



New South Wales

# Design and Building Practitioners Act 2020 No 7

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The Legislature of New South Wales enacts—

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Design and Building Practitioners Act 2020*.

### 2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Part 2, Division 1 of Part 3 and Parts 5–9 and clauses 2–4 of Schedule 1 commence on 1 July 2021.
- (3) Division 2 of Part 3 commences on a day or days to be appointed by proclamation.

### 3 Definitions

- (1) In this Act—

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

**building compliance declaration**—see section 8(3).

**building element**—see section 6.

**building practitioner**—see section 7(1).

**building work**—see section 4.

**class** of building means a building of that class as recognised by the *Building Code of Australia*.

**close associate** has the same meaning as in the *Home Building Act 1989*.

**compliance declaration** means a design compliance declaration, principal compliance declaration or building compliance declaration.

**Department** means the Department of Customer Service.

**design** includes a plan or specification or a report detailing a design.

**design compliance declaration**—see section 8(1).

**design practitioner** means a person who prepares regulated designs.

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

**occupation certificate** means an occupation certificate issued under the *Environmental Planning and Assessment Act 1979*.

**performance solution** has the same meaning as in the *Building Code of Australia*.

**practitioner** means a design practitioner, principal design practitioner, professional engineer, specialist practitioner or building practitioner.

**preparing** or **varying** a regulated design or other design means—

- (a) actually preparing or varying the design, or
- (b) coordinating or supervising the preparation or variation of the design.

**principal compliance declaration**—see section 8(2).

**principal contractor**—see section 7(2).

**principal design practitioner** means a person who coordinates the provision of design compliance declarations for the purposes of building work done by a building practitioner.

**professional engineer** means a person who carries out professional engineering work in a prescribed area of engineering within the meaning of section 32.

**professional engineering work**—see section 31.

**register** as a registered practitioner includes renew or restore registration.

**registered body corporate** means a registered practitioner that is a body corporate.

**registered building practitioner** means a person who is registered as a building practitioner under this Act or recognised as a building practitioner under this Act.

**registered design practitioner** means a person who is registered as a design practitioner under this Act or recognised as a design practitioner under this Act.

**registered practitioner** means a registered design practitioner, registered principal design practitioner, registered professional engineer, registered specialist practitioner or a registered building practitioner.

**registered principal design practitioner** means a person who is registered as a principal design practitioner under this Act or recognised as a principal design practitioner under this Act.

**registered professional engineer** means a person who is registered as a professional engineer under this Act or recognised as a professional engineer under this Act.

**registered specialist practitioner** means a person who is registered as a specialist practitioner under this Act or recognised as a specialist practitioner under this Act.

**registration** means registration as a registered practitioner and includes recognition as a practitioner under this Act.

**regulated design**—see section 5.

**Secretary** means the Secretary of the Department.

**specialist practitioner** means a person who carries out specialist work.

**specialist work**—see section 34.

**stop work order**—see section 89.

**Tribunal** means the Civil and Administrative Tribunal.

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

- (2) Notes included in this Act do not form part of this Act.

#### 4 Building work

- (1) For the purposes of this Act, **building work** means work involved in, or involved in coordinating or supervising work involved in, one or more of the following—
- the construction of a building of a class or type prescribed by the regulations for the purposes of this definition,
  - the making of alterations or additions to a building of that class or type,
  - the repair, renovation or protective treatment of a building of that class or type.
- (2) The regulations may—
- prescribe additional work that is building work for the purposes of this Act, and
  - exclude work from being building work for the purposes of this Act.
- (3) In this Act, a reference to a building (including a building as defined in Part 4) includes a reference to part of a building (including a building element).

#### 5 Regulated designs

- (1) For the purposes of this Act, **regulated design** means—

- (a) a design that is prepared for a building element for building work, or
  - (b) a design that is prepared for a performance solution for building work (including a building element), or
  - (c) any other design of a class prescribed by the regulations that is prepared for building work.
- (2) The regulations may prescribe the form and content of regulated designs or regulated designs belonging to a particular class.
  - (3) The Minister may, by order published in the Gazette, specify particulars that are additional to those (if any) prescribed by the regulations for regulated designs or regulated designs belonging to a particular class.
  - (4) An order under subsection (3) is to be made available on the website of the Department as soon as practicable after it is published in the Gazette.

## 6 Building elements

- (1) For the purposes of this Act, **building element** means any of the following—
  - (a) the fire safety systems for a building within the meaning of the *Building Code of Australia*,
  - (b) waterproofing,
  - (c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),
  - (d) a component of a building that is part of the building enclosure,
  - (e) those aspects of the mechanical, plumbing and electrical services for a building that are required to achieve compliance with the *Building Code of Australia*,
  - (f) other things prescribed by the regulations for the purposes of this section.
- (2) The regulations may exclude things from being building elements for the purposes of this Act.
- (3) In this section—

**above grade wall** means a wall above the level of the ground surrounding a building.

**below grade wall** means a wall below the level of the ground surrounding a building.

**building enclosure** means the part of the building that physically separates the interior environment of the building from the exterior environment, including roof systems, above grade and below grade walls (including windows and doors).

## 7 Building practitioners

- (1) In this Act, **building practitioner** means—
  - (a) a person who agrees under a contract or other arrangement to do building work, or
  - (b) if more than one person agrees to do building work, a person who is the principal contractor for the work.
- (2) In this Act, **principal contractor** means a person who agrees to do building work under a contract or arrangement (the **head contract**) and for whom work is to be carried out under one or more other contracts or arrangements as part of or incidental to the work carried out under the head contract.
- (3) In this Act, a **building practitioner is taken to do building work** if the practitioner—



- (a) agrees to do building work under a contract or other arrangement, or
  - (b) is the principal contractor for the work.
- (4) The regulations may—
- (a) prescribe additional persons as building practitioners for the purposes of this Act, and
  - (b) exclude persons from being building practitioners for the purposes of this Act, and
  - (c) prescribe circumstances in which a person prescribed for the purposes of paragraph (a) is taken to do building work.

## 8 Compliance declarations

- (1) In this Act, ***design compliance declaration*** means a declaration in the form and manner prescribed by the regulations as to the following—
- (a) whether or not a regulated design prepared for building work complies with the requirements of the *Building Code of Australia*,
  - (b) whether or not the design complies with other applicable requirements prescribed by the regulations for the purposes of this subsection,
  - (c) whether or not other standards, codes or requirements have been applied in preparing the design,
  - (d) any other matter prescribed by the regulations.
- (2) In this Act, ***principal compliance declaration*** means a declaration in the form and manner prescribed by the regulations as to the following—
- (a) whether or not a design compliance declaration has been provided in accordance with this Act for each regulated design prepared for the building work,
  - (b) whether or not each design compliance declaration has been provided by a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates,
  - (c) any other matter prescribed by the regulations.
- (3) In this Act, ***building compliance declaration*** means a declaration made in the form and manner prescribed by the regulations as to the following—
- (a) whether or not the building work complies with the requirements of the *Building Code of Australia*,
  - (b) whether or not the building work complies with other applicable requirements prescribed by the regulations for the purposes of this subsection,
  - (c) if the building work does not comply with the requirements referred to in paragraph (a) or (b), the steps required to be taken to ensure compliance,
  - (d) for a regulated design used for the building work, whether or not the design was prepared by a registered design practitioner and the building work was built in accordance with the design,
  - (e) whether or not a design compliance declaration has been obtained in relation to regulated designs used for the building work,
  - (f) whether or not a registered principal design practitioner was appointed in relation to the building work,
  - (g) whether or not a principal compliance declaration was obtained in relation to the regulated designs and design compliance declarations relating to the building work,

- (h) any other matter prescribed by the regulations.

## Part 2 Regulated designs and building work

### Division 1 Obligations of design practitioners

#### 9 Compliance declarations by registered design practitioners

- (1) A registered design practitioner must provide a design compliance declaration to a person if—
  - (a) the practitioner provides the person with a regulated design prepared by the practitioner, and
  - (b) the design is in a form suitable for use by that person or another person in connection with building work.Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (2) A registered design practitioner must provide a further design compliance declaration to a person if—
  - (a) the practitioner or another practitioner has previously provided a design compliance declaration for a regulated design prepared by either practitioner in connection with building work, and
  - (b) the practitioner provides the person with the regulated design as varied by the practitioner in a form suitable for use in connection with the building work before the building work is commenced.Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (3) A registered design practitioner must provide a further design compliance declaration to a person if—
  - (a) the practitioner or another practitioner has previously provided a design compliance declaration for a regulated design prepared by either practitioner relating to a building element or performance solution in connection with building work, and
  - (b) the practitioner provides the person with the regulated design as varied by the practitioner in a form suitable for use relating to the building element or performance solution after the building work is commenced.Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (4) A registered design practitioner who is required by subsection (1), (2) or (3) to provide a design compliance declaration to a person must also provide a copy of the declaration to the registered principal design practitioner (if any) appointed in relation to the building work to which the declaration relates.  
Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (5) A registered design practitioner must provide a design compliance declaration in other circumstances prescribed by the regulations.  
Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (6) Without limiting subsection (5), a regulation made under that subsection may require regulated designs and design compliance declarations to be lodged electronically through an internet site or an application established by or on behalf of the Department.

