

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

**Building and Construction Legislation
Amendment Bill 2022**

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public consultation draft

NEW SOUTH WALES
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**Building and Construction Legislation
Amendment Bill 2022**

No , 2022

A Bill for

An Act to make miscellaneous amendments to building and construction legislation; and for related purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Building and Construction Legislation Amendment Act 2022*.

2 Commencement

This Act commences as follows—

- (a) for Schedule 1—on the day that is 12 months after the date of assent to this Act,
- (b) for Schedules 2[4]–[8] and 3—on the day that is 6 months after the date of assent to this Act,
- (c) for Schedules 4 and 10—on the day that is 3 months after the date of assent to this Act,
- (d) for Schedule 11—on a days or days to be appointed by proclamation,
- (e) otherwise—on the date of assent to this Act.

Schedule 1 Amendments relating to building product safety

1.1 Building Products (Safety) Act 2017 No 69

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

building design, for Part 2A—see section 8A.

building product direction—see section 46B.

building product recall means a building product recall under section 15F that is in force.

building product safety notice—see section 9.

building product supply ban means a building product recall under section 15B that is in force.

building product warning means a building product warning under section 15 that is in force.

chain of responsibility, for a building product—see section 8B(1).

deal with, in relation to a building product, for Part 2A—see section 8A.

intended use, of a building product—see section 7(4).

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

non-compliance risk—see section 7A(4).

non-compliant use, of a building product—see section 7A(2).

non-conforming building product—see section 7A(1).

not justified, for Part 7, Division 4, Subdivision 2—see section 53A(2).

owner, of a building product, for Part 7, Division 4, Subdivision 2—see section 53A(1).

reasonably practicable, for Part 2A and Part 3, Division 6—see section 8A.

relevant regulatory provision means one or more of the following—

- (a) the *Design and Building Practitioners Act 2020*,
- (b) the *Environmental Planning and Assessment Act 1979*,
- (c) the *Gas and Electricity (Consumer Safety) Act 2017*,
- (d) the *Plumbing and Drainage Act 2011*,
- (e) the *Work Health and Safety Act 2011*,
- (f) another law, whether of New South Wales or another jurisdiction, specified by the regulations for this definition.

responsible person, for a seized building product, for Part 7, Division 4, Subdivision 2—see section 53A(1).

voluntary recall, for Part 2A, Division 3—see section 8I.

[2] Section 3(1), definition of “building product use ban”

Omit “section 9”. Insert instead “section 15D”.

[3] Section 4

Omit the section. Insert instead—

4 Safety risks and unsafe use of building products

- (1) For this Act, a *safety risk* exists in relation to the use of a building product in a building if the use has caused, will cause or may cause one or more of the following consequences—
 - (a) death or serious injury to a person,
 - (b) damage to, or a defect in, the building resulting in one or more of the following—
 - (i) an occupant of the building being unable to inhabit or use the building for its intended purpose,
 - (ii) destruction of the building,
 - (iii) the threat of the building collapsing.
- (2) To avoid doubt, a safety risk may exist—
 - (a) in relation to a reasonably foreseeable use of the product—
 - (i) even if the use causes the consequence only in certain circumstances or as a result of another event, and
 - (ii) regardless of the probability of the use causing the consequence, and
 - (b) whether or not a non-compliance risk exists in relation to the product.
- (3) For this Act, the use of a building product in a building is *unsafe* if a safety risk exists in relation to the use.
- (4) The regulations may specify additional circumstances in which a safety risk exists in relation to the use of a building product in a building.

[4] Section 7, heading

Insert “**and intended use**” after “Use”.

[5] Section 7(4)

Insert after section 7(3)—

- (4) The use of a building product in a building is an *intended use* if—
 - (a) the use is intended by a person in the chain of responsibility for the product, or
 - (b) a person in the chain of responsibility for the product makes a representation that the use is a suitable use of the product, or
 - (c) the use is otherwise reasonably foreseeable or likely.

[6] Section 7A

Insert after section 7—

7A Non-conforming building products and non-compliant uses

- (1) For this Act, a building product is a *non-conforming building product* if—
 - (a) the product does not comply with an applicable requirement of one or more of the following—
 - (i) the National Construction Code,
 - (ii) a relevant regulatory provision or an instrument made under a relevant regulatory provision, or

- (b) a person in the chain of responsibility for the product makes an incorrect representation, whether intentionally or not, about one or more of the following—
 - (i) a quality, feature or capability of the product,
 - (ii) the performance of the product in relation to a particular standard,
 - (iii) the product's compliance with the National Construction Code or another legal requirement.
- (2) For this Act, an intended use of a building product in a building is a **non-compliant use** if—
 - (a) the use does not comply with an applicable requirement of one or more of the following—
 - (i) the National Construction Code,
 - (ii) a relevant regulatory provision or an instrument made under a relevant regulatory provision, or
 - (b) the use is otherwise unsuitable.
- (3) Subsections (1)(a) and (2)(a) do not apply if the building product is accredited in relation to the applicable requirement for the *Environmental Planning and Assessment Act 1979*, section 4.15(4) or 4.28(4).
- (4) For this Act, a **non-compliance risk** exists in relation to a building product if—
 - (a) the product is or may be a non-conforming building product, or
 - (b) an intended use of the product in a building is or may be a non-compliant use.

[7] **Parts 2A and 3**

Omit Part 3. Insert instead—

Part 2A Chain of responsibility for building products

Division 1 General

8A Definitions

In this Part—

building design includes a plan, specification or report detailing the design of a building.

deal with, in relation to a building product, means manufacture, import or supply the product.

reasonably practicable, in relation to a duty imposed on a person, means reasonably able to be done by the person in relation to the duty at a particular time, taking into account all relevant matters.

8B Persons in chain of responsibility

- (1) For this Act, the following are in the **chain of responsibility** for a building product—
 - (a) a person who—
 - (i) designs or deals with the product, and
 - (ii) knows, or ought reasonably to know, that the product will, or is likely to, be used in a building,

- (b) a person who prepares a building design that incorporates or recommends the use of the product in the building,
Examples for paragraph (b)— building designers, engineers and architects
 - (c) a person who uses the product in a building,
Example for paragraph (c)— a person who installs, or co-ordinates or supervises the installation of, the product in a building during construction
Note— Section 7 defines when a building product is used in a building.
 - (d) a person specified in the regulations as a person in the chain of responsibility for the product.
- (2) The regulations may specify circumstances in which persons, including persons mentioned in subsection (1)(a)–(c), are not to be treated as persons in the chain of responsibility for a building product.

8C Multiple and concurrent duties

- (1) A person in the chain of responsibility for a building product may have more than one duty because of the functions the person performs or is required to perform.
- (2) More than 1 person may concurrently have the same duty.
- (3) A person must comply with a duty to the standard required under this Part even if another person has the same duty.
- (4) If more than 1 person has a duty in relation to the same matter, each person—
 - (a) is responsible for the person’s duty in relation to the matter, and
 - (b) must discharge the person’s duty to the extent to which the person—
 - (i) has the capacity to influence and control the matter, or
 - (ii) would have the capacity but for an agreement or arrangement purporting to limit or remove the capacity.
- (5) A person’s duty must not be transferred to another person.
- (6) In this section—
duty means a duty imposed by this Part.

Division 2 Duties of persons in chain of responsibility

8D Standards for duties under Division

- (1) A person who has a duty imposed by this Division must discharge the duty—
 - (a) as far as is reasonably practicable, and
 - (b) taking into account the risk management factors in relation to the matter to which the duty relates.
- (2) In this section—
risk management factors means the following—
 - (a) the likelihood of the existence of a safety risk or a non-compliance risk,
 - (b) the harm that could result from the risk,
 - (c) what the person knows, or ought reasonably to know, about—
 - (i) the risk, and
 - (ii) ways of removing or minimising the risk,
 - (d) the availability and suitability of ways to remove or minimise the risk,

- (e) the cost associated with available ways of removing or minimising the risk, including whether the cost is grossly disproportionate to the risk.

8E Duty to ensure conforming products and compliant uses

- (1) A person in the chain of responsibility for a building product must ensure a non-compliance risk does not exist in relation to the product.
Maximum penalty—
 - (a) for a corporation—1,500 penalty units, or
 - (b) otherwise—500 penalty units.
- (2) An offence against subsection (1) is an executive liability offence.

8F Duty to provide information in relation to building products

- (1) A person who designs a building product must ensure that, if the person gives the design to another person who is to give effect to the design, the design is accompanied by the required information for the product.
- (2) A person who deals with a building product must ensure that the product is accompanied by the required information for the product if the person—
 - (a) sells, supplies or otherwise transfers the product to another person, or
 - (b) facilitates the sale, supply or transfer of the product to another person.
- (3) A person who prepares a building design that incorporates or recommends the use of a building product in a building must ensure that, if the person gives the design to another person who is to give effect to the design, the design is accompanied by the required information for the product.
- (4) A person who uses a building product in a building must ensure the owner of the building is given the information about the product specified by the regulations for this subsection.
- (5) A duty imposed by this section applies only to a person in the chain of responsibility for the relevant building product.
- (6) The regulations may provide for—
 - (a) matters that must not, or need not, be included in information given under this section, and
 - (b) the form in which the information must be given.
- (7) In this section—
required information, for a building product, means the following—
 - (a) for each intended use of the product—
 - (i) the suitability of the product for the intended use, and
 - (ii) if the product is suitable for the intended use only in particular circumstances or subject to particular conditions—the circumstances or conditions, and
 - (iii) instructions for ensuring the intended use is not a non-compliant use, and
 - (iv) information about the maintenance required to ensure the product performs or operates correctly in relation to the intended use, and
 - (v) if the product is or includes a system or building component consisting of multiple elements—information mentioned in subparagraphs (i)–(iv) that is applicable to the system or component as a whole in relation to the intended use,

- (b) additional information specified by the regulations for this definition.

8G Duty to provide information—offences

- (1) A person who fails to comply with a duty imposed by section 8F is guilty of an offence.

Maximum penalty—

- (a) for a corporation—1,500 penalty units, or
(b) otherwise—500 penalty units.

- (2) A person is guilty of an offence if the person—

- (a) provides information in compliance or purported compliance with a duty imposed by section 8F, and
(b) knows, or ought reasonably to know, the information is false or misleading.

Maximum penalty—

- (a) for a corporation—1,500 penalty units, or
(b) otherwise—500 penalty units.

8H Duty to notify Secretary of non-compliance or safety risk

- (1) If a person in the chain of responsibility for a building product becomes aware of one or more of the following matters, the person must give the Secretary written notice of the matter—

- (a) a non-compliance risk exists in relation to the product,
(b) a safety risk exists in relation to an intended use of the product.

Maximum penalty—

- (a) for a corporation—500 penalty units and, for a continuing offence, a further penalty of 200 penalty units for each day the offence continues, or
(b) otherwise—200 penalty units and, for a continuing offence, a further penalty of 100 penalty units for each day the offence continues.

- (2) The notice must be given within 7 days after the person becomes aware of the matter.
(3) The regulations may provide for the form and content of the notice.
(4) The regulations may specify additional persons to whom the duty in this section applies.
(5) In this section, a person is taken to be aware of a matter if the person reasonably suspects the matter.

Division 3 Voluntary recalls

8I Meaning of “voluntary recall”

In this Division—

voluntary recall means action to recall a building product because—

- (a) a non-compliance risk exists in relation to the product, or
(b) a safety risk exists in relation to an intended use of the product, or
(c) a building product supply ban applies to the product.

8J Duty to notify voluntary recall

- (1) A person in the chain of responsibility for a building product who conducts a voluntary recall of the product must give the Secretary written notice of the recall within 48 hours of the start of the recall.
- (2) The voluntary recall is taken to start when the person notifies one of the following of the recall—
 - (a) the general public,
 - (b) a person to whom the product has been supplied.
- (3) The notice must be in a form approved by the Secretary and include the following information—
 - (a) relevant details of the recalled product,
 - (b) the reason for the recall of the product,
 - (c) other details of the recall reasonably required by the Secretary.
- (4) The Secretary may, by written notice on the internet, publish details of the voluntary recall.

8K Report on voluntary recall

- (1) A person in the chain of responsibility for a building product who conducts a voluntary recall of the product must give the Secretary a written report about the recall in accordance with this section.
Maximum penalty—100 penalty units.
- (2) The report must be given to the Secretary within 28 days of the start of the recall, unless the Secretary approves a further period.
- (3) The report must include the following information—
 - (a) details of how the person publicised the recall,
 - (b) details of the number of building products that have been returned under the recall,
 - (c) other details of the recall reasonably required by the Secretary.
- (4) The Secretary may publish a copy of the report on the internet.

Part 3 Building product safety notices

Division 1 General

9 Building product safety notices

For this Act, *building product safety notice* means—

- (a) a building product warning, or
- (b) a building product supply ban, or
- (c) a building product use ban, or
- (d) a building product recall.

10 Public submissions

- (1) The Secretary may, before or after issuing a building product safety notice under this Part, other than a building product warning, call for public submissions about—
 - (a) whether the notice is justified, and

- (b) the terms or proposed terms of the notice.
- (2) The Secretary must issue the call by written notice published on the internet.
- (3) The Secretary must consider submissions duly made to the Secretary by the date that is 28 days after the publication of the notice, or by a later date approved by the Secretary, in deciding whether to—
 - (a) publish the notice, or
 - (b) if the notice has already been published—amend or revoke the notice.
- (4) The Secretary is not required to give a person an opportunity to make submissions on a building product safety notice or proposed building product safety notice.
- (5) Subsection (4) prevails over a principle of procedural fairness.
- (6) This section applies to an amendment of a building product safety notice in the same way as it applies to the original publication of a building product safety notice.

