reinstate the demerit point against the relevant licence holder.
- (3) A demerit point reinstated under subsection (2)—
 - (a) is taken not to have been removed, and
 - (b) must be reinstated in the demerit points register—
 - (i) against the relevant licence holder, and
 - (ii) in relation to the day that the demerit point was originally recorded under section 135.
- (4) If a demerit point is reinstated under this section—
 - (a) remedial action required to be taken in relation to the relevant licence holder as a result of the demerit point before the removal continues to be required as if the demerit point had not been removed, and
 - (b) a condition imposed on the licence, registration or other authority as a result of the demerit point immediately before the removal of the demerit point applies as if the demerit point had not been removed.

Part 8 Offences and proceedings

Division 1 Preliminary

146 Application of Part

This Part applies in relation to an offence, or proceedings for an offence, against building enforcement legislation.

Division 2 Offences

147 Definition

In this Division—

education and training notice—see section 149(2).

148 Proceedings for offences [cf s 56 RAB]

- (1) Proceedings for an offence against building enforcement legislation, other than building enforcement legislation that is a regulation, may be brought before the Local Court or before the Land and Environment Court in its summary jurisdiction.
- (2) Proceedings for an offence against building enforcement legislation that is a regulation may be taken before the Local Court.
- (3) If proceedings for an offence referred to in subsection (1) are brought in the Local Court, the maximum monetary penalty the Local Court may impose for the offence is, despite another provision of building enforcement legislation, the lesser of—
 - (a) 1,000 penalty units, or
 - (b) the maximum monetary penalty provided by the building enforcement legislation for the offence.
- (4) If proceedings for an offence against a provision of building enforcement legislation are brought in the Land and Environment Court in its summary jurisdiction, the Land and Environment Court may impose a penalty not exceeding the maximum penalty provided by the building enforcement legislation for the offence.
- (5) Despite the *Criminal Procedure Act 1986* or another Act, proceedings for an offence against a provision of building enforcement legislation may be commenced not later than—
 - (a) 3 years after the date alleged to be the date on which the offence was committed, or
 - (b) after the end of the period specified in paragraph (a)—with the leave of the court, if the proceedings are commenced not later than 2 years after the date on which evidence of an act or omission constituting the alleged offence first came to the attention of an authorised officer.
- (6) If subsection (5)(b) is relied on, the court attendance notice or summons commencing proceedings—
 - (a) must contain particulars of the date on which evidence of an act or omission constituting the alleged offence first came to the attention of the authorised officer, and
 - (b) is not required to contain particulars of the date on which the offence was committed.
- (7) The date on which evidence first came to the attention of an authorised officer is the date specified in the court attendance notice or application, unless the contrary is established.

149 Education and training notices

- (1) An authorised officer may give an education and training notice to a relevant licence holder if—
 - (a) it appears to the officer that the holder has committed a penalty notice offence (the *original offence*), other than an offence against section 150(1), and
 - (b) the officer considers it would be more appropriate to issue an education and training notice than a penalty notice.
- (2) An *education and training notice* is a notice requiring the holder to undertake specified education or training relating to a specified type of work or business practice.
- (3) The notice must—
 - (a) be written, and
 - (b) specify the grounds for giving the notice, and
 - (c) specify a period (the *compliance period*) within which the holder must—
 - (i) undertake the specified education or training, and
 - (ii) provide evidence to the Secretary that the registered practitioner has undertaken the education or training.
- (4) The holder may, during the compliance period, make a written application to the Secretary for—
 - (a) an extension of the compliance period, or
 - (b) an exemption from compliance with the notice.
- (5) The Secretary may grant the application if the Secretary considers exceptional circumstances apply.
- (6) A penalty notice for the original offence may not be issued before the end of the compliance period.
- (7) However, a penalty notice for the original offence may be issued—
 - (a) if the holder does not comply with the education and training notice—after the end of the compliance period, or
 - (b) if the Secretary grants an exemption from compliance with the education and training notice—after the exemption is granted.
- (8) Section 161 applies to the giving of an education and training notice as if the giving of the notice were a decision of the Secretary to take disciplinary action under Part 6, but only if the person aggrieved by the notice has made an unsuccessful application under subsection (4).

150 Non-compliance with education and training notice

- (1) A relevant licence holder who receives an education and training notice must comply with the notice.
Maximum penalty—
 - (a) for a corporation—300 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) For this Act, compliance with the notice is taken to be a condition of the holder's licence, registration or other authority.
- (3) To avoid doubt, a penalty notice may be issued under section 149(7)(b) whether or not a penalty notice is issued, or the holder is prosecuted, for an offence under subsection (1).