- (7) A person must not make a design compliance declaration that the person knows to be false or misleading in a material particular.  
Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.
- (8) The regulations may require a design compliance declaration provided under this section to be accompanied by other documents prescribed by the regulations.

#### **10 Declarations by unregistered persons**

A person must not make a design compliance declaration unless—

- (a) the person is a registered design practitioner, and
- (b) the person's registration authorises the person to provide a declaration as to the matters to which the declaration relates.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

#### **11 Registered design practitioners to be indemnified**

- (1) A registered design practitioner must not—
  - (a) provide a design compliance declaration or prepare a regulated design, or
  - (b) hold out that the practitioner is adequately insured with respect to the provision of the declaration or that work,unless the practitioner is adequately insured with respect to the declaration and work.  
Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).
- (2) For the purposes of this section, a registered design practitioner is *adequately insured* with respect to a declaration and work if the practitioner—
  - (a) is indemnified by insurance that complies with the regulations against any liability to which the practitioner may become subject as a result of providing the declaration or doing the work, or
  - (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.
- (3) It is a condition of registration that a registered design practitioner must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the practitioner is adequately insured in accordance with this section.

### **Division 2 Obligations of principal design practitioners**

#### **12 Compliance declarations by registered principal design practitioners**

- (1) A registered principal design practitioner appointed in relation to building work must ensure that—
  - (a) a design compliance declaration has been provided in accordance with section 9 for each regulated design prepared for the building work, and
  - (b) each declaration has been provided by a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates.Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

- (2) A registered principal design practitioner appointed in relation to building work must provide a principal compliance declaration to the persons, and in the circumstances, prescribed by the regulations.  
Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (3) Without limiting subsection (2), a regulation made under that subsection may require regulated designs and principal compliance declarations to be lodged electronically through an internet site or an application established by or on behalf of the Department.
- (4) A person must not make a principal compliance declaration that the person knows to be false or misleading in a material particular.  
Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.
- (5) The regulations may require a principal compliance declaration provided under this section to be accompanied by other documents prescribed by the regulations.

### **13 Declarations by unregistered persons**

A person must not make a principal compliance declaration unless—

- (a) the person is a registered principal design practitioner, and
- (b) the person's registration authorises the person to provide a declaration as to the matters to which the declaration relates.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

### **14 Registered principal design practitioners to be indemnified**

- (1) A registered principal design practitioner must not—
  - (a) provide a principal compliance declaration or do other work for the purposes of this Act, or
  - (b) hold out that the practitioner is adequately insured with respect to the provision of the declaration or that work,unless the practitioner is adequately insured with respect to the declaration and work.  
Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).
- (2) For the purposes of this section, a registered principal design practitioner is *adequately insured* with respect to a declaration and work if the practitioner—
  - (a) is indemnified by insurance that complies with the regulations against any liability to which the practitioner may become subject as a result of providing the declaration or doing the work, or
  - (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.
- (3) It is a condition of registration that a registered principal design practitioner must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the practitioner is adequately insured in accordance with this section.

## **Division 3 Obligations of building practitioners**

### **15 Provision of relevant documents to Secretary**

- (1) A building practitioner who does building work must ensure that the relevant documents for the building work are provided to the Secretary no later than 90 days

after the occupation certificate is issued for the building or part of the building to which the building work relates.

Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

- (2) The regulations may make provision with respect to the manner and form in which a relevant document is to be provided to the Secretary.
- (3) Without limiting subsection (2), a regulation made under that subsection may require relevant documents to be lodged electronically through an internet site or an application established by or on behalf of the Department.
- (4) In this section—  
*relevant document* means—
  - (a) each regulated design for which a design compliance declaration has been provided that reflects the building work that was carried out, and
  - (b) any other documents (including designs) that relate to the building work and are prescribed by the regulations.

#### **16 Notice of application for occupation certificate**

- (1) A person must, before making an application for an occupation certificate for a building to which building work relates, give written notice to each registered building practitioner who did the building work of the intention to apply for the certificate.
- (2) A person must, after making an application for an occupation certificate for a building to which building work relates, give written notice to each registered building practitioner who did the building work of the making of the application.
- (3) The notices under subsections (1) and (2) must be given within the periods prescribed by the regulations for the purposes of this section.
- (4) A person who fails to comply with this section is guilty of an offence.  
Maximum penalty—200 penalty units.

#### **17 Compliance declarations by registered building practitioners**

- (1) A registered building practitioner must provide a building compliance declaration for building work, contractor document and other required documents to a person for whom the practitioner does the building work before an application is made for an occupation certificate for the building to which the work relates.  
Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (2) A registered building practitioner must provide a building compliance declaration, contractor document or other required document in other circumstances prescribed by the regulations.  
Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (3) Without limiting subsection (2), a regulation made under that subsection may require building compliance declarations, contractor documents and other required documents to be lodged electronically through an internet site or an application established by or on behalf of the Department.
- (4) A person must not make a building compliance declaration that the person knows to be false or misleading in a material particular.  
Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.

- (5) A person who is provided with a building compliance declaration under subsection (1) must provide the declaration to the principal certifier who is responsible for issuing an occupation certificate for the building work before or when the application for the certificate is made.

Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

- (6) For the purposes of this section—

**contractor document** means the following—

- (a) a list of persons who have agreed under a contract or arrangement with the registered building practitioner to do any of the building work,
- (b) a list of any other persons prescribed by the regulations who have done building work on the building,
- (c) a list of the work done by each of the persons referred to in paragraphs (a) and (b) in relation to the building work,
- (d) copies of final designs used for the building work that are not regulated designs and are designs of a class prescribed by the regulations for the purposes of this paragraph,
- (e) other documents prescribed by the regulations.

**required document** means a document prescribed by the regulations as a document that is required to accompany a building compliance declaration provided under subsection (1).

## 18 Building practitioners must ensure compliance with declaration obligations

A building practitioner who does building work must take all reasonable steps to ensure that—

- (a) each regulated design for the building work is prepared by a registered design practitioner, and
- (b) a design compliance declaration is obtained for those designs from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and
- (c) if a principal design practitioner has been appointed in relation to the building work, a principal compliance declaration is obtained for all of those designs from a registered principal design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates.

Maximum penalty—3,000 penalty units (in the case of a body corporate) or 1,000 penalty units (in any other case).

## 19 Designs and design compliance declarations to be obtained

A building practitioner must not, except with reasonable excuse, carry out any part of building work for which a regulated design is to be used unless—

- (a) the practitioner has obtained a design from a registered design practitioner for the work and a design compliance declaration for the design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and
- (b) the declaration states that the design complies with the requirements of the *Building Code of Australia* and other applicable requirements prescribed for the purposes of section 8(1).

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

## 20 Variations after building work commences

- (1) A building practitioner who does building work must take all reasonable steps to ensure that, if the building work (other than in relation to a building element or performance solution) is varied after commencement of the work from a regulated design for the work, the variation is recorded in the form and manner prescribed by the regulations for the purposes of this section.

Maximum penalty—3,000 penalty units (in the case of a body corporate) or 1,000 penalty units (in any other case).

- (2) A building practitioner who does building work must take all reasonable steps to ensure that, if the building work (in relation to a building element or performance solution) is varied after commencement of the work from a regulated design for the building element or performance solution—
- (a) a design with the variation is prepared by a registered design practitioner, and
  - (b) the registered design practitioner is given (or otherwise has access to in the manner prescribed by the regulations) any of the following that are relevant to the provision, by the registered design practitioner, of a design compliance declaration for the varied design—
    - (i) regulated designs,
    - (ii) design compliance declarations,
    - (iii) principal compliance declarations, and
  - (c) a design compliance declaration is obtained for the varied design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and
  - (d) if a principal design practitioner has been appointed in relation to the building work, a principal compliance declaration is obtained that includes the varied design.

Maximum penalty—3,000 penalty units (in the case of a body corporate) or 1,000 penalty units (in any other case).

- (3) A building practitioner who does building work must take all reasonable steps to ensure that, if after commencement of the work the work is varied so as to require a new building element or performance solution for which a regulated design is required—
- (a) a design for the building element or performance solution is prepared by a registered design practitioner, and
  - (b) the registered design practitioner is given (or otherwise has access to in the manner prescribed by the regulations) any of the following that are relevant to the provision, by the registered design practitioner, of a design compliance declaration for the design—
    - (i) regulated designs,
    - (ii) design compliance declarations,
    - (iii) principal compliance declarations, and
  - (c) a design compliance declaration is obtained for the design from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and
  - (d) if a principal design practitioner has been appointed in relation to the building work, a principal compliance declaration is obtained that includes the design.

Maximum penalty—3,000 penalty units (in the case of a body corporate) or 1,000 penalty units (in any other case).