11 Notice of issue of building product safety notice

- (1) The Secretary must, if practicable, give notice of the issue of a building product safety notice under this Part, other than a building product warning, to the manufacturer of the relevant building product.
- (2) If the building product is a foreign building product, notice may instead be given to an Australian importer or supplier of the building product.
- (3) If practicable, notice must be given at least 48 hours before the building product safety notice is published on the internet.
- (4) However, the Secretary is not required to give prior notice if the Secretary believes on reasonable grounds that a safety risk existing in relation to a use of the building product is or may be so serious that, in the public interest, the publication of the notice should not be delayed.
- (5) The Secretary is not required to give notice to a person under this section if the Secretary is unable, after making reasonable enquiries, to determine the identity of, or to locate, the person to whom notice would otherwise be required to be given.
- (6) The Secretary may also comply with a requirement to give prior notice of a building product safety notice under this section by publishing written notice on the internet of the Secretary's intention to publish the notice.
- (7) This section applies to an amendment of a building product safety notice in the same way as it applies to the original publication of a building product safety notice.
- (8) The regulations may specify other persons to whom notice must be given under this section.

12 Application of building product safety notice

- (1) A building product safety notice may be expressed to apply in one or more of the following ways—
 - (a) to some or all uses of a building product in a building,
 - (b) to the use of a building product in some or all buildings,
 - (c) to the use of a building product by some or all persons,

- (d) subject to exceptions, including exceptions permitting the use or supply of a building product only by some persons,
 - (e) subject to conditions,
 - (f) as otherwise authorised by the regulations for this section.
- (2) A building product safety notice may be issued whether or not the building product to which it applies has been used in a building at the time of publication of the notice.

13 Period for which building product safety notice in force

- (1) A building product safety notice issued under this Part comes into force on the day specified by the Secretary in the notice.
- (2) The specified day must not be earlier than the day on which the notice is first published.
- (3) A building product safety notice remains in force until the day that is 2 years after the day on which it comes into force, unless sooner revoked by the Secretary.

14 Amendment or revocation of building product safety notice

- (1) The Secretary may, by written notice published on the internet—
 - (a) amend a building product safety notice, or
 - (b) revoke a building product safety notice.
- (2) An amendment or revocation comes into force on the day specified by the Secretary in the notice of amendment or revocation.
- (3) The specified day must not be earlier than the day on which the notice of amendment or revocation is first published.

Division 2 Building product warnings

15 Secretary may issue building product warning

- (1) The Secretary may issue a notice warning about a building product (a ***building product warning***) if the Secretary is satisfied on reasonable grounds that—
 - (a) a non-compliance risk exists in relation to the product, or
 - (b) a safety risk exists in relation to an intended use of the product.
- (2) The Secretary must issue the warning by written notice published on the internet.
- (3) A building product warning may be issued whether or not another building product safety notice or a voluntary recall is in force in relation to the product.

15A Content of building product warning

- (1) A building product warning must specify the reasons the Secretary has decided—
 - (a) to publish the warning, or
 - (b) if the warning is amended—to amend the warning.
- (2) A building product warning notice may also include the following—
 - (a) information, advice or recommendations the Secretary considers would be in the public interest to include in relation to the product or the warning,

- (b) information the Secretary considers relevant relating to—
 - (i) the buildings or types of buildings, if any, in which the product has been used, and
 - (ii) the way the product has been used in the buildings.

Division 3 Building product supply bans

15B Secretary may issue building product supply ban

- (1) The Secretary may issue a notice prohibiting the supply of a building product (a *building product supply ban*) if the Secretary is satisfied on reasonable grounds that—
 - (a) a non-compliance risk exists in relation to the product, or
 - (b) a safety risk exists in relation to an intended use of the product.
- (2) The Secretary must issue the ban by written notice published on the internet.
- (3) A building product supply ban may be issued whether or not a building product warning is in force in relation to the product.

15C Content of building product supply ban

- (1) A building product supply ban must specify the reasons the Secretary has decided—
 - (a) to publish the ban, or
 - (b) if the ban is amended—to amend the ban.
- (2) A building product supply ban may require a person in the chain of responsibility for the building product with possession or control of the product to—
 - (a) notify the Secretary of the possession or control, or
 - (b) ensure the product is disposed of in the way and within the period specified in the ban.

Division 4 Building product use bans

15D Secretary may issue building product use ban

- (1) The Secretary may issue a notice prohibiting a use of a building product in a building (a *building product use ban*) if the Secretary is satisfied on reasonable grounds that—
 - (a) the prohibited use is an intended use that causes a non-compliance risk to exist in relation to the product, or
 - (b) a safety risk exists in relation to the prohibited use.
- (2) The Secretary must issue the ban by written notice published on the internet.
- (3) A building product use ban may be issued whether or not a building product warning is in force in relation to the product.

15E Content of building product use ban

- (1) A building product use ban must specify the reasons the Secretary has decided—
 - (a) to publish the ban, or
 - (b) if the ban is amended—to amend the ban.

- (2) A ban that prohibits an unsafe use of a building product may also prohibit another use of the building product that is not an unsafe use if—
 - (a) the application of the ban to the other use is not reasonably avoidable, and
 - (b) the ban operates reasonably and appropriately in prohibiting the unsafe use.

Division 5 Building product recalls

15F Secretary may issue building product recall

- (1) The Secretary may issue a notice for the recall of a building product (a ***building product recall***) if the Secretary is satisfied on reasonable grounds that—
 - (a) a non-compliance risk exists in relation to the product, or
 - (b) a safety risk exists in relation to an intended use of the product.
- (2) The Secretary must issue the building product recall by written notice published on the internet.
- (3) A building product recall may be issued whether or not the Secretary knows the identity of some or all suppliers of the product.
- (4) A building product recall may be issued whether or not a building product warning, a building product supply ban or a building product use ban is in force in relation to the product.

15G Content of building product recall

- (1) A building product recall must specify the reasons the Secretary has decided—
 - (a) to publish the recall, or
 - (b) if the recall is amended—to amend the recall.
- (2) A building product recall must specify what persons in the chain of responsibility for the building product must do to recall the product from use.
Example— An architect or engineer may be required to amend a design to specify an alternative building product instead of the recalled product.
- (3) The regulations may make further provision about—
 - (a) matters that may, must or must not be included in a building product recall, and
 - (b) the obligations of persons in the chain of responsibility for a recalled product in relation to the recall.

Division 6 Provision of information relating to notices

15H Definition

In this Division—

reasonably practicable has the same meaning as in Part 2A.

15I Requirement to provide information—persons in chain of responsibility

- (1) This section applies to a building product that is the subject of a building product safety notice other than a building product warning.
- (2) The Secretary may, by written notice, require a person in the chain of responsibility for the product to give specified information about the building

product safety notice to other specified persons in the chain of responsibility, including—

- (a) the existence of the building product safety notice, and
 - (b) particular information contained in the building product safety notice.
- (3) The person must comply with the notice as far as is reasonably practicable.
- Maximum penalty—
- (a) for a corporation—500 penalty units, or
 - (b) otherwise—200 penalty units.

15J Requirement to provide information—general

- (1) This section applies to a person who, in trade or commerce, designs, manufactures, imports or supplies a building product that is the subject of a building product safety notice other than a building product warning.
- (2) The Secretary may, by written notice, require the person to give specified information about the building product safety notice to other specified persons to whom the building product safety notice applies or may apply.
- (3) The notice given to the person may—
 - (a) specify the way in which it must be complied with, and
 - (b) specify the period for compliance, and
 - (c) require the person to give the Secretary evidence of the person's compliance.
- (4) The person must comply with the notice as far as is reasonably practicable.

Division 7 Offences

15K Contravening building product safety notice

- (1) A person must not—
 - (a) supply a building product in contravention of a building product supply ban, or
 - (b) cause a building product to be used in a building in contravention of a building product use ban, or
 - (c) contravene, or fail to carry out a requirement of, a building product recall.

Maximum penalty—

 - (a) for a corporation—10,000 penalty units and, for a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
 - (b) otherwise—2,000 penalty units or imprisonment for 2 years, or both, and, for a continuing offence, a further penalty of 400 penalty units for each day the offence continues.
- (2) For subsection (1), a person causes a building product to be used in a building—
 - (a) if the person does the building work by which the building product is used in the building, or
 - (b) in other circumstances specified by the regulations.

- (3) In proceedings for an offence against this section, it is a defence if the accused proves the accused had a reasonable excuse for the act or omission concerned.
- (4) An offence against subsection (1) is an executive liability offence.

15L Representation contravening building product safety notice

- (1) A person must not, in trade or commerce, represent that a building product is suitable for a use in a building if the use would contravene—
 - (a) a building product use ban, or
 - (b) a building product supply ban, or
 - (c) a building product recall.Maximum penalty—
 - (a) for a corporation—10,000 penalty units and, for a continuing offence, a further penalty of 1,000 penalty units for each day the offence continues, or
 - (b) otherwise—2,000 penalty units or imprisonment for 2 years, or both, and, for a continuing offence, a further penalty of 400 penalty units for each day the offence continues.
- (2) In proceedings for an offence against this section, it is a defence if the accused proves the accused had a reasonable excuse for the act or omission concerned.
- (3) An offence against subsection (1) is an executive liability offence.

[8] Section 17 Affected building

Omit section 17(1). Insert instead—

- (1) For this Part, a building is an *affected building* if—
 - (a) a building product the subject of a building product use ban has been used in the building for a use that is prohibited by the building product use ban, or
 - (b) a building product the subject of a building product supply ban has been used in the building for a use that is referred to in the building product supply ban, or
 - (c) a building product the subject of a building product recall has been used in the building for a use that is referred to in the building product recall.

[9] Sections 17(2) and 19(3)(c)

Omit “building product use ban”. Insert instead “relevant ban or notice”.

[10] Sections 18(2)(b), 19(2), 19(3)(b) and 20(2)(a)

Insert “, building product supply ban or building product recall” after “building product use ban”.

[11] Section 18(2)(c)

Omit the paragraph. Insert instead—

- (c) particulars of the safety risk or non-compliance risk posed by the use of the building product to which the relevant ban or notice applies.

[12] Section 18(3)(e)

Insert “or non-compliance risk” after “safety risk”.

[13] Section 26 When a building is “made safe”

Omit “applies, as identified by the Secretary in an affected building notice,”.

Insert instead “, building product supply ban or building product recall applies”.

[14] Part 6, heading

Omit the heading. Insert instead—

Part 6 Powers of Secretary

[15] Section 34 Building product investigations

Insert after section 34(1)(b)—

- (c) to decide whether a non-compliance risk exists in relation to a building product.

[16] Sections 36(1) and 41(1)

Omit “use ban”. Insert instead “safety notice”.

[17] Section 38 Definitions

Omit the definition of *product assessment*. Insert instead—

product assessment means an assessment that is conducted for the purpose of assessing whether—

- (a) a non-compliance risk exists in relation to a building product, or
- (b) an intended use of a building product in a building would be unsafe.

[18] Section 39 Secretary may require product assessment

Omit section 39(2)(a). Insert instead—

- (a) the Secretary has reasonable grounds to suspect that—
 - (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, and

[19] Part 6, Division 3

Insert after Part 6, Division 2—

Division 3 Trading prohibitions

41A Show cause notices

- (1) This section applies if the Secretary is satisfied that a person has, in trade or commerce, engaged in unlawful conduct relating to the use or supply of a building product on more than 1 occasion, whether in New South Wales or in another place.
- (2) The Secretary may, by written notice given to the person, require the person to show cause why the person should not, for the reason specified in the notice, be prevented from carrying on a business of supplying building products.
- (3) The notice must specify a period of at least 14 days after the notice is served in which the person may show cause.
- (4) The person may, within the specified period, make a written submission in relation to the matters to which the notice relates.

- (5) The Secretary—
 - (a) must consider submissions made, and
 - (b) may conduct enquiries, or make investigations, that the Secretary thinks appropriate in relation to the matters to which the notice relates.
- (6) This section does not limit the operation of the *Fair Trading Act 1987* or the ACL.

41B Trading prohibition orders

- (1) The Secretary may apply to the Supreme Court for an order prohibiting a person from carrying on a business of supplying building products (a **trading prohibition order**) if the Secretary—
 - (a) has given the person written notice under section 41A, and
 - (b) has considered submissions made in relation to the matter, and
 - (c) considers the person is likely to engage again, or to continue to engage, in unlawful conduct relating to the use or supply of a building product.
- (2) The Supreme Court may make a trading prohibition order if satisfied the person is likely to engage again, or to continue to engage, in unlawful conduct relating to the use or supply of a building product.
- (3) A trading prohibition order may be expressed to operate in one or more of the following ways—
 - (a) to prohibit the person from carrying on a business of supplying building products generally or in relation to a specified business,
 - (b) to prohibit the person from carrying on a business of supplying building products as part of, or incidentally to, the carrying on of another business.
- (4) A trading prohibition order may have effect—
 - (a) indefinitely, or
 - (b) for a period specified in the order.
- (5) In making a trading prohibition order, the Supreme Court may, if satisfied another person has sustained loss or damage as a result of the unlawful conduct of the person who is the subject of the order (the **prohibited person**), order the prohibited person to compensate the other person for the loss or damage.
- (6) A reference in subsection (5) to loss or damage does not, if the loss or damage arises from a contravention of Part 2-1, 3-1 or 4-1 of the ACL, include a reference to—
 - (a) the death of a person, or
 - (b) personal injury to a person, including prenatal injury, impairment of the person’s physical or mental condition and disease.
- (7) This section does not limit the operation of the *Fair Trading Act 1987* or the ACL.

[20] Part 7, heading

Omit “**Investigation powers**”. Insert instead “**Powers**”.

[21] Section 42 Purposes for which functions under Part may be exercised

Omit section 42(1)(a) and (b). Insert instead—

- (a) to assess 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,
- (b) to determine 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,
- (b1) for a function under Division 2A—for a purpose for which a building product direction may be given,

[22] Part 7, Division 2A

Insert after Part 7, Division 2—

Division 2A Powers relating to building product directions

46A Exercise in conjunction with other powers

A power conferred by this Division may be exercised whether or not a power of entry under Division 3 is being exercised.