151 Continuing offences [cf s 59 RAB]

- (1) A person who is guilty of an offence because the person fails to comply with a requirement made under building enforcement legislation to do or cease to do something, or cause something to be done or to cease, whether or not within a specified period or before a particular time—
 - (a) continues, until the requirement is complied with and despite the fact that a specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) Subsection (1) applies whether the requirement is imposed by a notice or in another way.
- (3) This section does not apply to an offence if the relevant provision of building enforcement legislation does not provide for a penalty for a continuing offence.
- (4) This section does not apply to the extent that a requirement of a notice is revoked.

Division 3 Orders and penalty notice offences

152 Publicity orders [cf s 56A RAB]

- (1) If a person is convicted by a court of an offence under building enforcement legislation, the court may order the person to take specified action to publicise—
 - (a) the offence, including the circumstances of the offence, and
 - (b) the consequences of the offence, and
 - (c) a prohibition order, building work rectification order or stop work order made that relates to the person, and
 - (d) a penalty imposed on the person under building enforcement legislation.
- (2) The court may, in the order—
 - (a) fix a period for compliance, and
 - (b) impose other requirements the court considers necessary or expedient for enforcement of the order.
- (3) If the person fails to comply with the order, the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise the failure to comply with the order.
- (4) The reasonable cost of taking action under subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the person.

153 Additional orders [cf s 56B RAB]

- (1) If a person is convicted by a court of failing to comply with an order or direction under this Act, the court may order the person to comply with the order or direction.
- (2) The court may, in the order—
 - (a) fix a period for compliance, and
 - (b) impose other requirements the court considers necessary or expedient for enforcement of the order.
- (3) A person who fails to comply with an order under this section is guilty of an offence. Maximum penalty—
 - (a) for a corporation—

- (i) 3,000 penalty units, and
 - (ii) for a continuing offence—300 penalty units for each day the offence continues, or
- (b) for an individual—
 - (i) 600 penalty units, and
 - (ii) for a continuing offence—60 penalty units for each day the offence continues.
- (4) If an order is made under this section, conduct to which the order relates is only to be prosecuted under this section and not by way of a continuing offence under another section of this Act.

154 Penalty notices [cf s 57 RAB]

- (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 could be imposed for the offence by a court.
- (5) This section does not limit the operation of another provision of building enforcement legislation in relation to proceedings that may be taken in relation to offences.
- (6) In this section—
penalty notice officer means the following persons designated by the Secretary as a penalty notice officer for the purposes of this section—
 - (a) a member of staff of the Department,
 - (b) a person prescribed by the regulations.

155 Onus of proof regarding reasonable excuse [cf s 60 RAB]

In proceedings for an offence against a provision of building enforcement legislation, the onus of proving that a person had a reasonable excuse, as referred to in the provision, lies with the defendant.

Division 4 Liability of directors

156 Liability of directors for offences by corporation—accessory to the commission of offences

- (1) For the purposes of this section, a **corporate offence** is an offence against building enforcement legislation that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if—
 - (a) a corporation commits a corporate offence, and
 - (b) the person is—
 - (i) a director of the corporation, or

- (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
- (c) the person—
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
 - (iii) conspires with others to effect the commission of the corporate offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty—The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of another law relating to the criminal liability of persons, whether or not directors or other managers of the corporation, who are concerned in, or party to, the commission of the corporate offence.

157 Liability of directors for specified offences by corporation—offences attracting executive liability [cf s 34D BCISPA]

- (1) For the purposes of this section, an *executive liability offence* is—
 - (a) an offence against section 53, 58, 66 or 87 that is committed by a corporation, or
 - (b) an offence against the regulations that—
 - (i) is prescribed by the regulations as an offence to which this section applies, and
 - (ii) is committed by a corporation.
- (2) A person commits an offence against this section if—
 - (a) a corporation commits an executive liability offence, and
 - (b) the person is—
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
 - (c) the person—
 - (i) knows the executive liability offence, or an offence of the same type, would be or is being committed or is recklessly indifferent as to whether the offence would be or is being committed, and
 - (ii) fails to take all reasonable steps to prevent or stop the commission of the offence.

Maximum penalty—200 penalty units.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section—
 - (a) does not affect the liability of the corporation for the executive liability offence, and
 - (b) applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of another law relating to the criminal liability of any persons, whether or not the persons are—
 - (a) directors or other managers of the corporation, who are accessories to the commission of the executive liability offence, or
 - (b) otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section—

director has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

reasonable steps, in relation to the commission of an executive liability offence, includes, but is not limited to, action of the following kinds that is reasonable in all the circumstances—

 - (a) action towards—
 - (i) assessing the corporation’s compliance with the provision creating the executive liability offence, and
 - (ii) ensuring that the corporation arranges regular professional assessments of its compliance with the provision,
 - (b) action towards ensuring that the corporation’s employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
 - (c) action towards ensuring that the following, relevant to compliance with the provision creating the executive liability offence, are appropriate in all the circumstances—
 - (i) the plant, equipment and other resources, and
 - (ii) the structures, work systems and other processes,
 - (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

Division 5 Other offences

158 False and misleading information

- (1) A person must not, in relation to the administration of building enforcement legislation, give information that the person knows is false or misleading in a material particular to—
 - (a) the Secretary, or
 - (b) an authorised officer.