## 21 Requirements for building elements and performance solutions

A building practitioner who does building work must take all reasonable steps to ensure that building work relating to a building element or performance solution for which a regulated design is to be used is carried out in accordance with a design for which a design compliance declaration has been obtained from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates.

Maximum penalty—3,000 penalty units (in the case of a body corporate) or 1,000 penalty units (in any other case).

## 22 Obligations relating to Building Code of Australia

- (1) A building practitioner who does building work must take all reasonable steps to ensure that the building work, or any part of that work, complies with the requirements of the *Building Code of Australia* applicable to the work and other requirements applicable to the work prescribed by the regulations for the purposes of section 8(1).

Maximum penalty—3,000 penalty units (in the case of a body corporate) or 1,000 penalty units (in any other case).

- (2) If a building compliance declaration provided by a registered building practitioner sets out steps required to be taken to ensure compliance with the *Building Code of Australia* and other requirements, the practitioner must give a written notice containing the steps to the principal certifier who is to be responsible for issuing an occupation certificate for the building work.

Maximum penalty—3,000 penalty units (in the case of a body corporate) or 1,000 penalty units (in any other case).

- (3) It is a defence to an offence under subsection (1) if the defendant proves that—

- (a) the defendant reasonably relied on and built in accordance with a regulated design for which a design compliance declaration was provided by a registered design practitioner stating that the design complied with the applicable requirements of the *Building Code of Australia*, and other applicable requirements prescribed for the purposes of section 8(1), and
- (b) the registered design practitioner's registration authorised the practitioner to provide a declaration as to the matters to which the declaration related.

## 23 Declarations by unregistered persons

A person must not make a building compliance declaration unless—

- (a) the person is a registered building practitioner, and
- (b) the person's registration authorises the person to provide a declaration as to the matters to which the declaration relates.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

## 24 Registered building practitioners to be indemnified

- (1) A registered building practitioner must not—
- (a) provide a building compliance declaration or do related building work, or
- (b) hold out that the practitioner is adequately insured with respect to the provision of the declaration or doing the work,

unless the practitioner is adequately insured with respect to the declaration and work.

Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

- (2) For the purposes of this section, a registered building practitioner is ***adequately insured*** with respect to a declaration and work if the practitioner—
  - (a) is indemnified by insurance that complies with the regulations against any liability to which the practitioner may become subject as a result of providing the declaration or doing the work, or
  - (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.
- (3) It is a condition of registration that a registered building practitioner must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the practitioner is adequately insured in accordance with this section.
- (4) The regulations may exempt a practitioner or class of practitioner from the operation of this section.

## Division 4 Miscellaneous

### 25 Compliance with Building Code of Australia

- (1) For the purposes of this Act, it is sufficient to comply with the requirements of the *Building Code of Australia* in respect of a regulated design or building work if the regulated design or building work complies with or satisfies—
  - (a) the applicable governing requirements, and
  - (b) the applicable performance requirements.
- (2) For the purposes of subsection (1)(b), the applicable performance requirements may be satisfied by—
  - (a) in respect of building work—
    - (i) achieving a performance solution in the manner specified in the *Building Code of Australia*, or
    - (ii) showing compliance through a deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*, or
    - (iii) a combination of a performance solution and deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*, and
  - (b) in respect of a regulated design that includes a performance solution—
    - (i) achieving a performance solution in the manner specified in the *Building Code of Australia*, or
    - (ii) a combination of a performance solution and deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*, and
  - (c) in respect of any other regulated design—showing compliance through a deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*.
- (3) Despite subsection (1), a regulated design or building work is taken to comply with the requirements of the *Building Code of Australia* for the purposes of this Act if—
  - (a) the application of the requirements of the *Building Code of Australia* is modified or displaced by another law (***modified requirements***) in respect of a regulated design or building work, and
  - (b) the regulated design or building work complies with the modified requirements.
- (4) In determining whether a variation to a regulated design or building work complies with the *Building Code of Australia* for the purposes of this Act, the variation must

not be considered in isolation but consideration must also be given to the effect of the variation on other aspects of the building work or other regulated designs for the building work.

- (5) In this section—  
*deemed-to-satisfy solution, governing requirements* and *performance requirements* have the same meanings as in the *Building Code of Australia*.

## **26 Requirements for compliance declarations before issue of building certificates**

The regulations may make provision for or with respect to prohibiting the issue of one or more of the following unless compliance declarations or regulated designs, or both, have been provided to the issuer of the certificate—

- (a) a complying development certificate under, or a certificate under Part 6 of, the *Environmental Planning and Assessment Act 1979*,
- (b) a strata certificate within the meaning of the *Strata Schemes Development Act 2015*,
- (c) a certificate of compliance within the meaning of the *Swimming Pools Act 1992*.

## **27 Principal certifier must consider compliance declarations**

- (1) A principal certifier who is responsible for issuing an occupation certificate for building work must not determine an application for an occupation certificate unless the principal certifier is satisfied that all compliance declarations required for the building work have been lodged in accordance with this Act.
- (2) A principal certifier who is responsible for issuing an occupation certificate for building work must consider any instances of non-compliance specified in the compliance declarations provided to the certifier relating to the building work when deciding whether to issue the certificate.
- (3) Nothing in this section prevents a regulation from being made under section 26 that prohibits the issue of occupation certificates unless compliance declarations are provided.

## **28 Provision of compliance declarations, and other obligations, of registered body corporates**

- (1) Each director of a registered body corporate must ensure the following with respect to the preparation of regulated designs or building work carried out, or compliance declarations provided, by or on behalf of the body corporate—
  - (a) that the body corporate complies with the requirements of this and other Acts with respect to the preparation of the designs, carrying out of the work or the provision of the declarations,
  - (b) that appropriate management systems are in place to ensure that the body corporate complies with those requirements,
  - (c) that the provision of compliance declarations is allocated to, and carried out by, individuals who are registered practitioners and whose registration authorises them to provide declarations as to the matters to which the declarations relate.

Maximum penalty—300 penalty units.

- (2) A registered body corporate must ensure that a compliance declaration provided on behalf of the body corporate is provided by an individual who is a registered practitioner whose registration authorises the individual to provide the declaration.  
Maximum penalty—1,000 penalty units.

## **29 Improper influence with respect to provision of declarations**

- (1) A registered practitioner must not, on an understanding that the practitioner will act otherwise than impartially in the provision of a compliance declaration, seek or accept, or offer or agree to accept, a benefit of any kind, whether on the practitioner's own behalf or on behalf of any other person.  
Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.
- (2) A person must not, on an understanding that a registered practitioner will act otherwise than impartially in the provision of a compliance declaration, give, or offer or agree to give, a benefit of any kind, whether to the practitioner or to any other person.  
Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.
- (3) A person must not unduly influence, or attempt to unduly influence, a registered practitioner for the purpose of prevailing on the practitioner to act otherwise than impartially in the provision of a compliance declaration.  
Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.
- (4) Without limiting subsection (3), a person is taken to have unduly influenced a registered practitioner if the person—
  - (a) alters, or threatens to alter, the position of the practitioner to the practitioner's detriment, or
  - (b) fails to pay, or threatens to fail to pay, remuneration payable to the practitioner.

## **30 Regulations relating to insurance requirements**

The regulations may make provision for or with respect to the following for the purposes of insurance requirements under this Act—

- (a) the persons or bodies who may provide indemnity,
- (b) the period for which a practitioner is to be indemnified,
- (c) the amount for which a practitioner is to be indemnified,
- (d) the risks for which a practitioner is to be indemnified,
- (e) the nature and terms of any insurance or arrangement,
- (f) the obligations on a person or body who provides indemnity,
- (g) the issue of indemnity for liability incurred by a person who was formerly a design practitioner or building practitioner.

## Part 3 Engineering work and specialist work

### Division 1 Professional engineering work

#### 31 Professional engineering work

- (1) For the purposes of this Act, **professional engineering work** means engineering work that requires, or is based on, the application of engineering principles and data to—
  - (a) a design, or
  - (b) a construction, production, operation or maintenance activity, relating to engineering.
- (2) However, engineering work is not **professional engineering work** if—
  - (a) the work is only provided in accordance with a document that states the procedure or criteria for carrying out the work and the work does not require the application of advanced scientifically based calculations, or
  - (b) the engineering work is prescribed by the regulations as not being professional engineering work.
- (3) For the purposes of this section, **engineering work** includes engineering services provided by a person.

#### 32 Professional engineering work only carried out by professional engineers

- (1) A person must not carry out professional engineering work in a prescribed area of engineering unless—
  - (a) the person is a registered professional engineer and the person's registration authorises the person to carry out the professional engineering work, or
  - (b) the person carries out the professional engineering work under the direct supervision of a person referred to in paragraph (a), or
  - (c) the person is authorised by the regulations to carry out the professional engineering work.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).
- (2) If a person carries out professional engineering work in contravention of subsection (1)—
  - (a) no monetary or other consideration is payable for the carrying out of the professional engineering work, regardless of any contract or arrangement, and
  - (b) an amount paid for the carrying out of the professional engineering work is recoverable as a debt in a court of competent jurisdiction.
- (3) In this section—

**prescribed area of engineering** means the following—

  - (a) structural engineering,
  - (b) civil engineering,
  - (c) mechanical engineering,
  - (d) fire safety engineering,
  - (e) electrical engineering,
  - (f) an area of engineering prescribed by the regulations.