46B Building product directions

- (1) An authorised officer may give an appropriate person a direction (a ***building product direction***) for one or more of the following purposes—
 - (a) to prevent the use of a building product in a building, by a person in the chain of responsibility for the product, in a way that poses a safety risk,
 - (b) to eliminate or minimise a safety risk posed by the use of a building product in a building,
 - (c) to prevent, eliminate or minimise a non-compliance risk in relation to a building product,
 - (d) to administer or execute this Act or an instrument made under this Act.
- (2) A building product direction may require the person to do, or refrain from doing, anything the authorised officer reasonably believes is necessary to give effect to the relevant purpose, including—
 - (a) ceasing to use or supply a building product generally, and
 - (b) ceasing to use a building product in a specified way, and
 - (c) making a building product incapable of being used or operated.
- (3) A building product direction may be given orally or in writing.
- (4) A building product direction remains in force until the day that is 90 days after the day on which it comes into force, unless sooner revoked.
- (5) An authorised officer is not required to notify a person who may be affected by a building product direction before the authorised officer gives the direction.
- (6) Unless the direction has already been complied with, written confirmation of an oral direction must be given to the person within 7 days after the oral direction.
- (7) In this section—
appropriate person means one of the following—

- (a) a person in the chain of responsibility for the relevant building product,
- (b) a person with possession of the relevant building product,
- (c) a person who is the occupier of, or employed at, a place where the relevant building product is manufactured, supplied or stored,
- (d) a person who is employed at, or engaged in building work at, a building or a building site where the relevant building product is stored or used.

46C Limitations on building product direction

- (1) A building product direction must not require something to be done in relation to a building product that has been used in a building if the building is occupied or fit for occupation.
- (2) Without limiting subsection (1), a building is taken to be fit for occupation if an occupation certificate under the *Environmental Planning and Assessment Act 1979* that is required in relation to the occupation of the building has been issued.

46D Failure to comply with building product direction

- (1) A person who fails to comply with a building product direction without a reasonable excuse is guilty of an offence.
Maximum penalty—500 penalty units.
- (2) If a person has failed to comply with a building product direction, the authorised officer who gave the direction may do anything the authorised officer reasonably believes is necessary to remedy the failure to comply.

46E Revocation or amendment of building product direction

- (1) A building product direction may be revoked or amended by a subsequent direction or directions.
- (2) Without limiting subsection (1), a direction may be amended by extending the time for complying with the direction.
- (3) A direction may be revoked or amended by the Secretary or an authorised officer.

[23] Part 7, Division 4, Subdivision 1, heading

Insert before section 49—

Subdivision 1 General

[24] Section 49 Powers that can be exercised on premises

Insert after section 49(2)(g)—

- (g1) an act authorised by Subdivision 2 in relation to seizure or forfeiture of a building product,

[25] Section 50 Search warrants

Insert at the end of section 50(1)(b)—

- , 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.

[26] Part 7, Division 4, Subdivision 2

Insert after section 53—

Subdivision 2 Seizure and forfeiture of building products

53A Interpretation

- (1) In this Subdivision—
owner, of a building product, includes a person entitled to possession of the product.
responsible person, for a seized building product, means the apparent owner of the product or the apparent occupier of premises at which the product is seized.
- (2) For this Subdivision, continuing to keep a seized building product in custody is *not justified* if it is not, or is no longer, reasonably necessary to keep the product—
 - (a) to prevent a safety risk in relation to the use of the product in a building, or
 - (b) as evidence of an offence.
- (3) For this Subdivision, a reference to returning or delivering a seized building product to its owner includes a reference to returning or delivering the product to a person nominated by the owner for the purpose of the return or delivery.

53B Seizure of building product

- (1) An authorised officer may seize a building product if the authorised officer believes on reasonable grounds that—
 - (a) a non-compliance risk exists in relation to the product, or
 - (b) a safety risk exists in relation to an intended use of the product, or
 - (c) the seizure is necessary to determine whether the non-compliance risk or safety risk exists, or
 - (d) an offence against this Act or the regulations has been committed in relation to the product.
- (2) On seizing the product, the authorised officer may do any of the following—
 - (a) move the product from the place where it is seized,
 - (b) leave the product at the place where it is seized and take reasonable action to restrict access to the product,
 - (c) direct the occupier of the premises where the product is seized to keep it at the premises or at another place under the control of the occupier,
 - (d) direct the occupier of the premises where the product is seized to deliver the product to a place specified by the authorised officer.

53C Receipt for seized product

- (1) As soon as practicable after an authorised officer seizes a building product, the authorised officer must give a written receipt for the product to a responsible person.

- (2) If the authorised officer cannot practicably give the receipt to a responsible person, the officer may instead leave the receipt at the place where the product is seized in a conspicuous position and in a reasonably secure way.
- (3) The receipt must generally describe the seized product and its condition.
- (4) This section does not apply if—
 - (a) the building product is seized in a public place and the authorised officer cannot, after reasonable enquiries, identify or locate the apparent owner of the product, or
 - (b) considering the nature, condition or value of the seized building product, it would be impracticable or unreasonable to give a receipt for the product.

53D Keeping of seized product for use as evidence

- (1) An authorised officer who seizes a building product may keep the product until the completion of proceedings, including proceedings on appeal, in which the product may be evidence.
- (2) A person aggrieved by the seizure of the product may make an application for an order that the authorised officer may not keep the seized product to the court in which proceedings referred to in subsection (1) are commenced.
- (3) If the court makes the order, subsection (1) ceases to have effect in relation to the seized product.

53E Return of seized product

- (1) An authorised officer must return a seized building product to its owner if the authorised officer is satisfied that—
 - (a) it is lawful for the owner to have possession of the product, and
 - (b) continuing to keep the product in custody is not justified.
- (2) A requirement to return a seized product to its owner includes a requirement to remove or lift restrictions, if any, on an owner's access to or control of the product.
- (3) The authorised officer may comply with the requirement by ensuring the seized product is made available for collection in accordance with an arrangement made with its owner.
- (4) This section does not apply if the authorised officer certifies in writing that the authorised officer is unable to return the seized product to its owner.

53F Certification of inability to return seized product

- (1) An authorised officer may certify in writing that it is not reasonably practicable to return a seized building product to its owner if—
 - (a) the authorised officer cannot find the owner after making reasonable enquiries, or
 - (b) the product has been destroyed in the process of testing or examining the product, or
 - (c) the authorised officer cannot, for another reason, return the product to its owner after making reasonable efforts.
- (2) The regulations may provide for the steps taken to constitute reasonable enquiries or efforts under subsection (1).

53G Court order requiring delivery of seized product

- (1) A person may apply to the following for an order directing that a seized building product be delivered to the person—
 - (a) if the estimated value of the product exceeds \$100,000—the Supreme Court,
 - (b) otherwise—the Local Court.
- (2) The court may make the order only if satisfied that—
 - (a) the person is the owner of the seized product, and
 - (b) it is lawful for the person to have possession of the product, and
 - (c) continuing to keep the product in custody is not justified.
- (3) In deciding the application, the court may do one or more of the following—
 - (a) make a finding or order about the ownership of the product,
 - (b) make a finding or order about the liability for, or payment of, costs and expenses incurred in keeping the product in custody,
 - (c) make an incidental or ancillary finding or order the court considers necessary.
- (4) A requirement to deliver a seized building product to its owner includes a requirement to remove or lift restrictions, if any, on an owner's access to the product.
- (5) A court may not make an order under this section in relation to a seized building product that has been forfeited to the Secretary.

53H Forfeiture of seized building product

- (1) The Secretary may, by written order, declare a seized building product to be forfeited to the Secretary if—
 - (a) the Secretary is satisfied that continuing to keep the product in custody is not justified, and
 - (b) either—
 - (i) the Secretary is satisfied that it is not lawful for the owner of the seized product to have possession of the product, or
 - (ii) an authorised officer certifies under section 53F that it is not reasonably practicable to return the product to the owner.
- (2) At least 21 days before making the order, the Secretary must give notice of the Secretary's intention to make the order by written notice—
 - (a) published on the internet, and
 - (b) given to the owner of the seized product.
- (3) Subsection (2)(b) does not apply if an authorised officer certifies under section 53F that it is not reasonably practicable to return the product to the owner.
- (4) The notice of intention to make the order must specify that a person may apply to a court under section 53G for an order directing that the product be delivered to the person, but only before the product has been forfeited to the Secretary.
- (5) The Secretary may not make an order under this section if—
 - (a) the Secretary receives notice that a person has applied to a court for an order directing that the seized product be delivered to the person, and
 - (b) the application has not been finally determined by the court.

53I Dealing with forfeited building products

- (1) If the Secretary makes an order under section 53H in relation to a seized building product, the seized product is forfeited to the Secretary and becomes the property of the Secretary.
- (2) The Secretary may deal with the seized product however the Secretary considers appropriate.

[27] Section 59 Liability of directors etc for corporate offences—executive liability

Insert in alphabetical order in section 59(7)—

product safety steps means the following—

- (a) action to obtain and maintain an up-to-date understanding of the building products for which the corporation is a person in the chain of responsibility, including—
 - (i) the nature of the corporation’s business activities in relation to the products, and
 - (ii) the safe use of the products, and
 - (iii) potential safety risks and non-compliance risks associated with the products,
- (b) action to ensure the corporation is appropriately resourced and has appropriate processes in relation to potential safety risks and non-compliance risks associated with the products, including processes—
 - (i) to remove or minimise the risks, and
 - (ii) to receive and respond to new information about the risks or incidents that may be relevant to the risks,
- (c) action to ensure the resources and processes mentioned in paragraph (b) are being appropriately implemented.

[28] Section 59(7), definition of “reasonable steps”, paragraph (e)

Insert after paragraph (d) of the definition—

- (e) for an executive liability offence against section 8E(1)—the product safety steps.

[29] Sections 81 and 82

Omit “building product use ban” wherever occurring.

Insert instead “building product safety notice”.

[30] Section 81 Administrative review of decisions

Insert after section 81(1)(e)—

- (f) a decision by the Secretary under section 40 to require the payment of a fee for action taken to conduct or complete a product assessment,
- (g) a decision by an authorised officer to give a building product direction.

[31] Section 82 Modification of requirement to give reasons

Omit “notice of the ban” from section 82(1), note. Insert instead “the notice”.

[32] Section 82(2)

Omit “of the ban”.

[33] Section 85

Omit the section. Insert instead—

85 Relationship with National Construction Code

- (1) A building product safety notice or building product direction may be issued even if the relevant building product or use complies with the requirements of the National Construction Code.
- (2) The fact that a building product or use complies with the requirements of the National Construction Code does not constitute a reasonable excuse for contravening a building product safety notice or building product direction.
- (3) However, a building product safety notice or building product direction must not purport to authorise, and is void to the extent that it otherwise purports to authorise, a contravention of the National Construction Code.

[34] Schedule 1 Savings, transitional and other provisions

Insert after Part 2—

Part 3 Provisions consequent on enactment of Building and Construction Legislation Amendment Act 2022

3 Building product use bans

A building product use ban in force immediately before the commencement of the *Building and Construction Legislation Amendment Act 2022* is taken to continue in force, on and from the commencement of that Act, Schedule 1, as a building product use ban under this Act as amended by that Act, Schedule 1.

1.2 Design and Building Practitioners Act 2020 No 7

[1] Section 64 Grounds for taking disciplinary action

Insert after section 64(ga)—

- (gb) the practitioner has—
- (i) used or supplied a building product in contravention of a building product use ban, building product supply ban or building product recall within the meaning of the *Building Products (Safety) Act 2017*, or
 - (ii) contravened another requirement of the *Building Products (Safety) Act 2017*, whether or not the practitioner is prosecuted or convicted for the contravention,

1.3 Home Building Act 1989 No 147

[1] Section 56 Grounds for taking disciplinary action against holder of a contractor licence

Insert after section 56(n)—

- (o) that the holder has—
- (i) used or supplied a building product in contravention of a building product use ban, building product supply ban or building product recall within the meaning of the *Building Products (Safety) Act 2017*, or

- (ii) contravened another requirement of the *Building Products (Safety) Act 2017*, whether or not the holder is prosecuted or convicted for the contravention.

[2] Section 57 Grounds for taking disciplinary action against holder of a supervisor or tradesperson certificate

Insert after section 57(i)—

- (j) that the holder has—
 - (i) used or supplied a building product in contravention of a building product use ban, building product supply ban or building product recall within the meaning of the *Building Products (Safety) Act 2017*, or
 - (ii) contravened another requirement of the *Building Products (Safety) Act 2017*, whether or not the holder is prosecuted or convicted for the contravention.

Schedule 2 Amendment of Strata Schemes Management Act 2015 No 50

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

APA or *authorised professional association*—see section 188B.

APA guidelines, for Part 10A—see section 188ZD.

approval, for Part 10A—see section 188A.

building inspector functions, for Part 10A—see section 188A.

co-regulation scheme, for Part 10A—see section 188ZC(1).

nominated individuals, for Part 10A—see section 188C(3).

officer, of a body corporate, for Part 10A—see section 188A.

relevant offence, for Part 10A—see section 188A.

strata inspector panel, in relation to an APA, for Part 10A—see section 188A.

[2] Part 10A

Insert after section 188—

Part 10A Approval of authorised professional associations

Division 1 Authorised professional associations

188A Definitions

In this Part—

APA guidelines—see section 188ZD.

approval means a written approval from the Secretary to exercise the functions of an APA.

building inspector functions means the functions of a building inspector under Part 11.

co-regulation scheme, in relation to an APA—see section 188ZC(1).

nominated individuals, for an APA—see section 188C(3).

officer, of a body corporate, means—

- (a) for a company registered under the *Corporations Act 2001* of the Commonwealth—an officer of the company within the meaning of that Act, or
- (b) for another body corporate—an individual, however described, who is concerned in or takes part in the management of the body corporate.

relevant offence means an offence involving fraud or dishonesty.

strata inspector panel, in relation to an APA, means the strata inspector panel established and maintained by the APA under section 188C(1)(a).