Maximum penalty—2,000 penalty units, imprisonment for 2 years, or both.

- (2) Subsection (1) applies whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a document if the person, when giving the document—
 - (a) tells the Secretary or authorised officer, to the best of the person’s ability, how it is false or misleading, and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the Secretary or authorised officer the correct information.

Note— See also the *Crimes Act 1900*, Part 5A, in relation to the offences of false or misleading applications and false or misleading documents.

Part 9 Miscellaneous

159 Building Commissioner [cf s 61 RAB]

A Building Commissioner is to be employed under the *Government Sector Employment Act 2013*.

160 Warning notices [cf s 99 DBPA]

- (1) The Secretary may authorise publication of a notice (a **warning notice**) warning persons of particular risks involved in dealing with—
 - (a) a relevant licence holder or former relevant licence holder, or
 - (b) another person that the Secretary reasonably believes may have breached building enforcement legislation.
- (2) The Secretary may authorise publication of a warning notice in 1 or more of the following ways—
 - (a) to a person making inquiries to the Secretary about the person,
 - (b) by advertisement by the use of any medium,
 - (c) to a media representative.
- (3) Publication of a warning notice may be authorised whether or not a complaint has been made.
- (4) However, the Secretary must conduct an investigation before authorising the publication.
- (5) Before authorising publication of a warning notice, the Secretary must give the person an opportunity for a period of not less than 2 business days to make representations to the Secretary about publication of the warning notice, unless—
 - (a) the Secretary, after making reasonable efforts, is not able to contact the person promptly and advise the person of the opportunity, or
 - (b) the person refuses to make representations.
- (6) However, no opportunity to make representations is required to be given if, in the opinion of the Secretary, there is an immediate risk to the public.
- (7) No liability is incurred by a person for publishing in good faith—
 - (a) a warning notice under this section, or
 - (b) a fair report or summary of a warning notice.
- (8) In this section—

relevant licence holder means the holder of a licence, registration or other authority held under building enforcement legislation.

161 Administrative review by NCAT

- (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the following decisions—
 - (a) a decision to give a person a compliance notice under section 72,
 - (b) a decision to suspend a licence under section 122,
 - (c) a decision to take disciplinary action under Part 6,
 - (d) a decision to remove demerit points under section 144(1).

- (2) The application must be made no later than 21 days after the person receives the notice.
- (3) The *Administrative Decisions Review Act 1997*, Chapter 3, Part 2 does not apply to the application.
- (4) If the reviewable decision is a decision by the Secretary to give a person a compliance notice, the application operates to stay the reviewable decision or compliance notice unless the Civil and Administrative Tribunal otherwise directs.
- (5) The requirement to comply with a compliance notice is suspended during the time the decision is stayed.
- (6) In determining the application, the Civil and Administrative Tribunal must take into account any matter that was required to be taken into account in making the reviewable decision.

162 Continuing effect of directions

- (1) A direction that is given under this Act that specifies a time by which, or a period within which, a direction or other requirement of the direction must be complied with continues to have effect until the direction or other requirement is complied with even through the time has passed or the period has expired.
- (2) A direction that does not specify a time by which, or a period within which, a direction or other requirement must be complied with continues to have effect until the direction or other requirement is complied with.
- (3) This section does not apply to the extent that a direction or other requirement is revoked.

163 Register of orders [cf s 62 RAB]

The Secretary must—

- (a) keep a register containing—
 - (i) copies of all prohibition orders, building work rectification orders and stop work orders in force, and
 - (ii) other information prescribed by the regulations, and
- (b) ensure the contents of the register is made publicly available for inspection free of charge on the Department's website.

164 Delegation [cf s 63 RAB]

- (1) The Secretary may delegate the exercise of a function of the Secretary under this Act, other than this power of delegation, to—
 - (a) the Building Commissioner or any other person employed in the Department, or
 - (b) an employee of Fire and Rescue NSW, or
 - (c) an employee of a council who is an authorised person under the *Local Government Act 1993*, or
 - (d) a person, or class of persons, authorised for the purposes of this section by the regulations.
- (2) Without limiting subsection (1), the Secretary must delegate the functions of the Secretary under section 14 to the Building Commissioner.