### 33 Registered professional engineers to be indemnified

- (1) A registered professional engineer must not—
  - (a) carry out professional engineering work, or
  - (b) hold out that the engineer is adequately insured with respect to the work, unless the engineer is adequately insured with respect to the work.  
Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).
- (2) For the purposes of this section, a registered professional engineer is *adequately insured* with respect to work if the engineer—
  - (a) is indemnified by insurance that complies with the regulations against any liability to which the engineer may become subject as a result of carrying out the work, or
  - (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.
- (3) It is a condition of registration that a registered professional engineer must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the engineer is adequately insured in accordance with this section.

## Division 2 Specialist work

### 34 Specialist work

For the purposes of this Act, *specialist work* means—

- (a) the design, construction, installation or maintenance of a building element, or
- (b) other work, involving a building element, that is prescribed by the regulations, but does not include work prescribed by the regulations as not being specialist work.

### 35 Specialist work only carried out by registered specialist practitioner

A person must not carry out specialist work unless—

- (a) the person is a registered specialist practitioner and the person's registration authorises the person to carry out the specialist work, or
- (b) the person is authorised by the regulations to carry out the specialist work.

Maximum penalty—1,500 penalty units (in the case of a body corporate) or 500 penalty units (in any other case).

## Part 4 Duty of care

### 36 Definitions

- (1) In this Part—
- association** means an association within the meaning of the *Community Land Management Act 1989*.
- building** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.
- building product** has the same meaning as in the *Building Products (Safety) Act 2017*.
- building work** includes residential building work within the meaning of the *Home Building Act 1989*.
- construction work** means any of the following—
- (a) building work,
  - (b) the preparation of regulated designs and other designs for building work,
  - (c) the manufacture or supply of a building product used for building work,
  - (d) supervising, coordinating, project managing or otherwise having substantive control over the carrying out of any work referred to in paragraph (a), (b) or (c).
- owner** of land means any of the following—
- (a) every person who jointly or severally or at law or in equity is entitled to the land for an estate of freehold,
  - (b) for a lot within a strata scheme, the owner of a lot within the meaning of the *Strata Schemes Management Act 2015*,
  - (c) for a development lot or neighbourhood lot within a community scheme, the proprietor in relation to the lot within the meaning of the *Community Land Management Act 1989*,
  - (d) every person who jointly or severally or at law or in equity is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,
  - (e) other persons prescribed by the regulations for the purposes of this definition.
- owners corporation** means an owners corporation constituted under the *Strata Schemes Management Act 2015*.
- (2) In this Part, a reference to **building work** applies only to building work relating to a building within the meaning of this Part.
- (3) In this Part, a reference to the **owner** of land includes—
- (a) if the land is subject to a strata scheme under the *Strata Schemes Management Act 2015*, the owners corporation constituted for the scheme, or
  - (b) if the land is subject to a community scheme, precinct scheme or neighbourhood scheme within the meaning of the *Community Land Management Act 1989*, the association for the scheme.
- (4) In this Part, a reference to a person who carries out construction work includes a reference to a person who manufactures, or is a supplier (within the meaning of the *Building Products (Safety) Act 2017*) of, a building product used for building work.
- (5) The regulations may—

- (a) prescribe additional work that is construction work for the purposes of this Part, and
  - (b) exclude work from being construction work for the purposes of this Part.
- (6) The regulations may exclude persons from being owners for the purposes of this Part.

### **37 Extension of duty of care**

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

### **38 Economic loss—owners corporations and associations**

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

### **39 Duty must not be delegated**

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

### **40 No contracting out of Part**

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

### **41 Relationship with other duties of care and law**

- (1) The provisions of this Part are in addition to duties, statutory warranties or other obligations imposed under the *Home Building Act 1989*, other Acts or the common law and do not limit the duties, warranties or other obligations imposed under that Act, other Acts or the common law.



- (2) This Part does not limit damages or other compensation that may be available to a person under another Act or at common law because of a breach of a duty by a person who carries out construction work.
- (3) This Part is subject to the *Civil Liability Act 2002*.  
**Note.** Actions under this Part are subject to applicable limitation periods established under the *Limitation Act 1969*, and section 6.20 of the *Environmental Planning and Assessment Act 1979* which relates to civil actions relating to certain work.

## Part 5 Registration of practitioners

### Division 1 Applications for registration

#### 42 Classes of registration

The regulations may make provision for or with respect to classes of registration as a practitioner.

#### 43 Application for registration

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

#### 44 Secretary may obtain information from third parties

- (1) The Secretary may, by written notice, require an applicant or a close associate of the applicant—
  - (a) to authorise a person described in the notice—
    - (i) to provide information specified in the notice that is relevant to the investigation of the application, or
    - (ii) to produce, in accordance with directions in the notice, the records relevant to the investigation of the application that are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them, or
  - (b) to furnish to the Secretary the authorities and consents that the Secretary directs for the purpose of enabling the Secretary to obtain information (including financial and other confidential information) from other persons concerning the applicant or close associate.
- (2) If a requirement made under this section is not complied with, the Secretary may refuse to consider the application concerned while the non-compliance continues.

- (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

#### **45 Determination of applications**

- (1) The Secretary may grant or refuse an application to be registered as a practitioner.
- (2) The Secretary may register a person as a practitioner of a class that the Secretary considers appropriate even if the application is for a different class of registration.
- (3) The Secretary must refuse to register a person as a practitioner if—
- (a) the application for registration does not comply with this Act, or
  - (b) the Secretary is of the opinion that the applicant does not have the qualifications, skills, knowledge and experience to carry out the work for which the applicant is seeking registration, or
  - (c) the Secretary is of the opinion that the person (including, if the person is a body corporate, a director of the body corporate) is not a suitable person to carry out the work for which the applicant is seeking registration, or
  - (d) the person (including, if the person is a body corporate, a director of the body corporate) is an individual who is under the age of 18 years, or
  - (e) the person is a mentally incapacitated person, or
  - (f) the person (including, if the person is a body corporate, a director of the body corporate) is an undischarged bankrupt, or
  - (g) on a ground prescribed by the regulations for the purposes of this section.
- (4) The Secretary is to give the applicant written notice of a decision to grant or refuse registration.
- (5) If the Secretary fails to give an applicant for registration notice of a decision to grant or refuse registration within the period prescribed by the regulations, the Secretary is taken to have refused to grant registration.

#### **46 Grounds for opinion that a person is not a suitable person to carry out work**

The Secretary may form an opinion that a person is not a suitable person to carry out the work for which the person is seeking registration or is registered in one or more of the following circumstances—

- (a) the person (including, if the person is a body corporate, a director of the body corporate) has contravened a requirement imposed by or under this Act or a requirement imposed under another Act or law that applies to the work for which registration is sought,
- (b) an equivalent authorisation of the person has been suspended or cancelled (other than at the person's request) under the law of another Australian jurisdiction,
- (c) the person is disqualified (other than on the grounds of not residing in that jurisdiction or on the grounds that the person is a body corporate) from holding an equivalent authorisation under the law of another Australian jurisdiction,
- (d) a close associate of the person who would not be a fit and proper person to be registered exercises a significant influence over the person or the operation and management of the person's business,
- (e) a circumstance prescribed by the regulations.

#### **47 Requirements for registration**

- (1) The regulations may make provision for or with respect to the requirements for registration.

- (2) Without limiting subsection (1), the regulations may provide for the qualifications, registration or recognition by professional bodies, skills, knowledge and experience for registration, including for particular classes of registration.

#### **48 Duration of registration**

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

#### **49 Conditions of registration**

- (1) Registration is subject to the following conditions—
  - (a) conditions imposed by this Act or the regulations,
  - (b) conditions imposed by the Secretary (whether on or after registration).
- (2) The Secretary may, by written notice given to a registered practitioner, impose a condition on the registration or vary or revoke a condition of the registration imposed by the Secretary.

#### **50 Particular conditions**

- (1) Conditions may be imposed on registration to require a registered practitioner to prepare regulated designs or carry out building work, professional engineering work or specialist work in accordance with specified standards or methodologies, including but not limited to standards or methodologies prepared by the Secretary.
- (2) The regulations may impose a condition of registration that a registered practitioner must comply with a code of practice prescribed by the regulations.
- (3) The regulations may impose a condition of registration that a registered practitioner must be registered or recognised by a professional body or a professional body belonging to a class of professional bodies.
- (4) A condition of registration may provide that an authorisation conferred by the registration does not take effect until the end of a specified period or the happening of a particular event or the occurrence of a particular state of affairs.
- (5) This section does not limit the matters for which conditions of registration may provide.