188B Meaning of “authorised professional association” or “APA”

- (1) For this Act, *authorised professional association* or *APA* means a body corporate holding a current approval.
- (2) The following bodies corporate are eligible for an approval—
 - (a) a company registered under the *Corporations Act 2001* of the Commonwealth,

- (b) an association within the meaning of the *Associations Incorporation Act 2009* or an incorporated association created under the legislation of another Australian jurisdiction.
- (3) A reference in this Act to an APA, in relation to a function of an APA, does not include a reference to an APA that is not approved to exercise the function concerned.

188C Functions of APA

- (1) The functions of an APA for this Act are as follows—
 - (a) to establish and maintain a strata inspector panel for building work, including by appointing individuals as members of the panel if satisfied the individuals are appropriately qualified to carry out building inspector functions in relation to building work,
 - (b) in relation to the members of the panel—
 - (i) to ensure compliance with professional obligations relevant to membership of the panel, and
 - (ii) to investigate possible failures to comply with the professional obligations, and
 - (iii) to exercise disciplinary functions where a failure to comply with the professional obligations is identified, including, if necessary, by removing the relevant member from the panel,
 - (c) other functions imposed on the APA by this Act or the regulations.
- (2) An APA may decide how to exercise its functions subject to the following—
 - (a) this Act and the regulations,
 - (b) conditions or limitations imposed on the APA's approval,
 - (c) the APA guidelines.
- (3) The functions of an APA may be exercised by individuals (*nominated individuals*) nominated by the APA from time to time to exercise the functions for the APA.
- (4) Except in section 188M(1)(a), a reference in this Part to the functions of an APA does not include a reference to a function conferred on the APA otherwise than by or under this Act.

188D Offences relating to APA functions

- (1) A person must not exercise a function of an APA unless the person is—
 - (a) the APA, or
 - (b) a nominated individual for the APA.Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—300 penalty units.
- (2) A person must not falsely represent that the person is authorised to—
 - (a) establish a strata inspector panel, or
 - (b) appoint an individual to be a member of a strata inspector panel, or
 - (c) otherwise exercise a function of an APA.Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or

- (b) otherwise—300 penalty units.

Division 2 Approval procedure

188E Application for approval

- (1) An eligible body corporate may apply to the Secretary for an approval.
- (2) An application must—
 - (a) be in a form approved by the Secretary, and
 - (b) include the names and contact details of the nominated individuals for the APA, and
 - (c) set out the proposed co-regulation scheme of the APA, and
 - (d) include or be accompanied by information or evidence specified for the application by the regulations.
- (3) The Secretary may require additional information or evidence to be provided in relation to the application.
- (4) The regulations may—
 - (a) provide for a fee for making the application, and
 - (b) require the fee to accompany the application.

188F Grant or refusal of approval

- (1) The Secretary may, on application, grant or refuse an approval.
- (2) On the granting of an approval, the proposed co-regulation scheme set out in the application becomes the co-regulation scheme of the APA and is taken to form part of the approval.
Note— Section 188ZC sets out requirements for the co-regulation scheme of an APA.
- (3) The Secretary may require the proposed co-regulation scheme or the list of nominated individuals to be modified before granting the approval.
- (4) The Secretary may refuse an approval—
 - (a) if the application does not comply with the requirements imposed by or under this Act, including the APA guidelines, or
 - (b) if the Secretary considers it is not in the public interest to grant the approval, or
 - (c) if the Secretary considers the applicant is not suitable to be granted an approval, or
 - (d) on another ground specified by the regulations.
- (5) The Secretary must give the applicant written notice of a decision to grant or refuse approval within 28 business days after making the decision.
- (6) The Secretary is taken to have refused approval if the Secretary fails to give the applicant notice of a decision to grant or refuse approval within—
 - (a) 60 business days after the application is made, or
 - (b) with the written agreement of the applicant—a longer period.
- (7) If the Secretary makes a written request for further information in relation to the application, the period mentioned in subsection (6) does not include the period starting on the day the written request is made and ending on—
 - (a) the day the further information is provided, or

- (b) the day the applicant declines to provide the further information.
- (8) The Secretary may refuse the application if the applicant does not provide, or declines to provide, the further information.
- (9) The Secretary may continue to consider an application the Secretary is taken to have refused under subsection (6).
- (10) If the Secretary grants an approval, the Secretary must ensure notice of the approval is published on a publicly accessible website maintained by the Secretary for this Act.

188G Suitability factors

- (1) In considering the suitability of an applicant for approval, the Secretary may consider one or more of the following—
 - (a) whether the applicant, or a director or officer of the applicant, was convicted of a relevant offence in the 10 years preceding the application,
 - (b) whether the Independent Commission Against Corruption, or a person or body exercising substantially similar functions to the Independent Commission Against Corruption in another Australian jurisdiction—
 - (i) has made a finding that the applicant, or a director or officer of the applicant, engaged in corrupt conduct in the 10 years preceding the application, or
 - (ii) is carrying out an ongoing investigation into the conduct of the applicant, or a director or officer of the applicant,
 - (c) whether the applicant, or a director or officer of the applicant, has held a NSW authorisation or equivalent authorisation that was involuntarily suspended or cancelled,
 - (d) whether the applicant, or a director or officer of the applicant, is disqualified from holding a NSW authorisation or equivalent authorisation other than on the grounds of—
 - (i) not living in the jurisdiction to which the authorisation applies, or
 - (ii) not being a natural person,
 - (e) whether the applicant, or a director or officer of the applicant, is an undischarged bankrupt,
 - (f) whether the applicant is subject to—
 - (i) a winding up order, or
 - (ii) the appointment of a controller or administrator,
 - (g) if the Secretary considers a close associate of the applicant is not a fit and proper person—whether the close associate exercises significant influence over—
 - (i) the applicant, or
 - (ii) the management of the applicant’s business,
 - (h) another matter specified by the regulations or APA guidelines for this section,
 - (i) another matter the Secretary considers relevant.
- (2) In this section—

equivalent authorisation means an authorisation, however described, that is issued or conferred under the laws of another Australian jurisdiction and the effect of which is substantially similar to the effect of a NSW authorisation.

NSW authorisation means one or more of the following—

- (a) registration as an architect under the *Architects Act 2003*,
- (b) registration as a registered certifier under the *Building and Development Certifiers Act 2018*,
- (c) registration as a registered practitioner under the *Design and Building Practitioners Act 2020*,
- (d) a licence, certificate or permit under the *Home Building Act 1989*.

188H Duration of approval

- (1) An approval remains in force for a period of 5 years unless sooner cancelled or voluntarily surrendered.
- (2) An approval has no effect during a period in which the approval is suspended.

188I Variation of approval

- (1) The Secretary may at any time vary an approval by written notice to the APA holding the approval.
- (2) A variation may include—
 - (a) a variation to the co-regulation scheme of the APA, or
 - (b) the modification, omission or substitution of an existing condition of approval, or
 - (c) the imposition of a new condition of approval.
- (3) If an APA applies to the Secretary for a variation of approval, the Secretary may require additional information or evidence to be provided in relation to the application.
- (4) The regulations may make further provision about variations of approval, including—
 - (a) applications for variations of approval, and
 - (b) fees for applications for variations of approval.

188J Renewal of approval

- (1) An APA holding an existing approval may apply to the Secretary for a renewal of the approval.
- (2) The renewal application must be made during the period that is 3 months before the expiry of the existing approval.
- (3) However, the Secretary may accept a renewal application made after the expiry of the existing approval if the Secretary considers there are reasonable grounds to accept the application.
- (4) A renewal application must be in a form approved by the Secretary.
- (5) The regulations may—
 - (a) provide for a fee for making the application, and
 - (b) require the fee to accompany the application.
- (6) The Secretary must give the applicant written notice of a decision to grant or refuse the renewal within 28 business days after making the decision.
- (7) The Secretary may refuse a renewal application—

- (a) because the existing approval was suspended at the time the renewal application was made, or
 - (b) if the renewal application does not comply with the requirements imposed by or under this Act, or
 - (c) if the Secretary considers it is not in the public interest to approve the renewal application, or
 - (d) if the Secretary considers the applicant is no longer suitable to be granted an approval, or
 - (e) on another ground specified by the regulations.
- (8) If an application for the renewal of an existing approval is made, including an application accepted under subsection (3), the existing approval is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the renewal application.
- (9) In this section—
existing approval does not include a deemed approval under Schedule 3, clause 21.

Division 3 Conditions of approval

188K Conditions generally

- (1) An approval is subject to the following—
 - (a) conditions specified by this Act or the regulations,
 - (b) conditions imposed by the Secretary.
- (2) The Secretary may impose conditions on an approval—
 - (a) at the time of granting the approval, or
 - (b) at any time by variation of the approval.
- (3) Without limiting subsection (2), the Secretary may impose a condition limiting the APA's functions, including the function of establishing and maintaining a strata inspector panel, to building work of a specified kind.

188L Condition of establishing and maintaining strata inspector panel

- (1) It is a condition of approval that the APA exercise the function of establishing and maintaining a strata inspector panel for building work.
- (2) The APA may exercise the function by appointing an individual as a member of the panel if satisfied the individual is appropriately qualified to carry out building inspector functions in relation to building work.
- (3) An APA that fails to comply with the condition set out in this section is guilty of an offence.
Maximum penalty—200 penalty units.

188M Condition of notifying Secretary of certain events

- (1) It is a condition of approval that the APA give the Secretary written notice of the following events within 7 days after becoming aware of the event—
 - (a) the commencement of proceedings against the APA, or a director or officer of the APA, for contravening a requirement imposed by or under this Act or another Act or law in relation to the functions of the APA,

- (b) the conviction for a relevant offence of the APA, or a director or officer of the APA,
 - (c) the APA becoming bankrupt or making composition, arrangement or assignment for the benefit of creditors,
 - (d) the APA becoming subject to—
 - (i) a winding up order, or
 - (ii) the appointment of a controller or administrator,
 - (e) an individual becoming, or ceasing to be, a director or officer of the APA,
 - (f) a change to the APA's nominated individuals,
 - (g) another event specified by the regulations for this section.
- (2) An APA that fails to comply with the condition set out in this section is guilty of an offence.
Maximum penalty—100 penalty units.

188N Condition that functions be exercised in accordance with co-regulation scheme

It is a condition of approval that the functions of the APA be exercised only in accordance with the co-regulation scheme of the APA.

188O Condition that functions be exercised by nominated individuals

It is a condition of approval that the functions of the APA be exercised only by individuals who are nominated individuals for the APA.

Note— See sections 188C(3) and 188M(1)(f).

188P Condition that functions be exercised in public interest

It is a condition of approval that the APA act in the public interest in exercising its functions.

188Q Condition that functions be exercised independently and fairly

It is a condition of approval that the APA exercise its functions independently, fairly and with honesty and integrity.

Maximum penalty—200 penalty units.

188R Condition requiring giving of information to Secretary

- (1) The Secretary may make a written request to an APA for specified information relating to the exercise of its functions as an APA.
 - (2) It is a condition of approval that the APA—
 - (a) comply with the request, and
 - (b) if the Secretary specifies a period within which the information must be given—give the information within the specified period.
- Note—** Section 188ZH authorises the APA to disclose information to the Secretary if the information was obtained in exercising the functions of an APA.
- (3) An APA that fails to comply with the condition set out in subsection (2) is guilty of an offence.
Maximum penalty—300 penalty units.
 - (4) The regulations may make further provision about the giving of information under this section.

188S Condition relating to investigations and audits

It is a condition of approval that the APA provide reasonable assistance to the Secretary in relation to an investigation or audit conducted by the Secretary under this or another Act or law.

Note— See section 188ZL.

188T Condition requiring publication of information

- (1) It is a condition of approval that an APA make available to the public the requirements or conditions the APA has imposed, or proposes to impose, on members of the strata inspector panel maintained by the APA.
- (2) The Secretary may make a written request to an APA to make available to the public other specified information relating to the exercise of its functions as an APA.
- (3) It is a condition of approval that the APA—
 - (a) comply with the request, and
 - (b) if the Secretary specifies a way in which the information must be made available—make the information available in the specified way.
- (4) Subsection (3) is subject to a provision of another Act that restricts or prohibits making the information available to the public.
- (5) An APA that fails to comply with the condition set out in subsection (1) or (3) is guilty of an offence.
Maximum penalty—100 penalty units.
- (6) The regulations may make further provision about making information available under this section.

188U Condition requiring making and keeping of records

- (1) It is a condition of approval that the APA make and keep the records specified by the regulations for this section.
- (2) The regulations may provide for—
 - (a) the way in which the records must be made, and
 - (b) the period for which the records must be kept.
- (3) A requirement to keep records continues to apply to a body corporate even if the body corporate ceases to be an APA.
- (4) An APA or former APA that fails to comply with the condition set out in this section is guilty of an offence.
Maximum penalty—100 penalty units.

188V Condition requiring maintenance of website

- (1) It is a condition of approval that the APA ensure a website is maintained in accordance with section 188ZK.
- (2) An APA that fails to comply with the condition set out in this section is guilty of an offence.
Maximum penalty—100 penalty units.

Division 4 Suspension or cancellation of approval

188W Grounds for suspension or cancellation of approval

- (1) Each of the following constitutes grounds for suspending or cancelling an approval—
 - (a) the Secretary considers the APA has contravened a condition of approval,
 - (b) the Secretary considers the APA has contravened another requirement imposed by or under this Act,
 - (c) the Secretary considers the APA is no longer suitable to hold an approval to exercise the functions of an APA,
 - (d) the Secretary has received information about the APA and considers that, had the information been available at the time the application by the APA for approval or renewal of approval was made, the Secretary would have refused the approval or renewal,
 - (e) the Secretary considers the APA is no longer exercising the functions of an APA,
 - (f) another ground specified by the regulations for this section.
- (2) In making a decision about suitability for approval, the Secretary may consider one or more of the factors specified in section 188G(1) as if the APA were an applicant for approval.