165 Disclosure and misuse of information [cf s 64 RAB]

- (1) 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 building enforcement legislation, or
 - (c) for the purposes of—
 - (i) disciplinary or legal proceedings arising out of building enforcement legislation, or
 - (ii) a report of the proceedings, or
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (e) with other lawful excuse.
- (2) A relevant person must not use information to gain an advantage for the person or a person with whom the relevant person is associated if—
 - (a) the relevant person acquired the information because the person is a relevant person, and
 - (b) the information is not generally known, and
 - (c) the information, if generally known, might reasonably be expected to affect materially the market value or price of land.
- (3) A relevant person in a position to gain, either directly or indirectly an advantage for themselves or another person with whom the person is associated, must not influence the giving of an order under building enforcement legislation.
- (4) In this section, a person is associated with another person if the person is the spouse, de facto partner, sibling, parent or child of the other person.
Maximum penalty—50 penalty units.
- (5) In this section—
relevant person means a person acting in the administration or execution of building enforcement legislation.

166 Exchange of information [cf s 65 RAB]

- (1) The Secretary may provide information to a relevant agency that is reasonably necessary for the purposes of enabling or assisting the relevant agency to regulate or take other action in relation to 1 or more of the following—
 - (a) developers and former developers,
 - (b) buildings,
 - (c) the carrying out of building work, including building work carried out by a contractor or subcontractor of a developer,
 - (d) prohibition orders,
 - (e) building work rectification orders,
 - (f) other matters prescribed by the regulations.
- (2) A relevant agency may provide information to the Secretary that is reasonably necessary for the purposes of enabling or assisting the Secretary to exercise the Secretary's functions under this Act.
- (3) Without limiting subsection (1), the Secretary may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging 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 that the information is reasonably necessary to assist in the exercise of functions of the Secretary under building enforcement legislation 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—

government sector agency has the same meaning as it has in the *Government Sector Employment Act 2013* and includes a council within the meaning of the *Local Government Act 1993*.

relevant agency means any of the following—

 - (a) a government sector agency,
 - (b) other persons or bodies prescribed by the regulations.

167 Multiple monetary penalties not to be imposed

- (1) A person is not liable to pay more than 1 monetary penalty if more than 1 offence or breach is committed by the person under this Act out of the same circumstances, if the person would otherwise be liable to pay more than 1 penalty.
- (2) In this section—

monetary penalty—

 - (a) includes a rectification bond that has been claimed or realised by the Secretary under this Act to realise costs, but
 - (b) does not include a penalty imposed in relation to demerit points under Part 7.

168 Personal liability [cf s 66 RAB]

- (1) A protected person is not personally subject to any 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 the following—

 - (a) the Secretary,
 - (b) an authorised officer,
 - (c) a person acting under the direction of the Secretary or an authorised officer.

169 Service of documents [cf s 67 RAB]

- (1) A document that is authorised or required by this Act or the regulations to be given to a person may be given by any of 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—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 the document at the office with a person apparently over the age of 16 years,
 - (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.

170 Certificate evidence of certain matters

- (1) A document signed by the Secretary, or by an officer prescribed by the regulations, and certifying any one or more of the relevant matters specified in subsection (2), is—
 - (a) admissible in criminal or civil proceedings under this Act, and
 - (b) in the absence of evidence to the contrary, is evidence of the matters certified.
- (2) The relevant matters are—
 - (a) that a specified person was or was not, at a specified time or during a specified period, an authorised officer, and
 - (b) any other matter prescribed by the regulations.

171 Regulations [cf s 68 RAB]

- (1) The Governor may make regulations, not inconsistent with this Act, for or 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) Without limiting subsection (1), the regulations may make provision about the following—
 - (a) prohibition orders and building work rectification orders,
 - (b) compliance directions,
 - (c) undertakings,
 - (d) notices and notifications under this Act,
 - (e) appeals,
 - (f) demerit points,
 - (g) the keeping of records for the purposes of this Act,
 - (h) the keeping of registers for the purposes of this Act,

- (i) the fees payable under this Act or the regulations and the refund, reduction or waiver of fees.
- (3) A regulation may apply, adopt or incorporate a publication as in force at a particular time or as in force from time to time.
- (4) A regulation may create an offence punishable by a penalty not exceeding—
 - (a) for a corporation—200 penalty units, or
 - (b) otherwise—100 penalty units.

172 Amendment of other Acts and instruments

Schedule 3 amends the Acts and instruments specified in the Schedule.

173 Repeal

The *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* No 9 is repealed.

Schedule 1 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 that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
 - (a) for a provision of this Act, the date of assent to this Act, or
 - (b) for a provision amending this Act, the date of assent to 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 that publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before that publication.
- (6) In this clause—

person does not include the State or an authority of the State.

Part 2 Provisions consequent on enactment of this Act

2 Register under Building Products (Safety) Act

- (1) The documents and information included on the register of undertakings maintained under the *Building Products (Safety) Act 2017*, section 33, immediately before commencement, is taken to be the register of undertakings under this Act, section 70 on commencement.
- (2) In this section—

commencement means the commencement of this Act, section 70.