#### **51 Condition requiring provision of information to the Secretary**

- (1) It is a condition of registration that a registered practitioner must, when requested in writing by the Secretary to do so, provide the Secretary, in accordance with this section, with information relating to activities as a practitioner that the Secretary requires.
- (2) The information must, if the Secretary specifies a time within which it must be provided, be provided within that time.
- (3) The regulations may make further provision with respect to the provision of information under this section.
- (4) A registered practitioner who fails to comply with the condition set out in this section is guilty of an offence.  
Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

## **Division 2 Variation, suspension or cancellation of registration**

### **52 Variation, suspension or cancellation of registration generally**

- (1) The Secretary may, by written notice given to a practitioner, vary, suspend or cancel the practitioner's registration on the following grounds—
  - (a) the practitioner is not entitled to be registered,
  - (b) the practitioner fails to comply with a condition of registration,
  - (c) in the opinion of the Secretary, the practitioner (including, if the practitioner is a body corporate, a director of the body corporate) is not a suitable person to be registered or registered as a particular class of practitioner,
  - (d) the practitioner (including, if the practitioner is a body corporate, a director of the body corporate) has contravened this Act or a regulation made under this Act, whether or not the practitioner or director is prosecuted or convicted for the contravention,
  - (e) the registration was granted in error,
  - (f) the Secretary has decided to suspend or cancel the registration under Part 6,
  - (g) the practitioner has applied for the registration to be cancelled or suspended,
  - (h) a ground prescribed by the regulations.
- (2) The notice must specify—
  - (a) the date or time from which the variation, suspension or cancellation takes effect, and
  - (b) the grounds for the variation, suspension or cancellation.

### **53 Suspension or cancellation may be subject to conditions**

- (1) Registration may be suspended or cancelled unconditionally or subject to the conditions that the Secretary determines to impose.
- (2) The conditions may include (but are not limited to) conditions to which the registration was subject immediately before it was suspended or cancelled.
- (3) The Secretary may, by written notice given to the former registered practitioner, attach new conditions to, or vary or revoke existing conditions of, the suspension or cancellation of the registration.

## **Division 3 Recognition as registered practitioner**

### **54 Recognition procedure**

- (1) The regulations may make provision for or with respect to the recognition of persons or classes of persons as registered practitioners for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may provide for the following—
  - (a) the recognition of persons as registered practitioners who—
    - (i) hold designated qualifications, or
    - (ii) are registered or recognised as practitioners by a professional body or a professional body belonging to a class of professional bodies, or
    - (iii) are registered or recognised as practitioners under a law of this State or another State or a Territory or the Commonwealth,
  - (b) the requirements relating to the registration or recognition processes of professional bodies that register or recognise practitioners including the following—

- (i) how qualifications and competencies are to be assessed,
- (ii) the time in which a decision on registration or recognition must be made,
- (iii) the procedures to be used to monitor and improve the registration or recognition processes,
- (iv) the maximum fees that may be charged,
- (v) the requirements relating to continuing professional development,
- (vi) audit requirements,
- (c) the financial and other facilities that a professional body must have and other requirements that must be met before a professional body is able to register or recognise practitioners,
- (d) the classes of practitioners for which persons or classes of persons may be recognised as registered practitioners,
- (e) the qualifications, skills, knowledge and experience required for recognition,
- (f) insurance requirements for recognition,
- (g) applications for recognition and related matters (including conditions of recognition).

#### **55 Recognition of professional bodies for engineers**

- (1) The recognition of a person as a registered professional engineer because the person is registered or recognised as a practitioner by a professional body of engineers may occur only if the professional body of engineers is recognised by the Secretary.
- (2) The Secretary may recognise a professional body of engineers only if the Secretary is satisfied that—
  - (a) the professional body's recognition or registration scheme—
    - (i) adequately provides for the assessment of qualifications and competencies of professional engineers in an area of engineering, and
    - (ii) is consistent with national and international standards for the recognition of professional engineers, and
    - (iii) has fees that are reasonable having regard to the scope of the services being offered, and
    - (iv) includes adequate continuing professional development requirements for professional engineers and an effective audit program to ensure continuing registration requirements are met, and
    - (v) meets the requirements, if any, prescribed by the regulations, and
  - (b) the professional body has—
    - (i) adequate procedures for monitoring and improving the assessment process carried out under the scheme, and
    - (ii) the financial capacity and facilities to conduct assessments of qualifications and competencies, and
    - (iii) a proven capacity to undertake independent and authoritative assessments in a timely manner.

### **Division 4 Registration offences**

#### **56 Offence of contravening condition**

A registered practitioner (including a former registered practitioner) who contravenes any of the following is guilty of an offence—

(a) a condition of the registration (other than a condition for which a different maximum penalty is prescribed),

(b) a condition of a suspension or cancellation of registration.

Maximum penalty—600 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).

#### **57 Offence of lending certificate registration**

(1) A registered practitioner must not let out, hire or lend a certificate of registration to another person or permit another person to use the certificate.

Maximum penalty—600 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).

(2) The Secretary must cancel the registration of a registered practitioner who is convicted of an offence against this section.

#### **58 False representations relating to practitioners**

A person must not falsely represent that the person or any other person—

(a) can do anything that is only able to be done by a person who is registered under this Act, or

(b) is a registered practitioner or is registered in a particular class as a registered practitioner.

Maximum penalty—600 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).

#### **59 Return of cancelled, suspended or varied registration**

(1) A person must return the person's registration certificate in accordance with this section if the Secretary suspends, varies or cancels the person's registration.

Maximum penalty—300 penalty units.

(2) The certificate must be returned, within the period specified by the Secretary when suspending, varying or cancelling the registration, by—

(a) lodging the certificate with the Secretary, or

(b) lodging with the Secretary a statement signed by the person providing accurate and complete details of why the registration cannot be lodged.

(3) If the person's registration has been varied and the registration certificate lodged in accordance with this section, the Secretary must issue an appropriate replacement registration certificate for the remainder of the term of the person's registration.

#### **60 Registered practitioner to notify Secretary of certain events**

A registered practitioner must notify the Secretary in writing of the following events within 7 days after becoming aware of the event—

(a) an equivalent authorisation held by the practitioner being suspended or cancelled (other than at the request of the practitioner),

(b) proceedings being instituted against the practitioner (including, if the practitioner is a registered body corporate, proceedings being instituted against a director of the body corporate) for a contravention of a requirement imposed by or under this Act or another law that applies to the work to which the registration applies,

(c) the practitioner (including, if the practitioner is a registered body corporate, a director of the body corporate) being found guilty of a contravention of a

requirement imposed by or under this Act or another law that applies to the work to which the registration applies,

- (d) the practitioner (including, if the practitioner is a registered body corporate, a director of the body corporate) being investigated in another Australian jurisdiction by a government agency or a body that issues an equivalent authorisation with respect to the carrying out of work authorised to be carried out under an equivalent authorisation or a failure to comply with an equivalent authorisation,
- (e) the practitioner (including, if the practitioner is a registered body corporate, a director of the body corporate) becoming bankrupt or making a composition, arrangement or assignment for the benefit of creditors,
- (f) if the practitioner is a registered body corporate, the registered body corporate becoming the subject of a winding up order or having a controller or administrator appointed,
- (g) if the practitioner is a registered body corporate, the appointment of a person as a director or a person concerned in the management of the body corporate, or a person ceasing to be a director or a person concerned in the management of the body corporate,
- (h) any event prescribed by the regulations.

Maximum penalty—250 penalty units (in the case of a body corporate) or 50 penalty units (in any other case).

## **Division 5      General**

### **61    Registration not transferable**

Registration is not transferable.

### **62    Voluntary surrender or suspension of registration**

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

### **63    Review by Civil and Administrative Tribunal**

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

- (a) a decision of the Secretary to refuse registration,
- (b) a decision of the Secretary to suspend or cancel registration,
- (c) a decision of the Secretary to refuse an application to vary registration,



- (d) a decision of the Secretary to impose, or vary or revoke, a condition on registration, or on the suspension or cancellation of registration,
- (e) a decision of the Secretary to vary registration,
- (f) a decision of the Secretary to refuse an application for the cancellation or suspension of registration.

**Note.** In this Act, a reference to registration of a person includes a reference to recognition of a person as a registered practitioner.

## Part 6 Disciplinary action against practitioners

### 64 Grounds for taking disciplinary action

The Secretary may take disciplinary action against a registered practitioner on one or more of the following grounds—

- (a) the practitioner has engaged in conduct in connection with the preparation of regulated designs or carrying out building work, professional engineering work or specialist work, or the provision of compliance declarations, that has fallen short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent practitioner,
- (b) the practitioner has contravened this Act or a regulation made under this Act, whether or not the practitioner is prosecuted or convicted for the contravention,
- (c) the practitioner has contravened a law of this or another Australian jurisdiction (whether or not the contravention is an offence and whether or not the practitioner is prosecuted or convicted for the contravention) with respect to any of the following—
  - (i) the preparation of regulated designs or the carrying out of building work, professional engineering work or specialist work or work authorised to be carried out under an equivalent authorisation,
  - (ii) the provision of a compliance declaration,
  - (iii) registration or an equivalent authorisation,
  - (iv) fraud or dishonesty,
- (d) the practitioner has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the practitioner by or in accordance with a law of this or another Australian jurisdiction with respect to the preparation of regulated designs or the carrying out of building work, professional engineering work or specialist work or work authorised to be carried out under an equivalent authorisation or the provision of a compliance declaration,
- (e) the practitioner has failed to comply with a condition of the registration,
- (f) the practitioner has wilfully disregarded matters to which the practitioner is required to have regard to when preparing regulated designs or carrying out building work, professional engineering work or specialist work or when providing a compliance declaration,
- (g) the practitioner has failed to comply with an undertaking given under section 88,
- (h) other grounds prescribed by the regulations.