188X Suspension of approval

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

188Y Cancellation of approval

- (1) The Secretary may, by written notice to an APA, cancel an approval if—
 - (a) the Secretary is satisfied there are grounds for the cancellation, or
 - (b) subject to section 188ZA—the APA gives notice of a voluntary surrender of the approval.
- (2) The notice must specify—
 - (a) the date or time from which the cancellation takes effect, and
 - (b) the grounds for the cancellation.

188Z Suspension or cancellation may be subject to conditions

- (1) An approval may be suspended or cancelled subject to conditions imposed by the Secretary.
- (2) The conditions may include conditions to which the approval was subject immediately before it was suspended or cancelled.
- (3) The Secretary may, by written notice to the APA, impose new conditions on, or vary or revoke existing conditions of, the suspension or cancellation of the approval.

188ZA Voluntary surrender of approval

- (1) An APA may voluntarily surrender its approval by written notice to the Secretary.
- (2) The notice must be—
 - (a) in a form approved by the Secretary, and
 - (b) given to the Secretary at least 90 days before the day on which the APA proposes that the surrender come into force.
- (3) The Secretary may require additional information or evidence to be provided in relation to the voluntary surrender.
- (4) The regulations may—
 - (a) provide for a fee for giving notice of a voluntary surrender, and
 - (b) require the fee to accompany the notice.
- (5) On receiving a notice, the Secretary must—
 - (a) decide the day on which the surrender will come into force, and
 - (b) give the APA written notice of the acknowledgment of the surrender and the day on which the surrender will come into force, and
 - (c) publish written notice of the surrender on a publicly accessible website maintained by the Secretary for this Act.
- (6) Within 7 days of receiving the notice of acknowledgment, the APA must give written notice of the surrender to all members of the strata inspection panel.

188ZB Effect of suspension or cancellation of approval

- (1) The suspension or cancellation of an approval does not affect the validity of anything done before the suspension or cancellation by—
 - (a) the APA, or
 - (b) an individual exercising building inspector functions following the individual's appointment to the strata inspector panel by the APA.
- (2) The regulations may make further provision about the effect of a suspension or cancellation of an approval.

Division 5 Miscellaneous

188ZC Co-regulation scheme of APA

- (1) In this Part, the *co-regulation scheme* of an APA means a scheme setting out the procedures to be followed by the APA in exercising the functions specified in section 188C(1).
- (2) Without limiting subsection (1), the co-regulation scheme of an APA must provide for the following—
 - (a) a process for the receipt, assessment and determination of applications for appointment to the strata inspector panel maintained by the APA,
 - (b) the fees, if any, to be charged by the APA in relation to applications for appointment to the strata inspector panel,
 - (c) a process for establishing and enforcing a code of conduct applicable to members of the panel appointed as building inspectors,
 - (d) a process for receiving and managing complaints about members of the panel in their capacity as members of the panel,

- (e) a process for investigating potential misconduct by members of the panel in their capacity as members of the panel,
 - (f) a process for taking disciplinary action against a member of the panel and notifying the Secretary of the action,
 - (g) a process for identifying and managing conflicts of interest between the functions the APA is approved to exercise under this Act and other functions of the APA,
 - (h) a process by which an aggrieved person may seek a review of a decision of the APA,
 - (i) a matter specified in the APA guidelines as a matter that must be provided for in a co-regulation scheme.
- (3) The regulations may—
- (a) make further provision about a requirement mentioned in subsection (2), and
 - (b) specify additional matters for which the co-regulation scheme must provide.

188ZD Secretary may adopt APA guidelines

- (1) The Secretary may adopt guidelines (the *APA guidelines*) relating to the approval of APAs and the functions of APAs.
- (2) The APA guidelines may make provision about the following—
 - (a) the suitability of a body corporate to be approved as an APA, including the qualifications, skills, knowledge and experience required,
 - (b) additional qualifications required for a person to be appointed as a building inspector within the meaning of Part 11,
Note— Section 193(2) provides that a person is qualified to be appointed as a building inspector if the person has been appointed by an APA as a member of a strata inspector panel.
 - (c) the receipt, assessment and determination of applications for appointment to a strata inspector panel maintained by an APA,
 - (d) another matter specified by this Part or the regulations as a matter about which APA guidelines may be made.
- (3) The Secretary must make the guidelines publicly available.
- (4) The Secretary may amend or replace the guidelines.

188ZE Offence of contravening condition

An APA or former APA that contravenes one or more of the following is guilty of an offence—

- (a) a condition of its approval, other than a condition the contravention of which carries a different maximum penalty under this Part,
- (b) a condition of a suspension or cancellation of its approval.

Maximum penalty—2,000 penalty units.

188ZF Offence of purporting to exercise functions of APA while suspended

An APA whose approval is suspended must not purport to exercise a function of an APA to which the suspension relates.

Maximum penalty—1,000 penalty units.

188ZG Offence of failing to ensure integrity of APA

A director or officer of an APA must take reasonable steps to ensure the APA exercises its functions independently, fairly and with honesty and integrity.

Maximum penalty—300 penalty units.

188ZH Disclosure of information to Secretary

An APA is authorised to disclose to the Secretary information obtained by the APA in exercising the functions of an APA, including personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*.

188ZI Investigation and audit powers of Secretary

- (1) The Secretary may, whether or not the Secretary has received a complaint, investigate the following—
 - (a) an APA or former APA,
 - (b) the exercise of a function of an APA,
 - (c) conduct of a person in the person's capacity as a director or officer, or former director or officer, of an APA,
 - (d) conduct of a person in the person's capacity as a member of a strata inspector panel,
 - (e) a possible breach of this Act or the regulations relating to an APA or a strata inspector panel.
- (2) The Secretary may require a complaint made to the Secretary about a matter mentioned in subsection (1) to be in a form approved by the Secretary.
- (3) The Secretary is not required to investigate the matter even if the Secretary has received a complaint in the approved form.
- (4) The Secretary may conduct an audit of an APA at any time.
- (5) This section does not limit another power the Secretary may have under this or another Act or law to receive a complaint, investigate a matter or conduct an audit.

188ZJ Register of APAs

- (1) The Secretary must maintain a current searchable register of APAs on a publicly accessible website maintained by the Secretary for this Act.
- (2) The regulations may make provision about the form and content of the register.

188ZK Website to be maintained by APAs

- (1) An APA must ensure a publicly accessible website is maintained in relation to the strata inspector panel maintained by the APA.
- (2) The website must include the following—
 - (a) information about the APA's co-regulation scheme, including—
 - (i) the process for the receipt, assessment and determination of applications for appointment to the strata inspector panel maintained by the APA, and
 - (ii) an application form for appointment to the panel, and

- (iii) the criteria to be considered in determining whether an individual is appropriately qualified to carry out building inspector functions in relation to building work of the relevant kind, and
 - (iv) grounds for removing an individual from the panel,
 - (b) information about the APA's processes for dealing with internal and external complaints about—
 - (i) the APA, or
 - (ii) a member of the panel,
 - (c) information about codes of conduct and conflict of interest policies applicable to members of the panel appointed as building inspectors,
 - (d) information about the requirements or conditions the APA has imposed, or proposes to impose, on members of the panel,
 - (e) information about procedures to be followed if the APA's approval to exercise the functions of an APA is suspended or cancelled,
 - (f) a searchable register of current and former members of the panel,
 - (g) other information required by the Secretary by written notice to the APA to be included on the website.
- (3) The information included in the website must be—
- (a) up to date, and
 - (b) prominently displayed, and
 - (c) available free of charge.
- (4) The regulations may make further provision about the form and content of the register mentioned in subsection (2)(f).

188ZL Review by Civil and Administrative Tribunal

A person aggrieved by one of the following decisions may apply to the Tribunal for an administrative review of the decision under the *Administrative Decisions Review Act 1997*—

- (a) a decision of the Secretary to refuse to grant an approval,
- (b) a decision of the Secretary to suspend or cancel an approval,
- (c) a decision of the Secretary to impose a condition on—
 - (i) the grant of an approval, or
 - (ii) the suspension or cancellation of an approval,
- (d) a decision of the Secretary to vary an approval.

[3] Section 193 Building inspectors

Omit section 193(2). Insert instead—

- (2) A person is qualified to be appointed as a building inspector if the person has been appointed by an authorised professional association as a member of a strata inspector panel under Part 10A.

Note— Other qualification requirements may apply—see section 188ZD(2).

- (3) A person must not falsely represent that the person—
- (a) is a member of a strata inspector panel under Part 10A, or
 - (b) is otherwise qualified to be appointed as a building inspector under this Part.

Maximum penalty—300 penalty units.

[4] Section 201 Final report

Omit section 201(3). Insert instead—

- (3) The final report may also identify defective building work that was not identified in the interim report.

[5] Section 207 Bond to be given

Omit “(up to the amount secured by the bond) of the costs of rectifying defective building work identified in a final report under this Part” from section 207(3).

Insert instead “, up to the amount required to be secured by the bond, of the costs of rectifying defective building work that has been identified in a final report under this Part but not rectified”.

[6] Section 209 When amount secured by building bond payable

Omit “if the report identifies the defective building work” from section 209(1)(a).

Insert instead “whether or not the defective building work was identified in the interim report on the work”.

[7] Section 209(1B)

Insert after section 209(1A)—

- (1B) An amount is not required to be paid under subsection (1)(a) until—
- (a) the day that is 90 days after the building inspector gives the final report to the Secretary, or
 - (b) if a builder rectifying the defective building work satisfies the Secretary that the rectification cannot be completed within 90 days of the giving of the final report—a later day approved by the Secretary.

[8] Section 209(3)(b)

Omit “90 days”. Insert instead “120 days”.

[9] Section 256A

Insert after section 256—

256A Exchange of information

- (1) The Secretary may enter into an arrangement with a relevant agency for sharing or exchanging information held by the Secretary or the agency.
- (2) An arrangement may relate only to information that is reasonably necessary to—
 - (a) assist in the exercise of the functions of the Secretary, or
 - (b) assist in the exercise of a relevant function by the relevant agency.
- (3) Under an arrangement, each party to the arrangement is authorised—
 - (a) to disclose information to another party to the arrangement, and
 - (b) to request and receive information held by another party to the arrangement.
- (4) This section does not—
 - (a) require the Secretary to provide information to a relevant agency only in accordance with an arrangement under this section if that 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 request and receive, or disclose, information to another person or body.
- (5) Nothing in this section authorises the sharing or exchange of information in contravention of the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.
- (6) In this section—
 - relevant agency** means—
 - (a) a government sector agency within the meaning of the *Government Sector Employment Act 2013*, or
 - (b) an owners corporation, or
 - (c) an authorised professional association within the meaning of Part 10A, or
 - (d) another person or body prescribed by the regulations.
 - relevant function** means a function in connection with—
 - (a) the management of a strata scheme, or
 - (b) the resolution of a dispute arising from or relating to a strata scheme, or
 - (c) the administration of Part 11, Division 3, or
 - (d) another matter prescribed by the regulations.

[10] Section 271 Regulations

Omit “for applications made to the Secretary under this Act and the remission of fees” from section 271(2)(b).

Insert instead “under this Act, including the waiver, reduction, postponement or refund of fees by the Secretary”.

[11] Schedule 3 Savings, transitional and other provisions

Omit Schedule 3, Part 2, clause 16. Insert instead—

16 Building defects

This Act, Part 11 does not apply to building work—

- (a) where there is a contract for carrying out the building work—if the contract was signed before 1 January 2018 and a construction certificate is issued before 1 January 2023, or
- (b) where there is no contract for carrying out the building work—if the building work commenced before 1 January 2018.

[12] Schedule 3, Part 4

Insert at the end of the Schedule—

Part 4 Provisions consequent on enactment of Building and Construction Legislation Amendment Act 2022

21 Temporary deemed approval for authorised professional associations

- (1) The following are deemed to hold an approval under this Act, Part 10A on and from the commencement of the *Building and Construction Legislation Amendment Act 2022*—

- (a) the Housing Industry Association Limited (ACN 004 631 752),
 - (b) the Master Builders Association of New South Wales Pty Ltd as registered under the *Industrial Relations Act 1996*,
 - (c) the Australian Institute of Building (ACN 000 165 248),
 - (d) the Australian Institute of Building Surveyors (ACN 004 540 836),
 - (e) the Australian Institute of Building Consultants Pty Ltd (ACN 605 683 690),
 - (f) the Australian Society of Building Consultants Incorporated (NSW Y1805133),
 - (g) the Institute of Building Consultants Inc (NSW Y0848702),
 - (h) Engineers Australia Pty Limited (ACN 001 311 511),
 - (i) the Association of Australian Certifiers Incorporated (NSW INC9880607),
 - (j) the Australian Institute of Quantity Surveyors Ltd (ACN 000 093 005),
 - (k) RICS Australasia Pty Ltd (ACN 089 873 067).
- (2) A holder of a deemed approval is not required to comply with Part 10A in exercising the functions of an APA.
- (3) The holder of a deemed approval may, with the approval of the Secretary, transfer the deemed approval to another body corporate related to the holder.
- (4) Despite section 188H(1), a deemed approval remains in force for a period of 1 year unless sooner cancelled.
- (5) The Secretary may cancel a deemed approval only if the Secretary considers the holder of the approval has, while the deemed approval is in force, exercised functions of an APA—
- (a) contrary to the public interest, and
 - (b) inconsistently with the holder being considered suitable to be granted a future approval to exercise the functions of an APA.
- (6) An act, matter or thing that had effect in relation to a body mentioned in subsection (1) under the *Strata Schemes Management Regulation 2016*, before its amendment by a regulation made consequent on the *Building and Construction Legislation Amendment Act 2022*, continues to have effect under the deemed approval.

22 Building inspections

The amendments made to Part 11 by the *Building and Construction Legislation Amendment Act 2022* do not apply to a building inspection for which a building inspector was appointed before the commencement of the amendments.