3 Disciplinary action

- (1) Conduct occurring before the commencement that is a ground for taking disciplinary action under a former disciplinary provision is taken to be a ground for disciplinary action under this Act, Part 6.
- (2) For a matter which, because of this section, Part 6 of this Act applies, the Secretary may rely on a step taken under the former disciplinary provision as if it were an equivalent step taken by the Secretary under Part 6 of this Act.
- (3) In this section—

commencement means the commencement of this Act, Part 6.
former disciplinary provision means the following—

- (a) the *Building and Development Certifiers Act 2018*, section 45,
- (b) the *Design and Building Practitioners Act 2020*, section 64,
- (c) the *Home Building Act 1989*, section 56.

4 Building enforcement commissioner

- (1) The Building Commissioner referred to in the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, section 61, holding office immediately before the commencement—
 - (a) is taken to be as the Commissioner appointed under this Act, section 159, and
 - (b) continues to hold the office for the term and conditions the subject of the appointment under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.
- (2) In this section—
commencement means the commencement of this Act, section 159.

5 Undertakings

- (1) An undertaking made under a relevant provision is taken, on commencement, to be an undertaking given under section 53, if the undertaking could be given under the requirements of that section.
- (2) If the undertaking refers to requirements under the building enforcement legislation the requirements are taken to be the equivalent requirement under this Act.
- (3) An undertaking made under a relevant provision that is not able to be given under section 53 continues in force as if the relevant provision has not been repealed.
- (4) In this section—
commencement means the commencement of section 53.
relevant provision means the following—
 - (a) the *Home Building Act 1989*, section 115A,
 - (b) the *Building and Development Certifiers Act 2018*, section 104,
 - (c) the *Design and Building Practitioners Act 2020*, section 88,
 - (d) the *Residential Apartment Building (Compliance and Enforcement Powers) Act 2020*, section 28,
 - (e) the *Australian Consumer Law (NSW)*, section 218 as applied by the *Gas and Electricity (Consumer Safety) Act 2017*, section 60.

6 Orders

A building work rectification order, prohibition order, or stop work order made under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, that has not been revoked before the commencement of this Bill, is taken to be a building work rectification order, prohibition order or stop work order, respectively, under this Act, from the commencement of section 173.

7 Offences

A reference to an offence includes a reference to an offence under the following Acts, and instruments under the Acts, that occurred prior to the commencement of this Act, section 2—

- (a) building enforcement legislation,
- (b) the *Home Building Act 1989*,

- (c) the *Plumbing and Drainage Act 2011*,
- (d) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

8 Appeals

- (1) This section applies to an appeal, proceeding or review made or commenced under relevant legislation that has not been determined before the commencement of this section.
- (2) The appeal, proceeding or review must be determined in accordance with the legislation the appeal, proceeding or review was made or commenced under as if—
 - (a) the relevant legislation had not been amended or repealed, and
 - (b) for a relevant proceeding—the amendments made by Schedule 3.9 had not commenced.

- (3) In this section—

relevant legislation means the following Acts and regulations made under the Acts—

- (a) the *Home Building Act 1989*,
- (b) the *Building and Construction Industry Security of Payment Act 1999*,
- (c) the *Building and Development Certifiers Act 2018*,
- (d) the *Building Products (Safety) Act 2017*,
- (e) the *Design and Building Practitioners Act 2020*,
- (f) the *Gas and Electricity (Consumer Safety) Act 2017*,
- (g) the *Plumbing and Drainage Act 2011*,
- (h) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

relevant proceeding means—

- (a) a proceeding under the *Building and Development Certifiers Act 2018*, section 119,
- (b) a proceeding for an offence under the *Design and Building Practitioners Act 2020*,
- (c) a proceeding for an offence under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

9 Investigations not finalised

An investigation into a council under the *Building and Development Certifiers Act 2018*, section 107 that has commenced but is not finalised is taken to be an investigation under this Act, section 34, and may be continued by the Secretary.

10 Existing audits

- (1) An audit commenced under a relevant provision may be continued by the Secretary under this Act, section 33.
- (2) In this section—

relevant legislation means the following—

 - (a) *Building and Development Certifiers Act 2018*, section 106,
 - (b) *Design and Building Practitioners Act 2020*, section 92.

11 Conduct before commencement ground for taking disciplinary action

- (1) Conduct that occurred prior to the commencement that is a ground for taking disciplinary action under a relevant provision is taken to be a ground for taking disciplinary action Part 6.
- (2) In this section—
commencement means the commencement of this Act, Part 6.
relevant provision means the following provisions—
 - (a) the *Home Building Act 1989*, section 56 or 57,
 - (b) the *Building and Development Certifiers Act 2018*, section 45,
 - (c) the *Design and Building Practitioners Act 2020*, of section 64.

