

**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

## **Building and Development Certifiers Bill 2018**

### **Explanatory note**

#### **Overview of Bill**

The objects of this Bill are as follows:

- (a) to provide for the licensing of persons to carry out certification work,
- (b) to place certain obligations on persons holding licences (*licensed certifiers*) including with regard to insurance and avoiding conflicts of interest,
- (c) to permit the Secretary of the Department of Finance, Services and Innovation (the *Secretary*) to take disciplinary action against licensed certifiers,
- (d) to provide for the accreditation of persons to carry out regulated work,
- (e) to provide for the approval of certain bodies corporate as accreditation authorities to exercise accreditation functions with respect to those persons,
- (f) to provide for the authorisation of persons as authorised officers and to set out the functions of authorised officers,
- (g) to set out the functions of the Secretary under the proposed Act,
- (h) to repeal the *Building Professionals Act 2005*, the *Building Professionals Amendment Act 2008* and the *Building Professionals Regulation 2007*,
- (i) to amend the *Home Building Act 1989* to require consumers to be given information about the role of licensed certifiers before entering certain contracts and to prevent consumers being unduly influenced in the selection of a licensed certifier with respect to work carried out under those contacts,
- (j) to make consequential amendments to other Acts and instruments.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act including *certification work* which includes the exercise of a function of a certifier under the *Environmental Planning and Assessment Act 1979*, the determination of an application for a strata certificate under the *Strata Schemes Development Act 2015* and the inspection of swimming pools under the *Swimming Pools Act 1992*.

### Part 2 Licensing of certifiers

#### Division 1 Preliminary

**Clause 5** creates offences (with a maximum penalty of \$110,000 in the case of a body corporate or \$33,000 in any other case) if a person (other than a council) carries out certification work without a licence that authorises the person to carry out that work or if a person falsely represents that the person can carry out certification work or holds a licence or class of licence.

**Clause 6** permits the Secretary to grant a licence to a person that authorises the person to carry out certification work.

**Clause 7** sets out the grounds for concluding that a person is not a suitable person to carry out certification work.

#### Division 2 Application for licence

**Clause 8** sets out how an application for a licence is made.

**Clause 9** provides that the Secretary may require a licence applicant or a close associate of an applicant to authorise other persons to provide the Secretary with information relevant to the investigation of the application. The Secretary may refuse to consider the application if the authorisation is not given.

**Clause 10** provides that the Secretary may grant or refuse a licence application. The grounds for refusing a licence are that the application did not comply with a requirement of the proposed Act, or the applicant is not a suitable person to carry out the certification work authorised by the licence or any other ground that may be prescribed by the regulations under the proposed Act.

**Clause 11** provides that a licence may be granted for 1, 3 or 5 years and that a licence has no effect during any period in which it is suspended.

**Clause 12** provides for the variation of a licence by the Secretary.

#### Division 3 Conditions of a licence

**Clause 13** permits a licence to be subject to conditions.

**Clause 14** permits the conditions of a licence to require the licensed certifier to carry out certification work in accordance with specified standards or methodologies.

**Clause 15** permits the conditions of a licence to provide that the authorisation conferred by the licence will take effect in the future at a particular time or following a particular event (such as the completion of a course of training).

## **Division 4      Suspension or cancellation of a licence**

**Clause 16** sets out the grounds for suspending or cancelling a licence which include (amongst other grounds) because the licensed certifier is not a suitable person to carry out the certification work authorised by the licence or is not entitled to hold the licence or the Secretary has determined to suspend or cancel the licence under Part 4 (Disciplinary action against certifiers) of the proposed Act.

**Clause 17** provides for the suspension of a licence.

**Clause 18** provides for the cancellation of a licence.

**Clause 19** permits the suspension or cancellation of a licence to be subject to conditions.

## **Division 5      Miscellaneous**

**Clause 20** creates an offence (with a maximum penalty of \$33,000) if a licensed certifier or former licensed certifier contravenes a condition of the licence or a condition of a suspension or cancellation of a licence.

**Clause 21** provides that a licence is not transferable.

**Clause 22** creates an offence (with a maximum penalty of \$66,000 in the case of a body corporate or \$33,000 in any other case) if a licensed certifier lets out, hires or lends the certifier's licence to another person or permits another person to use the licence.

**Clause 23** permits a licensed certifier to apply to the Secretary for a cancellation or suspension of the certifier's licence.

**Clause 24** permits a person who is aggrieved by certain decisions of the Secretary under the proposed Part to apply to the Civil and Administrative Tribunal (*the Tribunal*) for an administrative review of the decision.

**Clause 25** provides for the recovery of unpaid fees under proposed Part 2.

## **Part 3      Requirements on certifiers**

### **Division 1      Insurance**

**Clause 26** creates offences (with a maximum penalty of \$110,000) if a licensed certifier, who does not have the required insurance policy with respect to certification work, carries out the certification work or holds out that the certifier is covered by the required insurance policy.

**Clause 27** permits regulations under the proposed Act to be made with respect to policies of insurance.

### **Division 2      Conflicts of interest**

**Clause 28** creates an offence (with a maximum penalty of \$33,000) if a licensed certifier carries out certain certification work whilst having a conflict of interest in the certification work.

**Clause 29** specifies when a licensed certifier will have a conflict of interest in certification work, this occurs if a reasonable person would conclude that the licensed certifier has a private interest that comes into conflict with, and may affect, the duty of the licensed certifier to act in the public interest when undertaking certification work. A number of examples are given as to when a licensed certifier will have a private interest in certification work including if the licensed certifier is a person who is obtaining the benefit of the certification work, has a pecuniary interest in the development or building to which the certification work relates, has worked on the construction or design of, or a development application for, the development or building or is related to a person who has any of those private interests.