Schedule 3 Amendment of Building and Construction Industry Security of Payment Act 1999 No 46

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

original adjudicator, for Part 3, Division 2, Subdivision 2—see section 26AA.

original application, for Part 3, Division 2, Subdivision 2—see section 26AA.

original claimant, for Part 3, Division 2, Subdivision 2—see section 26AA.

original determination, for Part 3, Division 2, Subdivision 2—see section 26AA.

original respondent, for Part 3, Division 2, Subdivision 2—see section 26AA.

review adjudicator, for Part 3, Division 2, Subdivision 2—see section 26AF.

review applicant, for Part 3, Division 2, Subdivision 2—see section 26AA.

review application, for Part 3, Division 2, Subdivision 2—see section 26AA.

review respondent, for Part 3, Division 2, Subdivision 2—see section 26AA.

[2] Section 13 Payment claims

Insert after section 13(2)—

- (2A) The regulations may make further provision about additional information that must be included in, or accompany, a payment claim.

[3] Section 13(8A)

Insert after section 13(8)—

- (8A) A claimant must not serve a payment claim that does not include, or is not accompanied by, the information required by subsections (2) and (2A).

Maximum penalty—

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

[4] Section 20 Adjudication responses

Omit “section 14(4)” in section 20(2A). Insert instead “section 14(4)(b)”.

[5] Section 21 Adjudication procedures

Omit section 21(4)(d). Insert instead—

- (d) unless both parties object, may—
(i) carry out an inspection of a matter to which the claim relates, or
(ii) arrange for the testing of a matter or thing to which the claim relates, or
(iii) engage an appropriately qualified person to investigate and report on a matter to which the claim relates.

[6] Part 3, Division 2, Subdivision 1, heading

Insert before section 17—

Subdivision 1 Adjudication determinations

[7] **Part 3, Division 2, Subdivision 2**

Insert after section 26—

Subdivision 2 Reviews of adjudication determinations

26AA Definitions

In this Subdivision—

original adjudicator, in relation to a review application, means the adjudicator who made the original determination.

original application, in relation to a review application, means the adjudication application the determination of which is the subject of the review application.

original claimant means the claimant in an original application.

original determination, in relation to a review application, means the adjudicator's determination of the original application under section 22.

original respondent means the respondent in an original application.

review adjudicator—see section 26AF.

review applicant means a person who makes a review application.

review application means an application for a review of an original determination.

review respondent means—

- (a) for a review application made by the original claimant—the original respondent, and
- (b) for a review application made by the original respondent—the original claimant.

26AB Eligibility to make review application

- (1) An original respondent may only make a review application if the following conditions apply—
 - (a) the original respondent, in relation to the original application—
 - (i) gave the original claimant a payment schedule within the time specified in section 14(4)(b), and
 - (ii) gave the original adjudicator an adjudication response within the time specified in section 20(1),
 - (b) the adjudicated amount determined in the original determination exceeds the scheduled amount by more than the minimum amount specified by the regulations for this subsection,
 - (c) the original claimant has not made, or has withdrawn, a review application in relation to the original determination,
 - (d) the original respondent has complied with section 26AC(1).
- (2) An original claimant may only make a review application if the following conditions apply—
 - (a) the claimed amount exceeds the adjudicated amount determined in the original determination by more than the minimum amount specified by the regulations for this subsection,
 - (b) the original respondent has not made, or has withdrawn, a review application in relation to the original determination.

- (3) Subject to this section, the regulations may specify other circumstances in which a person may, or may not, make a review application.

26AC Mandatory payment of disputed sum into trust account

- (1) Before making a review application, an original respondent must—
- (a) pay the part of the adjudicated amount that is not disputed to the original claimant, and
 - (b) pay the part of the adjudicated amount that is disputed into a trust account established with an authorised deposit-taking institution, and
 - (c) give the original claimant written notice of—
 - (i) the payment into the trust account, and
 - (ii) information identifying the trust account.
- (2) Money held in a trust account under this section, including accrued interest, is taken to be held by the original respondent on trust for the benefit of the original claimant until—
- (a) the review application is determined or withdrawn, and
 - (b) all money required to be paid to the original claimant as a result of the determination or withdrawal has been paid.
- (3) The original respondent is entitled to money remaining in the trust account, if any, following the payment of money in accordance with subsection (2)(b).
- (4) The regulations may make further provision about the following—
- (a) the establishment of trust accounts under this section,
 - (b) payments into or out of the accounts,
 - (c) compliance with notice requirements under subsection (1)(c).

26AD Review applications

- (1) A review application must—
- (a) be written, and
 - (b) be made to the authorised nominating authority to which the original application was made, and
 - (c) be made within 5 business days after the review applicant receives a copy of the original determination, and
 - (d) identify the original application and original determination to which it relates, and
 - (e) be accompanied by the application fee, if any, specified by the authorised nominating authority.
- (2) If the review application includes a submission, the submission must not raise, and is void to the extent that it purports to raise—
- (a) an irrelevant matter, or
 - (b) a matter that was not, but could have been, raised before the original adjudicator.
- (3) The Minister may, by order, specify a maximum application fee amount for this section.
- (4) An authorised nominating authority must not specify an application fee that is more than the maximum application fee.

- (5) The review applicant must give the review respondent a copy of the review application within 1 business day after making the review application.
- (6) The regulations may make further provision about—
 - (a) the form of review applications, and
 - (b) information that must be included in, or accompany, review applications.

26AE Response to review application

- (1) A review respondent may make a written response to a review application.
- (2) The response must—
 - (a) identify the review application to which it relates, and
 - (b) be given to the authorised nominating authority within 5 business days after the review respondent receives a copy of the review application.
- (3) If the review respondent receives notice of the appointment of a review adjudicator before the time specified in subsection (2)(b), the review respondent may also give the response directly to the review adjudicator.
- (4) If the response includes a submission, the submission must not raise, and is void to the extent that it purports to raise—
 - (a) an irrelevant matter, or
 - (b) a matter that was not, but could have been, raised before the original adjudicator.
- (5) The review respondent must give the review applicant a copy of the response within 1 business day after giving the response to the authorised nominating authority.

26AF Appointment of review adjudicator

- (1) An authorised nominating authority must, as soon as practicable after receiving a review application, refer the application to a person who is eligible to be an adjudicator for the review application (a *review adjudicator*).
- (2) A person is eligible to be a review adjudicator for a review application if the person—
 - (a) was not involved, directly or indirectly, in the original determination, and
 - (b) would be eligible under section 18 to be an adjudicator in relation to the construction contract from which the original application arose.
- (3) The regulations may specify further circumstances in which a person is, or is not, eligible to be a review adjudicator for a review application.
- (4) The person may accept the referral by giving written notice of acceptance to the following within 4 business days of receiving the referral—
 - (a) the authorised nominating authority,
 - (b) the parties to the review application.
- (5) If the person does not accept the referral within the time specified in subsection (4), the authorised nominating authority must refer the review application to another person eligible to be a review adjudicator.
- (6) On accepting the review application, the person is taken to have been appointed as the review adjudicator.

- (7) If the authorised nominating authority receives a response to the review application from the review respondent, the authorised nominating authority must give a copy of the response to the review adjudicator as soon as practicable.
- (8) An authorised nominating authority must not refer material or give a document under this section if the material or document was given to the authorised nominating authority, or another party, later than the time required by a provision of this Subdivision.
- (9) In this section, a reference to a review application or a response to a review application includes a reference to material accompanying the review application or response.

26AG Review application—matters for consideration

- (1) In deciding a review application, the review adjudicator must consider only the following—
 - (a) the provisions of this Act and the regulations,
 - (b) the provisions of the construction contract from which the original application arose,
 - (c) the material given to the review adjudicator under section 26AE(3) or 26AF.
- (2) The review adjudicator must not consider a submission included in the review application, or a response to the review application, to the extent that the submission purports to raise—
 - (a) an irrelevant matter, or
 - (b) a matter that was not, but could have been, raised before the original adjudicator.
- (3) If material or documents are given to the review adjudicator contrary to section 26AF(8), the review adjudicator must not consider the material or documents.
- (4) The review adjudicator may communicate with the authorised nominating authority and the parties to ensure the review adjudicator has a copy of all the material the review adjudicator is entitled to consider in deciding the review application.
- (5) If the review adjudicator does not comply with subsections (1)–(3), the review adjudicator’s determination is void.

26AH Determination of review application

- (1) A review adjudicator may determine a review application by—
 - (a) confirming the original determination, or
 - (b) substituting a new determination for the original determination.
- (2) If the review adjudicator substitutes a new determination, the new determination must include all of the following information that is applicable—
 - (a) the matters required by section 22 to be determined or included in an original determination,
 - (b) if an amount has already been paid by the original respondent to the original claimant as a result of the original determination—whether the amount is to be taken to be paid under the new determination,

- (c) the further amount the original respondent must pay to the original claimant,
 - (d) the amount the original claimant must repay to the original respondent,
 - (e) the interest payable on an amount specified under paragraph (c).
- (3) The day on which an amount specified under subsection (2)(c)–(e) becomes payable is—
- (a) the day that is 5 business days after the day on which the review adjudicator gives the parties a copy of the new determination, or
 - (b) a later date specified by the adjudicator in the new determination.
- (4) The review adjudicator’s determination of a review application must—
- (a) be written, and
 - (b) include the reasons for the determination.
- (5) The review adjudicator must make the determination—
- (a) within 10 business days after the review adjudicator’s appointment, or
 - (b) within a further time, not exceeding 5 business days after the review adjudicator’s appointment, agreed to by the parties to the review application.
- (6) The review adjudicator must give a copy of the determination to the authorised nominating authority and the parties to the review application as soon as practicable after making the determination.
- (7) If the review adjudicator’s determination contains one of the following, the review adjudicator may, on the review adjudicator’s own initiative or on the application of the claimant or the respondent, correct the determination—
- (a) a minor error that does not substantially affect the determination,
 - (b) a material miscalculation,
 - (c) a mistake in the description of a person, thing or matter mentioned in the determination.

26AI Withdrawal of review application

- (1) A review applicant may withdraw a review application at any time before the review application is determined by giving written notice of the withdrawal to—
- (a) the authorised nominating authority, and
 - (b) if the review applicant has given the review respondent a copy of the review application—
 - (i) the review respondent, and
 - (ii) the review adjudicator, if any.
- (2) However, the withdrawal of a review application after the appointment of a review adjudicator does not have effect if—
- (a) another party to the construction contract concerned objects to the withdrawal, and
 - (b) the review adjudicator considers that it is in the interests of justice to uphold the objection.

26AJ Consequences of not paying amount determined on review

- (1) If a review applicant or review respondent (the *review debtor*) fails to pay the whole or part of an amount specified under section 26AH, the person to whom the amount is owed (the *review creditor*) may—
 - (a) ask the authorised nominating authority to which the review application was made for a review certificate under this section, and
 - (b) if the review debtor is the original respondent—give the review debtor written notice of the review creditor’s intention to suspend carrying out construction work, or to suspend supplying related goods and services, under the construction contract under which the original application arose.
- (2) A notice under subsection (1)(b) must state that it is made under this Act.
- (3) A review certificate must state that it is made under this Act and specify the following matters—
 - (a) the name of the review creditor,
 - (b) the name of the review debtor who is liable to pay the specified amount,
 - (c) the specified amount,
 - (d) the date on which payment of the specified amount was due to be paid to the review creditor.
- (4) If an amount of interest that is due and payable on the specified amount is not paid by the review debtor, the review creditor may ask the authorised nominating authority to specify the amount of interest payable in the review certificate.
- (5) A review applicant may ask the authorised nominating authority to specify the review respondent’s share of the review application fees under section 26AL in a review certificate under this section, as if the review applicant were a review creditor, if the review applicant—
 - (a) has paid the share of the fees, and
 - (b) has not been reimbursed by the review respondent for the payment of the share.
- (6) An amount of interest or unpaid share specified under subsection (4) or (5) is taken to be an additional amount specified under section 26AH.

26AK Filing of review certificate as judgment debt

- (1) A review certificate may be filed as a judgment for a debt in a court of competent jurisdiction and is enforceable accordingly.
- (2) A review certificate may not be filed under this section unless it is accompanied by an affidavit by the review creditor stating that the whole or a part of the specified amount has not been paid at the time the certificate is filed.
- (3) If the affidavit indicates that part of the specified amount has been paid, the judgment is for the unpaid part of the amount only.
- (4) If the review debtor commences proceedings to have the judgment set aside, the review debtor—
 - (a) is not, in the proceedings, entitled—
 - (i) to bring a cross-claim against the review creditor, or

- (ii) to raise a defence in relation to matters arising under the construction contract under which the original application arose, or
 - (iii) to challenge the review adjudicator's determination, and
- (b) is required to pay into the court as security the unpaid part of the specified amount pending the final determination of the proceedings.

26AL Review adjudicator's fees

- (1) A review adjudicator is entitled to be paid for determining a review application—
 - (a) the amount of fees and expenses agreed between the review adjudicator and the parties to the review application, or
 - (b) if no amount is agreed—the amount of fees and expenses that is reasonable having regard to the work done and expenses incurred by the review adjudicator.
- (2) The review applicant is liable to pay the review adjudicator's fees and expenses unless the adjudicator decides that the fees and expenses must be paid by each party to the review application in a proportion specified in the determination of the review application.
- (3) A review adjudicator is not entitled to be paid fees or expenses in connection with the determination of a review application if the review adjudicator fails to make a decision on the review application within the time specified by section 26AH(5), unless the reason for failing to make a decision is that—
 - (a) the review application was withdrawn, or
 - (b) the dispute between the review applicant and review respondent was resolved.
- (4) Subsection (3) does not apply to disentitle a review adjudicator to be paid fees or expenses—
 - (a) merely because the review adjudicator refuses to communicate the determination of a review application until the review adjudicator's fees and expenses are paid, or
 - (b) in other circumstances specified by the regulations.