12 Existing evidence

- (1) Evidence, information or documents obtained by an authorised officer under the relevant legislation before the commencement may be used for an authorised purpose under this Act from commencement.
- (2) In this section—
commencement means the commencement of this Act, Part 3.
relevant legislation means the following Acts and regulations made under the Acts—
 - (a) the *Home Building Act 1989*,
 - (b) the *Building and Construction Industry Security of Payment Act 1999*,
 - (c) the *Building and Development Certifiers Act 2018*,
 - (d) the *Building Products (Safety) Act 2017*,
 - (e) the *Design and Building Practitioners Act 2020*,
 - (f) the *Gas and Electricity (Consumer Safety) Act 2017*,
 - (g) the *Plumbing and Drainage Act 2011*,
 - (h) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

13 Compliance cost notice

A compliance cost notice issued under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* continues in force under this Bill if unpaid and the Secretary may seek recovery of any unpaid money.

14 Compliance and enforcement activities already commenced—general

- (1) A compliance and enforcement activity that commenced under the relevant legislation that is not yet completed on the commencement is taken to continue under the relevant legislation, as if the relevant legislation had not been amended or repealed.
- (2) In this section—
commencement means the commencement of this Act, Part 4.
relevant legislation means the following Acts and regulations made under the Acts—
 - (a) the *Home Building Act 1989*,
 - (b) the *Building and Construction Industry Security of Payment Act 1999*,
 - (c) the *Building and Development Certifiers Act 2018*,

- (d) the *Building Products (Safety) Act 2017*,
- (e) the *Design and Building Practitioners Act 2020*,
- (f) the *Gas and Electricity (Consumer Safety) Act 2017*,
- (g) the *Plumbing and Drainage Act 2011*,
- (h) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

15 Complaints

- (1) A complaint that has been made to the Secretary under relevant legislation is taken, from commencement, to be a complaint under this Act, section 56.
- (2) In this section—
 - commencement** means the commencement of this Act, section 56.
 - relevant legislation** means the following Acts and regulations made under the Acts—
 - (a) the *Home Building Act 1989*,
 - (b) the *Building and Construction Industry Security of Payment Act 1999*,
 - (c) the *Building and Development Certifiers Act 2018*,
 - (d) the *Building Products (Safety) Act 2017*,
 - (e) the *Design and Building Practitioners Act 2020*,
 - (f) the *Gas and Electricity (Consumer Safety) Act 2017*,
 - (g) the *Plumbing and Drainage Act 2011*,
 - (h) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

Schedule 2 Dictionary

section 4

approved plans, in relation to building work, means the following—

- (a) approved plans and specifications issued in relation to a construction certificate for the building work under the *Building Act 2022*, together with any variations to the plans and specifications for the purposes of the certificates effected or approved in accordance with the *Building Act 2022*,
- (b) approved plans and specifications issued in relation to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to the plans and specifications for the purposes of the certificates effected or approved in accordance with the *Environmental Planning and Assessment Act 1979*,
- (c) regulated designs,
- (d) other plans prescribed by the regulations for the purposes of this definition.

authorised officer means—

- (a) the Building Commissioner, or
- (b) a person appointed under Part 2, Division 2, or
- (c) a police officer.

authorised person, for Part 4, Division 5—see section 78.

authorised purpose means a purpose referred to section 19(1) or (2) or section 20.

Authority, for Part 3—see section 18.

building claim has the same meaning as in the *Building Act 2022*, Chapter 4.

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

Building Commissioner means the Building Commissioner referred to in section 159.

building element has the same meaning as in the *Design and Building Practitioners Act 2020*, and includes an element of a building that is prescribed by the regulations for the purposes of this definition.

building product means a product, material or other thing that is, or could be, used in a building.

building product undertaking, for Part 4, Division 3—see section 63.

building enforcement legislation—see section 5.

building work—see section 7.

building work rectification order—see section 87.

certificate of compliance, for Part 4, Division 5—see section 78.

certification work has the same meaning as in the *Building and Development Certifiers Act 2018*.

class, of building, means a building of the class recognised by the *National Construction Code*.

completion, in relation to building work, means the date the occupation certificate for the building, to which the building work relates was issued.

compliance cost notice, for Part 5—see section 86.

compliance declaration has the same meaning as in the *Design and Building Practitioners Act 2020*.

compliance notice means a notice given under Part 4, Division 4.

Department means the Department of Customer Service.

demerit offence, for Part 7—see section 128.

demerit points register, for Part 7—see section 128.

developer—see section 6.

education and training notice, for Part 8, Division 2—see section 147.

expected completion amendment notice, for Part 2—see section 8.

expected completion notice, for Part 2—see section 8.

expected date, for Part 2—see section 8.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

intended use has the same meaning as in the *Building Products (Safety) Act 2017*.

intentional phoenix activity, for Part 6—see section 111.

investigation cost notice, for Part 3, Division 6—see section 49

licence includes a registration or other authority.

motor vehicle, for Part 3—see section 18.