### 65 Notice to show cause

- (1) This section applies if the Secretary is of the opinion that there may be grounds for taking disciplinary action under this Part against a practitioner.
- (2) The Secretary may give a written notice to the practitioner inviting the practitioner to show cause why the practitioner should not be dealt with under this Part.
- (3) The notice must state the grounds on which the practitioner is required to show cause and must specify the period, being at least 14 days, during which it must be done.
- (4) A practitioner to whom a notice to show cause has been given may, within the period specified in the notice, make submissions to the Secretary, orally or in writing, and provide evidence with respect to the matters to which the notice relates.

- (5) The Secretary may conduct any inquiry or make any investigation with respect to the matters to which the notice relates and the submissions are made, if any, and the evidence adduced, if any, by or on behalf of the practitioner with respect to those matters that the Secretary thinks fit.
- (6) The Secretary must, before determining whether or not to take disciplinary action under this Part against a person, take into consideration any submission made by the person in accordance with this section.
- (7) However, the Secretary may take immediate disciplinary action without taking any steps under this section if the Secretary is of the opinion that it is in the public interest to take immediate action.

#### **66 Disciplinary action that may be taken by Secretary**

- (1) The Secretary may, if satisfied that one or more of the grounds for taking disciplinary action against a registered practitioner has been established, do one or more of the following—
  - (a) determine to take no further action against the practitioner,
  - (b) caution or reprimand the practitioner,
  - (c) make a determination requiring the practitioner to pay to the Secretary, as a penalty, an amount not exceeding \$220,000 (in the case of a body corporate) or \$110,000 (in any other case) within a specified time,
  - (d) impose a condition on the registration of the practitioner, including a condition requiring the practitioner to undertake specified education or training relating to a particular type of work or business practice within a specified time,
  - (e) suspend or cancel the registration of the practitioner in accordance with Part 5,
  - (f) disqualify the practitioner, either temporarily or permanently, from being registered or being registered in a particular class.
- (2) In determining the disciplinary action to take, the Secretary must take into account other disciplinary action taken against the person under this Part.
- (3) The Secretary is to provide a written statement of a decision made under this section to the practitioner as soon as is reasonably practicable after the decision is made.
- (4) The statement of a decision must specify—
  - (a) the decision that has been made, and
  - (b) if relevant, the date or time on which the decision takes effect, and
  - (c) the grounds for the decision.

**Note.** In this Act, a reference to registration of a person includes a reference to recognition of a person as a registered practitioner.

#### **67 Directors must report certain conduct**

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

- (a) the body corporate,
- (b) a registered individual who is preparing regulated designs or carrying out building work, professional engineering work or specialist work, or providing compliance declarations, on behalf of the body corporate.

Maximum penalty—300 penalty units.

**68 Review by Civil and Administrative Tribunal**

A person aggrieved by a decision of the Secretary to take disciplinary action under this Part may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.

**69 Enforcement of monetary penalties and payment of costs**

- (1) When a decision of the Secretary to impose a monetary penalty has taken effect and the amount required to be paid has not been paid to the Secretary—
  - (a) registration held by the person required to pay is taken to be suspended until that amount is paid to the Secretary, and
  - (b) that amount may be recovered by the Secretary as a debt in a court of competent jurisdiction.
- (2) The Secretary may agree in writing to extend the time for payment by a person of an amount referred to in subsection (1) and, in that case, that subsection does not have effect with respect to the person during the extension of time.
- (3) The Secretary's failure to enter into an agreement under this section cannot be reviewed by the Tribunal in an application for an administrative review made under this Act.

**70 Liability for offences not affected**

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

## Part 7 Investigations

### Division 1 Preliminary

#### 71 Definitions

In this Part—

**authorised officer** means a person appointed under Division 2 or a police officer.

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

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

**premises** includes—

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

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

**specify** an act, matter or thing includes—

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

**vessel** means any kind of vessel used in navigation.

#### 72 Purposes for which functions under Part may be exercised

- (1) An authorised officer may exercise the functions conferred by this Part for one or more of the following purposes—
  - (a) investigating, monitoring and enforcing compliance with the requirements imposed by or under this Act,
  - (b) obtaining information or records for purposes connected with the administration of this Act,
  - (c) enforcing, administering or executing this Act.
- (2) In this Part, a reference to an **authorised purpose** is a reference to a purpose referred to in subsection (1).

### Division 2 Authorised officers

#### 73 Appointment of authorised officers

The Secretary may appoint any of the following persons as an authorised officer for the purposes of this Part—

- (a) an employee of the Department,
- (b) a person who is an investigator within the meaning of the *Fair Trading Act 1987*,
- (c) a person belonging to a class of persons prescribed by the regulations.

#### 74 Scope of authority

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

to act in contravention of the conditions, limitations or restrictions or for other purposes.

#### **75 Identification**

- (1) Every authorised officer who is not a police officer is to be provided with an identification card as an authorised officer by the Secretary.
- (2) The Secretary may decide not to issue an identification card to an investigator within the meaning of the *Fair Trading Act 1987* who is appointed as an authorised officer.
- (3) In that case, the person's certificate of identification as an investigator is taken to be the person's identification card as an authorised officer.
- (4) An authorised officer must, if requested to do so when exercising a function under this Act by a person affected by the exercise of the function, produce to the person the officer's identification card as an authorised officer or, in the case of a police officer, the officer's police identification.

### **Division 3 Information gathering powers**

#### **76 Exercise in conjunction with other powers**

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

#### **77 Powers of authorised officers to require information and records**

- (1) An authorised officer may, by written notice given to a person, direct the person to furnish to the officer or another authorised officer information or records (or both) as the authorised officer may require for an authorised purpose.
- (2) The notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.
- (3) The notice may only require a person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) The person to whom a record is furnished under this Division may take copies of it.
- (5) If a record directed to be furnished under this Division is in electronic, mechanical or other form, the record must be furnished in written form, unless the notice otherwise provides.

#### **78 Power of authorised officers to require answers**

- (1) An authorised officer may direct a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters with respect to which information is reasonably required for an authorised purpose to answer questions with respect to those matters.
- (2) An authorised officer may, by written notice, direct a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (3) An authorised officer may, by written notice, direct a body corporate to nominate, in writing within the time specified in the notice, a director or other officer of the body corporate to be the body corporate's representative for the purpose of answering questions under this section.
- (4) Answers given by a person nominated under subsection (3) bind the body corporate.

- (5) The place and time at which a person may be directed to attend is to be a place and time nominated by the authorised officer that is reasonable in the circumstances.

#### **79 Recording of evidence**

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

### **Division 4 Entry to premises**

#### **80 Powers of authorised officers to enter premises**

- (1) An authorised officer may enter any premises at a reasonable hour in the daytime or at an hour during which business (including building work) is in progress or is usually carried on at the premises.
- (2) A power to enter premises conferred by this Act authorises entry by foot, vehicle, vessel or aircraft or by any other means.
- (3) Entry to premises may be effected with or without the authority of a search warrant.
- (4) When exercising a power of entry under this Part, an authorised officer may be accompanied by any assistants that the authorised officer considers necessary.

#### **81 Entry into residential premises only with permission or warrant**

- (1) This Division does not empower an authorised officer to enter a part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant.
- (2) This section does not limit entry onto common property under a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*) or association property under a scheme (within the meaning of the *Community Land Management Act 1989*).

#### **82 Search warrants**

- (1) An authorised officer under this Act may apply to an issuing officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that—
  - (a) a requirement imposed by or under this Act is being or has been contravened at any premises, or
  - (b) there is, in or on any premises, a matter or thing that is connected with an offence under this Act or the regulations.
- (2) An issuing officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant—
  - (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer—
  - (a) may accompany an authorised officer executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.
- (5) In this section—  
**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **83 Provision of assistance to authorised officers**

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

### **84 Powers that may be exercised on premises**

- (1) An authorised officer may, at premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for an authorised purpose, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following—
  - (a) examine and inspect any thing,
  - (b) take and remove samples of a thing,
  - (c) make examinations, inquiries, measurements or tests that the authorised officer considers necessary,
  - (d) take photographs or other recordings that the authorised officer considers necessary,
  - (e) direct a person to produce records for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,
  - (h) seize a thing that the authorised officer has reasonable grounds for believing is connected with an offence against this Act or the regulations,
  - (i) move a seized thing from the place where it is seized or leave it at the place where it is seized and take reasonable action to restrict access to the thing,
  - (j) direct the occupier of the premises where a thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (k) open up, cut open or demolish a building or structure or part of a building or structure, if the authorised officer has reasonable grounds for believing that it is necessary to do so because it is connected with an offence against this Act or the regulations,
  - (l) do anything else authorised by or under this Act.
- (3) The power to examine and inspect a thing includes a power to use reasonable force to break open or otherwise access a thing, including a floor or wall containing the thing.
- (4) The power to seize a thing connected with an offence includes a power to seize—



- (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.
- (5) The power to do a thing under this section includes a power to arrange for that thing to be done.
- (6) A power to do something under this section with respect to a thing may be exercised without the consent of the owner of the thing.
- (7) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

## **Division 5      Miscellaneous**

### **85    Taking possession of records to be used as evidence**

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

### **86    Obstruction of authorised officers**

A person must not obstruct, hinder or interfere with an authorised officer in the exercise of the authorised officer's functions under this Part.