[8] Section 28 Nominating authorities

Insert after section 28(5)—

- (6) In this section—
adjudicator includes a review adjudicator under Division 2, Subdivision 2.

[9] Section 30 Protection from liability for adjudicators and authorised nominating authorities

Insert after section 30(2)—

- (3) In this section—
adjudicator includes a review adjudicator under Division 2, Subdivision 2.

[10] Section 32A Finding of jurisdictional error in adjudicator's determination

Insert after section 32A(2)—

- (3) The Supreme Court may refuse to allow an application for an order mentioned in subsection (1) if—

- (a) the adjudicator's determination was made under Division 2, Subdivision 1, and
 - (b) the Court considers the matter would more appropriately have been dealt with by a review application under Division 2, Subdivision 2.
- (4) In this section—
adjudicator's determination includes a determination by a review adjudicator under Division 2, Subdivision 2.

[11] Section 32B Application of Part to a claimant in liquidation

Insert after section 32B(2)—

- (3) In this section—
adjudication application includes a review application under Division 2, Subdivision 2.
adjudication determination includes a determination by a review adjudicator under Division 2, Subdivision 2.

Schedule 4 Amendment of Home Building Act 1989 No 147

Section 48C Notification of building dispute

Omit section 48C(3). Insert instead—

- (3) If action required in relation to residential building work or specialist work under the *Strata Schemes Management Act 2015*, Part 11 has not been completed, a person may notify a dispute under this Division in relation to the work only if a building inspector has not been appointed under that Act, Part 11, Division 2 to inspect and provide an interim report on the work.

Schedule 5 **Amendment of Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9**

[1] **Section 3 Definitions**

Omit section 3(1), definition of *serious defect*, paragraph (d).

Insert instead—

- (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.

[2] **Section 3(1)**

Insert in alphabetical order—

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

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

Schedule 6 Amendment of Building and Development Certifiers Act 2018 No 63

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

approved professional body means a professional body holding a current approval from the Secretary under section 12B.

competency recognition—see section 12A(1).

[2] Section 10 Grant or refusal of registration

Insert after section 10(3)—

- (3A) If the applicant for registration has received a competency recognition from an approved professional body, the Secretary may accept the competency recognition as evidence of the qualifications, skills, knowledge or experience recognised.

[3] Part 2, Division 2A

Insert after section 12—

Division 2A Recognition of eligible persons

12A Competency recognition by approved professional bodies

- (1) The regulations may provide for an approved professional body to recognise that a person eligible for registration has the appropriate qualifications, skills, knowledge or experience to hold registration (a *competency recognition*).
- (2) A competency recognition entitles the person recognised to include the recognition as evidence of the relevant qualifications, skills, knowledge or experience in an application under section 8.
- (3) A regulation under this section—
 - (a) may apply to some or all classes of registration, and
 - (b) may authorise an approved professional body to place conditions on a competency recognition.
- (4) Without limiting subsection (1) or (3), a regulation under this section may make provision about the following matters—
 - (a) the process for making an application for a competency recognition,
 - (b) the processes an approved professional body may or must follow in assessing an application for a competency recognition,
 - (c) the minimum requirements of which an approved professional body may or must be satisfied in relation to any matter when assessing an application for a competency recognition, including—
 - (i) the applicant's qualification, skills, knowledge or experience, and
 - (ii) the applicant's insurance, and
 - (iii) the applicant's continuing professional development,
 - (d) the time in which an approved professional body must decide an application for a competency recognition,
 - (e) procedures for monitoring and improving competency recognition processes,

- (f) the maximum fees that may be charged for an application for a competency recognition,
- (g) circumstances in which an approved professional body must not grant a competency recognition.

12B Approval of professional bodies to grant competency recognition

- (1) The Secretary may approve a professional body to grant competency recognitions under section 12A.
- (2) The Secretary may approve the professional body if the Secretary is satisfied the body—
 - (a) has adopted a professional standards scheme, and
 - (b) meets the additional requirements for professional bodies, if any, specified by the regulations for this section.
- (3) The Secretary's approval of a professional body to grant competency recognitions may be limited to specified classes of registration.
- (4) The regulations may make further provision about the approval of professional bodies, including—
 - (a) the process for making an application for approval, and
 - (b) grounds on which the Secretary may grant or refuse an approval, and
 - (c) conditions the Secretary may impose on an approval, and
 - (d) the variation of an approval, including the conditions of an approval, and
 - (e) the fees that may be charged for an application for an approval or a variation of an approval, and
 - (f) the duration of an approval, and
 - (g) the grounds on which the Secretary may suspend or cancel an approval, including conditions the Secretary may impose on the suspension or cancellation.

12C Review by Civil and Administrative Tribunal

A person aggrieved by one of the following decisions may apply to the Tribunal for an administrative review of the decision under the *Administrative Decisions Review Act 1997*—

- (a) a decision of the Secretary to refuse to approve a professional body under section 12B,
- (b) a decision of the Secretary to suspend or cancel the approval of a professional body,
- (c) a decision of the Secretary to impose or vary a condition of—
 - (i) the approval of a professional body, or
 - (ii) the suspension or cancellation of the approval of a professional body,
- (d) another decision specified by the regulations for this section.

[4] Section 113A

Insert after section 113—

113A Exercise of certain Secretary functions by professional bodies

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

- (a) ensuring that registered certifiers comply with registration requirements,
- (b) the investigation of—
 - (i) complaints about the conduct of registered certifiers, or
 - (ii) possible failures by registered certifiers to comply with registration requirements,
- (c) disciplinary action in relation to registered certifiers.

Schedule 7 Amendment of Environmental Planning and Assessment Act 1979 No 203

[1] Section 6.31 Directions by principal certifiers

Omit “any non-compliance to which this section applies” from section 6.31(1).

Insert instead “a serious defect, or a non-compliance to which this section applies,”.

[2] Section 6.31(1)(a)

Insert “serious defect or” after “in the”.

[3] Section 6.31(2A)

Insert after section 6.31(2)—

(2A) A principal certifier must, as soon as reasonably practicable, give the Registration Secretary a copy of—

(a) a notice issued under subsection (1), and

(b) a notification given to a consent authority under subsection (2).

[4] Section 6.31(4)

Insert after section 6.31(3)—

(4) In this section—

serious defect has the same meaning as in the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

Schedule 8 Amendments relating to corporate self-incrimination

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

Section 32HA

Insert after section 32H—

32HA 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—
 - (a) in proceedings for an offence against section 34C or 34D, and
 - (b) in other criminal proceedings, unless—
 - (i) the individual objected at the time to giving the relevant information on the ground that it might incriminate the individual, or
 - (ii) 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 32G or answer questions under section 32H.

8.2 Building and Development Certifiers Act 2018 No 63

Section 92A

Insert after section 92—

92A Self-incriminating evidence—bodies corporate

- (1) A body corporate is not excused from giving relevant information on the ground that the information may incriminate the body corporate or make the body corporate liable to a penalty.
- (2) An individual acting as the representative of a body corporate is not excused from giving relevant information on the ground that the information may—
 - (a) incriminate the body corporate or make the body corporate liable to a penalty, or

- (b) incriminate the individual or make the individual liable to a penalty.
- (3) Relevant information given by a body corporate or an individual acting as the representative of a body corporate is admissible in evidence against the body corporate in criminal proceedings.
- (4) Relevant information given by an individual acting as the representative of a body corporate is admissible in evidence against the individual—
 - (a) in proceedings for an offence against this Act taken against the individual under section 115(1), and
 - (b) in other criminal proceedings, unless—
 - (i) the individual objected at the time to giving the relevant information on the ground that it might incriminate the individual, or
 - (ii) 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 91 or answer questions under section 92.

8.3 Building Products (Safety) Act 2017 No 69

Section 45A

Insert after section 45—

45A 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—
 - (a) in proceedings for an offence against section 59 or 60, and
 - (b) in proceedings for an offence against this Act taken against the individual under section 61(1), and
 - (c) in other criminal proceedings, unless—
 - (i) the individual objected at the time to giving the relevant information on the ground that it might incriminate the individual, or
 - (ii) 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 documents under section 44 or answer questions under section 45.

8.4 Design and Building Practitioners Act 2020 No 7

Section 78A

Insert after section 78—

78A Self-incriminating evidence—bodies corporate

- (1) A body corporate 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 body corporate is not excused from giving relevant information on the ground that the information may—
 - (a) incriminate the body corporate or make the body corporate liable to a penalty, or
 - (b) incriminate the individual or make the individual liable to a penalty.
- (3) Relevant information given by a body corporate or an individual acting as the representative of a body corporate is admissible in evidence against the body corporate in criminal proceedings.
- (4) Relevant information given by an individual acting as the representative of a body corporate is admissible in evidence against the individual—
 - (a) in proceedings for an offence against this Act taken against the individual under section 95(1), and
 - (b) in other criminal proceedings, unless—
 - (i) the individual objected at the time to giving the relevant information on the ground that it might incriminate the individual, or
 - (ii) 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 77 or answer questions under section 78.

8.5 Fair Trading Act 1987 No 68

Section 20 Power to obtain information, documents and evidence

Omit section 20(4) and (5). Insert instead—

- (4) A person is not excused from giving information or producing a document, or from giving evidence, in response to a notice under this section on the ground that the information, document or evidence may tend to incriminate—
 - (a) the person, or
 - (b) a body corporate on whose behalf the person is responding to the notice.
- (5) Information, documents and evidence obtained in response to a notice under this section are—
 - (a) admissible against a body corporate in criminal proceedings, and

- (b) if obtained from an individual—inadmissible against the individual in criminal proceedings, other than proceedings for an offence against subsection (3).

8.6 Home Building Act 1989 No 147

Section 127 Power to obtain information

Omit section 127(5) and (6). Insert instead—

- (5) A person is not excused from giving information or producing a document, or from giving evidence, in response to a notice under this section on the ground that the information, document or evidence may tend to incriminate—
 - (a) the person, or
 - (b) a body corporate on whose behalf the person is responding to the notice.
- (6) Information, documents and evidence obtained in response to a notice under this section are—
 - (a) admissible against a body corporate in criminal proceedings, and
 - (b) if obtained from an individual—inadmissible against the individual in criminal proceedings, other than proceedings—
 - (i) for an offence against subsection (4) or section 137A, or
 - (ii) taken against the individual under section 137(1) for an offence against this Act.

8.7 Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9

Section 18A

Insert after section 18—

18A Self-incriminating evidence—bodies corporate

- (1) A body corporate 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 body corporate is not excused from giving relevant information on the ground that the information may—
 - (a) incriminate the body corporate or make the body corporate liable to a penalty, or
 - (b) incriminate the individual or make the individual liable to a penalty.
- (3) Relevant information given by a body corporate or an individual acting as the representative of a body corporate is admissible in evidence against the body corporate in criminal proceedings.
- (4) Relevant information given by an individual acting as the representative of a body corporate is admissible in evidence against the individual—
 - (a) in proceedings for an offence against this Act taken against the individual under section 58(1), and
 - (b) in other criminal proceedings, unless—
 - (i) the individual objected at the time to giving the relevant information on the ground that it might incriminate the individual, or

- (ii) 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 17 or answer questions under section 18.

8.8 Strata Schemes Management Act 2015 No 50

Section 211EA

Insert after section 211E—

211EA 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 211D or answer questions under section 211E.

Schedule 9 Amendments relating to training or education as alternative to disciplinary action

9.1 Building and Development Certifiers Act 2018 No 63

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

compliance period, for an education and training notice—see section 118A(3)(c).

education and training notice—see section 118A(2).

[2] Sections 118A and 118B

Insert after section 118—

118A Education and training notices

- (1) A penalty notice officer within the meaning of section 118 may give an education and training notice to a registered certifier if—
 - (a) it appears to the officer that the certifier has committed a penalty notice offence (the *original offence*), other than an offence against 118B(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 registered certifier 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 registered certifier must—
 - (i) undertake the specified education or training, and
 - (ii) provide evidence to the Secretary that the registered certifier has undertaken the education or training.
- (4) The registered certifier 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 registered certifier 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 49 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 4, but only if the person aggrieved by the notice has made an unsuccessful application under subsection (4).

118B Non-compliance with education and training notice

- (1) A registered certifier who receives an education and training notice must comply with the notice.
Maximum penalty—
(a) for a body corporate—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 registered certifier's registration.
- (3) To avoid doubt, a penalty notice may be issued under section 118A(7)(a) whether or not a penalty notice is issued, or the registered certifier is prosecuted, for an offence against subsection (1).

9.2 Design and Building Practitioners Act 2020 No 7

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

compliance period, for an education and training notice—see section 94A(3)(c).

education and training notice—see section 94A(2).

[2] Sections 94A and 94B

Insert after section 94—

94A Education and training notices

- (1) A penalty notice officer within the meaning of section 94 may give an education and training notice to a registered practitioner if—
(a) it appears to the officer that the practitioner has committed a penalty notice offence (the *original offence*), other than an offence against 94B(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 registered practitioner 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 registered practitioner 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 registered practitioner 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 registered practitioner 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 68 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).

94B Non-compliance with education and training notice

- (1) A registered practitioner who receives an education and training notice must comply with the notice.
Maximum penalty—
 - (a) for a body corporate—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 registered practitioner's registration.
- (3) To avoid doubt, a penalty notice may be issued under section 94A(7)(a) whether or not a penalty notice is issued, or the registered practitioner is prosecuted, for an offence against subsection (1).

9.3 Home Building Act 1989 No 147

[1] Sections 138B and 138C

Insert after section 138A—

138B Education and training notices

- (1) An authorised officer within the meaning of section 138A may give an education and training notice to a holder of an authority (an *authority holder*) if—
 - (a) it appears to the officer that the authority holder has committed a penalty notice offence (the *original offence*), other than an offence against 138C(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 authority 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 authority holder must—
 - (i) undertake the specified education or training, and
 - (ii) provide evidence to the Secretary that the authority holder has undertaken the education or training.
- (4) The authority 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 authority 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 83B(3) 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 4, but only if the person aggrieved by the notice has made an unsuccessful application under subsection (4).