National Construction Code means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

notifiable building, for Part 2—see section 9.

occupation certificate means an occupation certificate issued under the *Building Act 2022*.

occupier, for Part 3—see section 18.

owners corporation, for a strata scheme, means the owners corporation for the strata scheme constituted under the *Strata Schemes Management Act 2015*.

plumbing and drainage work direction, for Part 4, Division 5—see section 78.

Plumbing Code of Australia means the document entitled the *Plumbing Code of Australia*, produced for all State governments by the Australian Building Codes Board, as in force from time to time.

professional engineering work has the same meaning as in the *Building Act 2022*, section 10.

prohibition order—see section 14(1).

premises, for Part 3—see section 18.

principal certifier has the same meaning as in the *Building Act 2022*, Chapter 6.

records, for Part 3—see section 18.

rectification bond means a bank guarantee, bond or other form of security acceptable to the Secretary.

regulated design has the same meaning as in the *Design and Building Practitioners Act 2020*.

relevant building enforcement legislation—

(a) for Part 4—see section 52, or

(b) for Part 6—see section 111.

relevant licence holder means the holder of a licence, registration or other authority held under building enforcement legislation.

relevant standards means—

(a) a document referenced in the *National Construction Code*, and

(b) another document prescribed by the regulations for the purposes of this definition.

remedial action, for Part 7—see section 128.

responsible person—

(a) for Part 4, Division 5—see section 79, or

(b) for Part 5—see section 86.

Secretary means the Secretary of the Department.

serious defect, in relation to a building, means—

- (a) a defect in a building element that is attributable to a failure to comply with the governing requirements or the performance requirements of the *National Construction Code* as in force at the time the building work was carried out, the relevant standards or the relevant approved plans, or
- (b) a defect in a building product or building element that—
 - (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
 - (ii) causes or is likely to cause—
 - (A) the inability to inhabit or use the building, for its intended purpose, or
 - (B) the destruction of the building or any part of the building, or
 - (C) a threat of collapse of the building or any part of the building, or
- (c) a defect of a kind that is prescribed by the regulations as a serious defect, or
- (d) the use of a building product in the building, if—
 - (i) the use is in contravention of the *Building Products (Safety) Act 2017*, or
 - (ii) the product or use does not comply with the requirements of the *National Construction Code*, or
 - (iii) the product or use does not comply with other standards or requirements prescribed by the regulations for the purposes of this definition.

show cause notice, for Part 6—see section 111.

specify, for Part 3—see section 18.

specialist work has the same meaning as in the *Building Act 2022*, section 11.

stop work order—see section 58(1).

strata building means a building containing a lot or part of a lot that is the subject of a strata scheme.

strata plan has the same meaning as in the *Strata Schemes Development Act 2015*.

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

submission period, for Part 7—see section 128.

use, in relation to a building product, has the same meaning as in the *Building Products (Safety) Act 2017*.

under, for an Act or a provision of an Act, includes—

- (a) by, and
- (b) for the purposes of, and
- (c) in accordance with, and
- (d) within the meaning of.

vessel, for Part 3—see section 18.

Schedule 3 Amendment of Acts and other instruments

section 172

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

[1] **Section 1 Name of Act**

Insert at the end of the section—

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] **Sections 32C–32E**

Omit the sections. Insert instead—

32C Definition

In this Part—

authorised officer has the same meaning as in the *Building Compliance and Enforcement Act 2022*, Part 3.

[3] **Part 3A, Division 2 Information gathering powers**

Omit the Division.

[4] **Sections 32I–32M**

Omit the sections.

[5] **Section 32O Failure to comply with requirement under Part**

Omit the section.

[6] **Section 32Q Obstruction of authorised officer**

Omit the section.

[7] **Sections 34A–34D**

Omit the sections.

3.2 Building and Development Certifiers Act 2018 No 63

[1] **Section 1 Name of Act**

Insert at the end of the section—

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] **Section 4 Definitions**

Insert in alphabetical order in section 4(1)—

authorised officer has the same meaning as in the *Building Compliance and Enforcement Act 2022*, Part 3.

[3] **Section 16 Grounds for suspension or cancellation of registration**

Omit “Part 4” from section 16(f). Insert instead “the *Building Compliance and Enforcement Act 2022*, Part 6”

[4] Section 16(f1)

Insert after section 16(f)—

- (f1) the Secretary has suspended or cancelled another licence held under building enforcement legislation within the meaning of the *Building Compliance and Enforcement Act 2022*,

[5] Section 39 Registered directors must report certain conduct

Omit “Part 4” from section 39. Insert instead “the *Building Compliance and Enforcement Act 2022*, Part 6”.

[6] Part 4 Disciplinary action against certifiers

Omit the Part.

[7] Part 7 Powers of authorised officers

Omit the Part.

[8] Sections 103–107

Omit the sections.

[9] Sections 115, 118 and 119

Omit the sections.

[10] Section 120 Regulations

Insert “or the *Building Compliance and Enforcement Act 2022*” after “this Act” in section 120(4).