Maximum penalty—1,000 penalty units (in the case of a body corporate) or 200 penalty units (in any other case).

### **87    Failure to comply with direction**

A person must not, without reasonable excuse, fail to comply with a direction of an authorised officer made in accordance with this Part.

Maximum penalty—1,000 penalty units (in the case of a body corporate) or 200 penalty units (in any other case).

## Part 8 Enforcement

### Division 1 Remedial actions

#### 88 Undertakings

The Secretary may accept a written undertaking from a registered practitioner as to the manner in which the practitioner will prepare regulated designs, carry out building work, professional engineering work or specialist work, provide compliance declarations or conduct the practitioner's business as a registered practitioner.

**Note.** Part 6 provides that a breach of an undertaking is grounds for taking disciplinary action against a registered practitioner.

#### 89 Stop work orders

- (1) The Secretary may, by order (a *stop work order*) in writing given to either or both of the following persons, order the person to ensure that building work, professional engineering work or specialist work stops—
  - (a) a person carrying out the work,
  - (b) the owner of the land on which the work is being carried out.
- (2) The Secretary may give a stop work order only if the Secretary is of the opinion that—
  - (a) the work is, or is likely to be, carried out in contravention of this Act, and
  - (b) the contravention could result in significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates or significant damage to property.
- (3) A stop work order takes effect on the day it is given to the person who is the subject of the order or on a later day specified in the order.
- (4) A stop work order may be unconditional or subject to conditions.
- (5) The Secretary may, by written notice given to the person who is subject to a stop work order, impose a condition on the order or revoke or vary a condition of the order.
- (6) A stop work order remains in force until one of the following occurs—
  - (a) the order is revoked by the Secretary,
  - (b) the term (if any) of the order ends,
  - (c) the period of 12 months from the day on which the order takes effect ends.
- (7) A person must not fail to comply with an order in force under this section.  
Maximum penalty—3,000 penalty units and in addition, in the case of a continuing offence, 300 penalty units for each day the offence continues (in the case of a body corporate) and 1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues (in any other case).

#### 90 Appeals against stop work orders

- (1) A person given a stop work order may appeal against the order to the Land and Environment Court within 30 days of the service of the notice of the order.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the order appealed against.

### **91 Applying for orders to restrain or remedy contraventions**

- (1) The Secretary may apply to the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) The application may be made whether or not proceedings have been instituted for an offence against this Act or the regulations.
- (3) An order may be made without the Secretary being required to show a likelihood of damage.
- (4) If in the opinion of the Court it is desirable to do so, the Court may grant an interim order pending determination of the application.
- (5) When the Secretary applies for the grant of an order under this section, the Court is not to require the Secretary or another person, as a condition of granting an interim order, to give an undertaking as to damages.
- (6) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make the orders it thinks fit to remedy or restrain the breach.

### **92 Complaints, investigations and audits of practitioners**

- (1) The Secretary may, whether or not the Secretary has received a complaint, investigate—
  - (a) a registered practitioner or former registered practitioner, or
  - (b) the preparation of regulated designs or the carrying out of building work, professional engineering work or specialist work or the provision of compliance declarations, or
  - (c) other matters that may constitute a breach of this Act or the regulations.
- (2) The Secretary may require that a complaint made to the Secretary about a matter referred to in subsection (1)(a)–(c) be in a form approved by the Secretary.
- (3) However, the Secretary is not required to investigate a matter even if a complaint is made in the approved form.
- (4) The Secretary may conduct an audit of a registered practitioner at any time.
- (5) This section does not limit other powers that the Secretary may have under this Act or another Act or law to receive a complaint, investigate a matter or conduct an audit.

## **Division 2 Offences**

### **93 Proceedings for offences**

- (1) Proceedings for an offence against this Act may be taken before the Local Court or before the Land and Environment Court in its summary jurisdiction.
- (2) Proceedings for an offence against the regulations may be taken before the Local Court.
- (3) If proceedings in respect of an offence against this Act are brought in the Local Court, the maximum monetary penalty the Court may impose in respect of the offence is, despite any other provisions of this Act, 1,000 penalty units or the maximum monetary penalty provided by this Act in respect of the offence, whichever is the lesser.
- (4) If proceedings in respect of an offence against this Act are brought in the Land and Environment Court in its summary jurisdiction, the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.

- (5) Despite the *Criminal Procedure Act 1986* or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than—
  - (a) 3 years after the date alleged to be the date on which the offence was committed, or
  - (b) after the end of that period, with the leave of the court, if the proceedings are commenced not later than 2 years after the date on which evidence of an act or omission constituting the alleged offence first came to the attention of an authorised officer.
- (6) If subsection (5)(b) is relied on, the court attendance notice or summons commencing proceedings must contain particulars of the date on which evidence of an act or omission constituting the alleged offence first came to the attention of the authorised officer and need not contain particulars of the date on which the offence was committed.
- (7) The date on which evidence first came to the attention of an authorised officer is the date specified in the court attendance notice or application, unless the contrary is established.

#### 94 Penalty notices

- (1) A penalty notice officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.  
**Note.** The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section—  
**penalty notice officer** means any of the following designated by the Secretary as a penalty notice officer for the purposes of this section—
  - (a) a member of staff of the Department,
  - (b) a person prescribed by the regulations.

#### 95 Offences by bodies corporate

- (1) If a body corporate contravenes, whether by act or omission, a provision of this Act or the regulations, each person who is a director of the body corporate or who is concerned in the management of the body corporate is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act or the regulations.

**96 Continuing offences**

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

**97 Onus of proof regarding reasonable excuse**

In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

## Part 9 Miscellaneous

### 98 Practitioners registers

- (1) The Secretary is to maintain a register of registered practitioners that contains the information prescribed by the regulations.
- (2) Different registers may be maintained under this section for different types of registered practitioners.
- (3) A register is to be in the form determined by the Secretary and is to be freely available on the internet for inspection by the public.
- (4) Without limiting the information that may be prescribed by the regulations with respect to a register, the regulations may require that the register include one or more of the following particulars with respect to a registered practitioner—
  - (a) details of the registration, including details of the holder of the registration,
  - (b) the results of a relevant disciplinary determination,
  - (c) the results of prosecutions under this Act,
  - (d) details of penalty notices issued,
  - (e) details of warning notices published under this Part,
  - (f) details of any conditions on the registration,
  - (g) details of any cancellation or suspension of the registration.
- (5) The Secretary may remove a particular from, or otherwise amend, a register if the particular is, in the opinion of the Secretary, false, erroneous, misleading or unfairly prejudicial to the interests of the holder of the registration concerned.

### 99 Warning notices

- (1) The Secretary may authorise publication of a notice (a *warning notice*) warning persons of particular risks involved in dealing with—
  - (a) a specified registered practitioner or former registered practitioner, or
  - (b) any other person that the Secretary reasonably believes may have breached this Act or the regulations.
- (2) The Secretary may authorise publication of a warning notice in one or more of the following ways—
  - (a) to a person making inquiries to the Secretary about the person concerned,
  - (b) by advertisement by the use of any medium,
  - (c) to any media representatives.
- (3) Publication of a warning notice may be authorised whether or not a complaint has been made.
- (4) However, the Secretary must conduct an investigation before authorising the publication.
- (5) Before authorising publication of a warning notice, the Secretary must give the person concerned an opportunity for a period of not less than 2 business days to make representations to the Secretary about publication of the warning notice, unless—
  - (a) the Secretary, after making reasonable efforts to do so, is not able to contact the person promptly and advise the person of that opportunity, or
  - (b) the person refuses to make any representations.

- (6) However, no opportunity to make representations is required to be given if, in the opinion of the Secretary, there is an immediate risk to the public.
- (7) No liability is incurred by a person for publishing in good faith—
  - (a) a warning notice under this section, or
  - (b) a fair report or summary of a warning notice.