138C Non-compliance with education and training notice

- (1) An authority holder who receives an education and training notice must comply with the notice.
Maximum penalty—
 - (a) for a body corporate—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 authority holder's authority.
- (3) To avoid doubt, a penalty notice may be issued under section 138B(7)(a) whether or not a penalty notice is issued, or the authority holder is prosecuted, for an offence against subsection (1).

[2] Schedule 1 Definitions and other interpretative provisions

Insert in alphabetical order in clause 1(1)—

compliance period, for an education and training notice—see section 138B(3)(c).

education and training notice—see section 138B(2).

Schedule 10 Amendments relating to intentional phoenix activity

10.1 Building and Development Certifiers Act 2018 No 63

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

intentional phoenix activity—see section 44A.

[2] Part 3, Division 6

Insert after section 44—

Division 6 Intentional phoenix activity

44A 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 or 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 *Home Building Act 1989*.

44B Duty to take reasonable steps to avoid business association

- (1) A registered certifier must take reasonable steps to ensure that persons with whom the certifier 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 registered certifier’s capacity as a registered certifier,
 - (b) a relationship mentioned in the *Home Building Act 1989*, Schedule 1, clause 5(1)(a), (b) or (f).

[3] Section 45 Grounds for taking disciplinary action

Insert after section 45(1)—

- (la) the registered certifier has failed to take the reasonable steps required under section 44B,

10.2 Design and Building Practitioners Act 2020 No 7

[1] Part 5, Division 4A

Insert after section 60—

Division 4A Intentional phoenix activity

60A Duty to take reasonable steps to avoid business association

- (1) A registered practitioner must take reasonable steps to ensure that persons with whom the practitioner 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 registered practitioner's capacity as a registered practitioner,
 - (b) a relationship mentioned in the *Home Building Act 1989*, Schedule 1, clause 5(1)(a), (b) or (f).
- intentional phoenix activity* has the same meaning as in the *Building and Development Certifiers Act 2018*.

[2] Section 64 Grounds for taking disciplinary action

Insert after section 64(g)—

- (ga) the practitioner has failed to take the reasonable steps required under section 60A,

10.3 Home Building Act 1989 No 147

[1] Part 3, Division 5

Insert after section 48—

Division 5 Intentional phoenix activity

48AA Duty to take reasonable steps to avoid business association

- (1) The holder of an authority 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—
authority does not include an owner-builder permit.
business association includes the following—
- (a) a contract, arrangement or understanding entered into in a holder of an authority's capacity as the holder of the authority,
 - (b) a relationship mentioned in Schedule 1, clause 5(1)(a), (b) or (f).
- intentional phoenix activity* has the same meaning as in the *Building and Development Certifiers Act 2018*.

[2] Section 56 Grounds for taking disciplinary action against holder of a contractor licence

Insert after section 56(m)—

- (n) that the holder has failed to take the reasonable steps required under section 48AA.

[3] Section 57 Grounds for taking disciplinary action against holder of a supervisor or tradesperson certificate

Insert after section 57(h)—

- (i) that the holder has failed to take the reasonable steps required under section 48AA.

Schedule 11 Amendments relating to continuing professional development

11.1 Building and Development Certifiers Act 2018 No 63

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

CPD means continuing professional development.

[2] Section 8 Application for registration

Insert after section 8(4)—

- (4A) An application for the renewal of registration must be accompanied by written records specifying how the applicant has complied with CPD requirements imposed on the applicant by or under Part 3, Division 2A in relation to the period since the applicant's most recent grant or renewal of registration.

Note—Section 30A(3)(e) provides for the regulations to specify alternative procedures.

[3] Part 3, Division 2A

Insert after section 30—

Division 2A Continuing professional development

30A Continuing professional development requirements

- (1) The regulations may make provision about CPD requirements for registered certifiers.
- (2) A registered certifier must comply with CPD requirements imposed on the certifier by the regulations.
- (3) Without limiting subsection (1), the regulations may—
 - (a) specify minimum annual CPD requirements for registered certifiers, and
 - (b) specify circumstances in which the Secretary may—
 - (i) impose additional CPD requirements on some or all registered certifiers, or
 - (ii) exempt some or all registered certifiers from specified CPD requirements, and
 - (c) adopt guidelines made under section 30B, if any, as amended from time to time, and
 - (d) specify procedures for monitoring, declaring or providing evidence of compliance with CPD requirements, and
 - (e) specify procedures that may be adopted as an alternative to providing written records under section 8(4A).

30B Continuing professional development guidelines

- (1) The Secretary may make guidelines relating to CPD requirements for registered certifiers.
- (2) The guidelines may make provision about the following—

- (a) activities that may be counted towards complying with CPD requirements,
 - (b) other matters about which regulations may be made under section 30A that are specified in the regulations for this section.
- (3) The Secretary must make the guidelines publicly available.
 - (4) The Secretary may amend or replace the guidelines.
 - (5) The Secretary may make different guidelines in relation to different classes of registration.
 - (6) The guidelines are void to the extent of an inconsistency with a regulation under section 30A.

[4] Section 120 Regulations

Insert “, knowledge” after “skills” in section 120(2)(a).

11.2 Design and Building Practitioners Act 2020 No 7

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

CPD means continuing professional development.

[2] Section 43 Application for registration

Insert after section 43(4)—

- (4A) An application for the renewal of registration must be accompanied by written records specifying how the applicant has complied with CPD requirements imposed on the applicant by or under Division 4A in relation to the period since the applicant’s most recent grant or renewal of registration.

Note—Section 60A(3)(e) provides for the regulations to specify alternative procedures.

[3] Part 5, Division 4A

Insert after section 60—

Division 4A Continuing professional development

60A Continuing professional development requirements

- (1) The regulations may make provision about CPD requirements for registered practitioners.
- (2) A registered practitioner must comply with CPD requirements imposed on the practitioner by the regulations.
- (3) Without limiting subsection (1), the regulations may—
 - (a) specify minimum annual CPD requirements for registered practitioners, and
 - (b) specify circumstances in which the Secretary may—
 - (i) impose additional CPD requirements on some or all registered practitioners, or
 - (ii) exempt some or all registered practitioners from specified CPD requirements, and

- (c) adopt guidelines made under section 60B, if any, as amended from time to time, and
- (d) specify procedures for monitoring, declaring or providing evidence of compliance with CPD requirements, and
- (e) specify procedures that may be adopted as an alternative to providing written records under section 43(4A).

60B Continuing professional development guidelines

- (1) The Secretary may make guidelines relating to CPD requirements for registered practitioners.
- (2) The guidelines may make provision about the following—
 - (a) activities that may be counted towards complying with CPD requirements,
 - (b) other matters about which regulations may be made under section 60A that are specified in the regulations for this section.
- (3) The Secretary must make the guidelines publicly available.
- (4) The Secretary may amend or replace the guidelines.
- (5) The Secretary may make different guidelines in relation to different classes of registration.
- (6) The guidelines are void to the extent of an inconsistency with a regulation under section 60A.

[4] Section 107 Regulations

Insert “, knowledge” after “skills” in section 107(2)(a).

[5] Section 107(2)(b)

Omit the paragraph.

11.3 Home Building Act 1989 No 147

[1] Section 40 Renewal of authorities

Insert after section 40(2)—

- (2A) An application for renewal of an authority must be accompanied by written records specifying how the applicant has complied with CPD requirements imposed on the applicant by or under Division 6 in relation to the period since the applicant’s authority was most recently issued, renewed or restored.

Note—Section 48AB(3)(e) provides for the regulations to specify alternative procedures.

[2] Part 3, Division 6

Insert after Part 3, Division 5—

Division 6 Continuing professional development

48AB Continuing professional development requirements

- (1) The regulations may make provision about CPD requirements for holders of authorities.

- (2) A holder of an authority must comply with CPD requirements imposed on the holder by the regulations.
- (3) Without limiting subsection (1), the regulations may—
 - (a) specify minimum annual CPD requirements for the holder of an authority, and
 - (b) specify circumstances in which the Secretary may—
 - (i) impose additional CPD requirements on some or all holders of authorities, or
 - (ii) exempt some or all holders of authorities from specified CPD requirements, and
 - (c) adopt guidelines made under section 48AC, if any, as amended from time to time, and
 - (d) specify procedures for monitoring, declaring or providing evidence of compliance with CPD requirements, and
 - (e) specify procedures that may be adopted as an alternative to providing written records under section 40(2A).

48AC Continuing professional development guidelines

- (1) The Secretary may make guidelines relating to CPD requirements for holders of authorities.
- (2) The guidelines may make provision about the following—
 - (a) activities that may be counted towards complying with CPD requirements,
 - (b) other matters about which regulations may be made under section 48AB that are specified in the regulations for this section.
- (3) The Secretary must make the guidelines publicly available.
- (4) The Secretary may amend or replace the guidelines.
- (5) The Secretary may make different guidelines in relation to different kinds of authority.
- (6) The guidelines are void to the extent of an inconsistency with a regulation under section 48AB.

[3] Section 140 Regulations

Insert after section 140(2)(a2)—

- (a3) the qualifications, skills, knowledge and experience required for holding an authority, including the approval of training and the approval of persons to conduct the training or to assess persons undergoing the training,

[4] Schedule 1 Definitions and other interpretative provisions

Insert in alphabetical order in clause 1(1)—

CPD means continuing professional development.

Schedule 12 Amendments relating to investigation cost recovery

12.1 Building and Development Certifiers Act 2018 No 63

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

investigation cost notice—see section 110A.

[2] Sections 110A and 110B

Insert after section 110—

110A Investigation cost notices

- (1) This section applies if—
 - (a) an investigation is conducted under section 106 or another provision of this Act, 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) a reasonable period within which the amount must be paid or, if the regulations specify a period to be allowed for payment, the specified period.
- (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.

110B 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 Court grants leave for the appeal to be made at a later time.
- (2) On hearing an appeal against an investigation cost notice, the Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order the 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 considers relevant.

12.2 Building Products (Safety) Act 2017 No 69

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—
investigation cost notice—see section 41C.

[2] Part 6, Division 4

Insert after Part 6, Division 3—

Division 4 Investigation cost notices

41C Investigation cost notices

- (1) This section applies if—
 - (a) an investigation is conducted under section 34 or another provision of this Act, 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) a reasonable period within which the amount must be paid or, if the regulations specify a period to be allowed for payment, the specified period.
- (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.

41D Appeals against investigation cost notices

- (1) A person to whom an investigation cost notice is given may appeal against the notice to the Supreme Court within 30 days after the notice is given to the person unless the Court grants leave for the appeal to be made at a later time.
- (2) On hearing an appeal against an investigation cost notice, the Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order the 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 considers relevant.

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

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

investigation cost notice—see section 68B.

[2] Part 7, Division 8

Insert after Part 7, Division 7—

Division 8 Investigation cost notices

68B Investigation cost notices

- (1) This section applies if—
 - (a) an investigation is conducted under a provision of this Act, 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) a reasonable period within which the amount must be paid or, if the regulations specify a period to be allowed for payment, the specified period.
- (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.

68C Appeals against investigation cost notices

- (1) A person to whom an investigation cost notice is given may appeal against the notice to the Supreme Court within 30 days after the notice is given to the person unless the Court grants leave for the appeal to be made at a later time.
- (2) On hearing an appeal against an investigation cost notice, the Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order the 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 considers relevant.

12.4 Home Building Act 1989 No 147

[1] Sections 115B and 115C

Insert after section 115A—

115B Investigation cost notices

- (1) This section applies if—
 - (a) an investigation is conducted under section 60 or another provision of this Act, 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) a reasonable period within which the amount must be paid or, if the regulations specify a period to be allowed for payment, the specified period.
- (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.

115C Appeals against investigation cost notices

- (1) A person to whom an investigation cost notice is given may appeal against the notice to the Supreme Court within 30 days after the notice is given to the person unless the Court grants leave for the appeal to be made at a later time.
- (2) On hearing an appeal against an investigation cost notice, the Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order the 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 considers relevant.

[2] Schedule 1 Definitions and other interpretative provisions

Insert in alphabetical order in clause 1(1)—

investigation cost notice—see section 115B.

12.5 Plumbing and Drainage Act 2011 No 59

[1] Section 3 Definitions

Insert in alphabetical order in section 4(1)—

investigation cost notice—see section 38A.

[2] Sections 38A and 38B

Insert after section 38—

38A Investigation cost notices

- (1) This section applies if—
 - (a) an investigation is conducted under a provision of this Act, and
 - (b) the investigation reasonably requires the plumbing regulator 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 plumbing regulator is satisfied that a person has breached this Act or the regulations.
- (2) The plumbing regulator 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) a reasonable period within which the amount must be paid or, if the regulations specify a period to be allowed for payment, the specified period.
- (4) The plumbing regulator 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.

38B 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 Court grants leave for the appeal to be made at a later time.
- (2) On hearing an appeal against an investigation cost notice, the Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order the 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 considers relevant.

12.6 Strata Schemes Management Act 2015 No 50

[1] Section 4 Definitions

Insert in alphabetical order in section 4(1)—

investigation cost notice—see section 211N.

[2] Sections 211N and 211O

Insert after section 211M—

211N Investigation cost notices

- (1) This section applies if—

- (a) an investigation is conducted under section 256 or another provision of this Act, 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) a reasonable period within which the amount must be paid or, if the regulations specify a period to be allowed for payment, the specified period.
- (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.

211O Appeals against investigation cost notices

- (1) A person to whom an investigation cost notice is given may appeal against the notice to the Supreme Court within 30 days after the notice is given to the person unless the Court grants leave for the appeal to be made at a later time.

- (2) On hearing an appeal against an investigation cost notice, the Court may—
 - (a) revoke the notice, or
 - (b) modify the notice, or
 - (c) make another order the 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 considers relevant.