3.3 Building and Development Certifiers Regulation 2020

[1] Clause 63 Exemptions for registered certifiers employed by councils from civil penalty

Omit “section 48(1)(c) of the Act”. Insert instead “the *Building Compliance and Enforcement Act 2022*, section 124(1)(d)”.

[2] Clause 66 Register of registrations and approvals

Omit clause 66(1)(q). Insert instead—

- (q) details of an undertaking made by the person under the *Building Compliance and Enforcement Act 2022*, Part 4, Division 1.

3.4 Building Products (Safety) Act 2017 No 69

[1] Section 1 Name of Act

Insert at the end of the section—

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] Section 3 Definitions

Omit the definition of *authorised officer* in section 3(1). Insert instead—

authorised officer has the same meaning as in the *Building Compliance and Enforcement Act 2022*, Part 3.

[3] Part 5 Building product undertakings

Omit the Part.

[4] Part 7 Powers of authorised officers

Omit Part 7, Divisions 1–3.

[5] Sections 49–51

Omit the sections.

[6] Section 54 Offence of failing to comply with requirement made by authorised officer

Omit the section.

[7] Sections 61 and 62, and 64–66

Omit the sections.

[8] Part 9 Authorised officers

Omit the Part.

3.5 Community Land Management Act 2021 No 7

Section 109 Duty of association to maintain and repair property

Insert at the end of the section—

Note— The *Building Compliance and Enforcement Act 2022* contains compliance and enforcement provisions that apply in relation to this section, including investigation powers.

3.6 Design and Building Practitioners Act 2020 No 7

[1] Section 1 Name of Act

Insert at the end of the section—

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] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

authorised officer has the same meaning as in the *Building Compliance and Enforcement Act 2022*, Part 3.

[3] Section 3(1), definition “stop work order”

Omit the definition.

[4] Section 52 Variation, suspension or cancellation of registration generally

Insert after section 52(1)(g)—

(g1) the Secretary has suspended or cancelled another licence held under building enforcement legislation within the meaning of the *Building Compliance and Enforcement Act 2022*,

[5] Section 64 Grounds for taking disciplinary action

Omit “section 88” from section 64(g).

Insert instead “the *Building Compliance and Enforcement Act 2022*, Part 4, Division 1”.

[6] Sections 65 and 66

Omit the sections.

[7] Sections 68–70

Omit the sections.

[8] Part 7 Investigations

Omit the Part.

[9] Part 8, Divisions 1 and 2

Omit the Divisions.

[10] Section 99 Warning notices

Omit the section.

3.7 Environmental Planning and Assessment Act 1979 No 203

[1] Section 6.31 Directions by principal certifiers

Omit “*Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*” from section 6.31(4), definition of *serious defect*.

Insert instead “*Building Compliance and Enforcement Act 2022*”.

[2] Section 9.3 Action that may be taken against council following investigation

Omit “section 107 of the *Building and Development Certifiers Act 2018*” and “Section 107 of the *Building and Development Certifiers Act 2018*” wherever occurring in section 9.3(1).

Insert instead “the *Building and Compliance Enforcement Act 2022*, section 34” and “The *Building and Compliance Enforcement Act 2022*, section 34”, respectively.

3.8 Gas and Electricity (Consumer Safety) Act 2017 No 15

[1] Section 1 Name of Act

Insert at the end of the section—

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] Section 4 Definitions

Omit the definition of *authorised officer* in section 4(1). Insert instead—

authorised officer has the same meaning as in the *Building Compliance and Enforcement Act 2022*, Part 3.

[3] Part 7, Divisions 4–6

Omit the Divisions.

[4] Sections 64 and 66–68A

Omit the sections.

3.9 Land and Environment Court Act 1979 No 204

Section 21 Class 5—environmental planning and protection summary enforcement

Omit paragraphs (hg)–(hfb) from section 21. Insert instead—

- (hg) proceedings for an offence against building enforcement legislation brought under the *Building Compliance and Enforcement Act 2022*,

3.10 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Schedule 2 Search warrants under other Acts

Insert in alphabetical order in the Schedule—

Building and Compliance Enforcement Act 2022, section 38

[2] Schedule 2

Omit the following entries from the Schedule—

- *Building and Development Certifiers Act 2018*, section 96
- *Building Products (Safety) Act 2017*, section 50
- *Design and Building Practitioners Act 2020*, section 75
- *Gas and Electricity (Consumer Safety) Act 2017*, section 59
- *Home Building Act 1989*, section 126A
- *Plumbing and Drainage Act 2011*, section 35

3.11 Strata Schemes Management Act 2015 No 50

Section 106 Duty of owners corporation to maintain and repair property

Insert at the end of the section—

Note— The *Building Compliance and Enforcement Act 2022* contains compliance and enforcement provisions that apply in relation to this section, including investigation powers.