#### **100 Service of documents**

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

#### **101 Certificate evidence of certain matters**

- (1) A document signed by the Secretary, or by an officer prescribed by the regulations, and certifying one or more of the matters specified in subsection (2) is admissible in criminal or civil proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the matters so certified.
- (2) The matters are as follows—
  - (a) that a specified person was or was not, at a specified time or during a specified period, a registered practitioner or a registered practitioner of a specified class,
  - (b) that registration held by a specified person was or was not, at a specified time or during a specified period, subject to a specified condition or was or was not suspended,
  - (c) that a specified person was or was not, at a specified time or during a specified period, an authorised officer,
  - (d) that a particular or other matter was or was not, at a specified time or during a specified period, included on the register,
  - (e) that a design was or was not, at a specified time or during a specified period, a regulated design,
  - (f) any other matter prescribed by the regulations.

## 102 Personal liability

- (1) A matter or thing done or omitted to be done by the following persons does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the person to any action, liability, claim or demand—
  - (a) the Secretary,
  - (b) an authorised officer,
  - (c) a person acting under the direction of the Secretary or an authorised officer.
- (2) However, any such liability attaches instead to the Crown.

## 103 Disclosure and misuse of information

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

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

Maximum penalty—50 penalty units.

## 104 Exchange of information

- (1) The Secretary may provide information to a relevant agency that is reasonably necessary for the purposes of enabling or assisting the relevant agency to regulate or take other action in respect of one or more of the following—
  - (a) the preparation of regulated designs and other work done by a registered design practitioner or principal design practitioner,
  - (b) building work, professional engineering work or specialist work,
  - (c) practitioners,
  - (d) compliance declarations,
  - (e) other matters prescribed by the regulations.
- (2) A relevant agency may provide information to the Secretary that is reasonably necessary for the purposes of enabling or assisting the Secretary to exercise the Secretary's functions under this Act.
- (3) Without limiting subsection (1), the Secretary may enter into an arrangement (an ***information sharing arrangement***) with a relevant agency (or in the case of the Tribunal, the President of the Tribunal) for the purposes of sharing or exchanging information held by the Secretary or the agency.
- (4) Under an information sharing arrangement, the Secretary and the relevant agency are, despite any other Act or law, authorised—
  - (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party.
- (5) Subsection (4) applies only to the extent that the information is reasonably necessary to assist in the exercise of functions of the Secretary under this Act or the functions of the relevant agency.



- (6) This section does not—
- (a) require the Secretary to provide information to a relevant agency only in accordance with subsection (1), or with an information sharing arrangement, where 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 disclose information to another person or body.
- (7) In this section—  
**relevant agency** means any of the following—
- (a) a government sector agency,
  - (b) the Tribunal,
  - (c) other persons or bodies prescribed by the regulations.

#### **105 Secretary may require information about insurance policies**

- (1) The Secretary may direct a person who issues insurance policies to registered practitioners for the purposes of this Act to provide to the Secretary information, as may be specified by the Secretary, about the following matters relating to policies or particular classes of policies issued for the purposes of this Act by the person—
- (a) the terms of the policies,
  - (b) the premiums payable,
  - (c) the number of policies issued,
  - (d) the registered practitioners to whom policies have been issued,
  - (e) the number and value of claims made under the policies,
  - (f) any other information prescribed by the regulations.
- (2) The Secretary may direct that the information be provided in the time specified in the direction.
- (3) A direction under this section must be given in writing.
- (4) A person must not fail to comply with a direction given to the person under this section.  
Maximum penalty—500 penalty units.

#### **106 Delegation**

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

#### **107 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that

is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may make provision with respect to the following—
  - (a) the qualifications, skills and experience required for registration, including the approval of training and the approval of persons to conduct the training or to assess persons undergoing the training,
  - (b) continuing professional development requirements for registered practitioners,
  - (c) the particulars relating to regulated designs and compliance declarations that must be recorded, and the form and manner in which they must be recorded,
  - (d) the keeping of records and the provision of information to the Secretary by practitioners with respect to preparation of regulated designs, building work, professional engineering work or specialist work and compliance declarations,
  - (e) the lodging of copies of designs and compliance declarations electronically or otherwise with the Department or another person approved by the Minister,
  - (f) notice to registered practitioners of matters affecting the circumstances when compliance declarations are to be provided,
  - (g) the fees payable under this Act or the regulations and the refund, reduction or waiver of any fees.
- (3) Without limiting subsection (2)(a), the regulations may authorise the approval of training and persons under that paragraph to be done by order of the Secretary published in the Gazette.
- (4) A regulation may apply, adopt or incorporate a publication as in force at a particular time or as in force from time to time.
- (5) The regulations may exempt specified persons or bodies or classes of persons or bodies, or specified work or classes of work, or specified registrations, from any specified provision of this Act.
- (6) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units in the case of a body corporate or 100 penalty units in any other case.

#### **108 Recovery of unpaid fees**

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

#### **109 Review of Act**

- (1) The Public Accountability Committee of the Legislative Council is to review this Act—
  - (a) to consider the functions exercised or delegated by the Secretary, and
  - (b) to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain effective for securing those objectives, and
  - (c) to consider the desirability of establishing an independent NSW Building Commission to instead exercise the regulatory and oversight functions under this Act and other Acts relating to the construction of buildings.
- (2) The review is to be undertaken as soon as possible after 30 March 2022.
- (3) A report on the outcome of the review is to be tabled in the Legislative Council by 30 June 2022 (or by a later day determined by the Committee).

- (4) The Minister is to table in the Legislative Council a written response to the report within 3 months after the tabling of the report.

## Schedule 1 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision—
  - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and
  - (b) has effect despite anything to the contrary in this Schedule.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definition

In this Part—

*existing arrangement* means a contract or other arrangement for the preparation of regulated designs or the carrying out of building work entered into before the commencement of section 9.

#### 3 Application of Act (other than Part 4) to work done under existing arrangements

This Act (other than Part 4) applies to the preparation of designs, building work or other work done in respect of a building under an existing arrangement if the first application for the issue of a complying development certificate or construction certificate (within the meaning of the *Environmental Planning and Assessment Act 1979*) for the building is made on or after a day prescribed by the regulations for the purposes of this clause.

#### 4 Registration requirements

A person is not required to be registered under this Act merely because the person is, or has been, carrying out work to which this Act does not apply under an existing arrangement.

#### 5 Application of duty of care provisions to existing buildings and contracts and arrangements

- (1) Part 4 of this Act extends to construction work carried out before the commencement of section 37 as if the duty of care under that Part was owed by the person who carried

out the construction work to the owner of the land and to subsequent owners when the construction work was carried out.

- (2) Subclause (1) only applies to economic loss caused by a breach of the duty of care extended under that subclause if—
  - (a) the loss first became apparent within the 10 years immediately before the commencement of section 37, or
  - (b) the loss first becomes apparent on or after the commencement of that section.
- (3) Part 4 of the Act as extended by subclause (1) applies regardless of whether an action for breach of a common law duty of care has commenced before the commencement of section 37 and may be taken into account in those proceedings unless the court considers that it would not be in the interests of justice to do so.
- (4) Section 40 extends to a contract, agreement or stipulation relating to the construction work whenever made.
- (5) For the purposes of this clause, a loss becomes apparent when an owner entitled to the benefit of the duty of care under Part 4 of this Act first becomes aware (or ought reasonably to have become aware) of the loss.
- (6) Words and expressions used in this clause have the same meaning as in Part 4 of this Act.

## **Schedule 2 Amendment of Acts**

### **2.1 Civil and Administrative Tribunal Act 2013 No 2**

**[1] Schedule 5 Occupational Division**

Insert in appropriate order in clause 4(1)—

*Design and Building Practitioners Act 2020*

**[2] Schedule 5, clause 28(1)(f)**

Insert after clause 28(1)(e)—

- (f) a decision for the purposes of the *Design and Building Practitioners Act 2020* concerning a registered practitioner or former registered practitioner.

**[3] Schedule 5, clause 29(1)(i)**

Insert after clause 29(1)(h)—

- (i) a decision for the purposes of the *Design and Building Practitioners Act 2020*,

### **2.2 Home Building Act 1989 No 147**

**Section 18F Defences**

Insert “registered design practitioner or registered principal design practitioner (within the meaning of the *Design and Building Practitioners Act 2020*),” after “architect,” in section 18F(4)(a).

### **2.3 Land and Environment Court Act 1979 No 204**

**[1] Section 18 Class 2—local government and miscellaneous appeals and applications**

Insert at the end of the section—

- (k) proceedings under section 83 of the *Design and Building Practitioners Act 2020*,

**[2] Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement**

Insert after section 20(1)(dd)—

- (de) proceedings under section 84 of the *Design and Building Practitioners Act 2020*,

**[3] Section 21 Class 5—environmental planning and protection summary enforcement**

Insert after section 21(hf)—

- (hfa) proceedings for an offence under the *Design and Building Practitioners Act 2020*,

## **2.4 Law Enforcement (Powers and Responsibilities) Act 2002 No 103**

### **Schedule 2 Search warrants under other Acts**

Insert in alphabetical order—

*Design and Building Practitioners Act 2020, section 75*

[Second reading speech made in—

Legislative Assembly on 23 October 2019

Legislative Council on 19 November 2019]