**Clause 30** specifies when a licensed certifier has a pecuniary interest in the subject of certification work, this occurs if there is a reasonable likelihood or expectation of appreciable financial gain or loss to the licensed certifier, or to a person with whom the licensed certifier has a relationship (whether family, personal, employment, business or other).

## Division 3 General requirements

**Clause 31** makes it a condition of a licence that the licensed certifier must not carry out certification work unless the work is carried out under a written contract that complies with the regulations under the proposed Act. The contract is to be between the person who appoints a licensed certifier to carry out the particular certification work and the licensed certifier or the licensed certifier's employer.

**Clause 32** permits regulations under the proposed Act to prescribe a code of conduct for licensed certifiers.

**Clause 33** creates an offence (with a maximum penalty of \$5,500) if a person appointed as the principal certifier with respect to development, fails to give notice to the person who made the appointment of the person's licence being cancelled or suspended or being changed so that the person can no longer exercise the functions of a principal certifier.

**Clause 34** creates an offence (with a maximum penalty of \$5,500) if a person, who carries out certification work in the course of the person's employment, fails to give notice to the person's employer of the person's licence being cancelled or suspended or being changed so that the person can no longer carry out the certification work.

**Clause 35** creates an offence (with a maximum penalty of \$5,500) if a licensed certifier fails to notify the Secretary of certain events that may affect the certifier's suitability to hold a licence. The clause also creates an offence (with a maximum penalty of \$1,100) if a licensed certifier fails to notify the Secretary of any other change required to the particulars recorded in the register of licences and approvals maintained by the Secretary.

**Clause 36** creates an offence (with a maximum penalty of \$4,400 in the case of a body corporate or \$2,200 in any other case) if a person whose licence has been suspended, subjected to conditions or cancelled fails to return it to the Secretary when required to do so.

**Clause 37** provides that an individual who is the holder of a licence (a *licensed individual*) who carries out certification work on behalf of a council or a body corporate is subject to the same requirements as a person who carries out certification work on the person's own behalf.

## Division 4 Additional requirements for licensed body corporate

**Clause 38** creates an offence (with a maximum penalty of \$33,000) if a *licensed director* (being an individual who holds a licence and who is the director of a body corporate that holds a licence (a *licensed body corporate*)) fails to ensure certain matters with respect to certification work carried out by or on behalf of the body corporate, including ensuring compliance with the proposed Act and ensuring that the work is carried out by a suitably licensed individual.

**Clause 39** creates an offence (with a maximum penalty of \$33,000) if a licensed director of a licensed body corporate fails to report conduct of the body corporate, another licensed director of the body corporate or a licensed individual who is carrying out certification work on behalf of the body corporate to the Secretary if the director suspects that the conduct is a ground for the Secretary to take disciplinary action against the person.

**Clause 40** creates an offence (with a maximum penalty of \$110,000) if a licensed body corporate fails to ensure that any certification work carried out on behalf of the body corporate is carried out by a licensed individual whose licence authorises the individual to carry out that work.

**Clause 41** creates an offence (with a maximum penalty of \$110,000) if a licensed body corporate carries out certification work during any period during which it does not have at least 1 director who is a licensed individual whose licence authorises the individual to carry out that work (a *suitably qualified director*). The clause also creates an offence (with a maximum penalty of \$110,000) if a licensed body corporate (that has not had a suitably qualified director for a continuous period of 3 months) carries out certification work before it has a suitably qualified director and has notified the Secretary of that fact.

## **Division 5 Miscellaneous offences relating to certification work**

**Clause 42** creates an offence (with a maximum penalty of \$1,100,000 or imprisonment for 2 years, or both) if a licensed certifier accepts, or agrees to accept, a benefit (a bribe) to carry out certification work other than impartially. The clause also includes an offence with the same maximum penalty for the person who gives, or offers to give, the benefit.

**Clause 43** creates an offence (with a maximum penalty of \$33,000) if a person represents, for the purposes of securing work, that work other than certification work can be carried out only by a licensed certifier.

**Clause 44** creates an offence (with a maximum penalty of \$1,100,000 or imprisonment for 2 years, or both) if a licensed certifier falsely issues certain certificates (including a complying development certificate or a strata certificate).

## **Part 4 Disciplinary action against certifiers**

**Clause 45** sets out the grounds on which the Secretary may take disciplinary action against a licensed certifier.

**Clause 46** provides that the proposed part extends to certification work or certain other functions even if done on behalf of a licensed body corporate or a council.

**Clause 47** requires the Secretary, before taking disciplinary action against a licensed certifier, to give the licensed certifier an opportunity to show cause why the disciplinary action should not be taken.

**Clause 48** sets out the disciplinary action that the Secretary may take against a licensed certifier. This includes cautioning or reprimanding the certifier, requiring the certifier to pay a penalty of up to \$110,000 (in the case of a body corporate) or \$55,000 (in the case of an individual), imposing a condition of the certifier's licence, suspending or cancelling the certifier's licence or disqualifying the certifier from holding a licence.

**Clause 49** permits a person who is aggrieved by a decision of the Secretary to take disciplinary action to apply to the Tribunal for an administrative review of the decision.

**Clause 50** provides for the enforcement of monetary penalties imposed on a licensed certifier as disciplinary action by the Secretary.

**Clause 51** provides that disciplinary action may be taken under the proposed Part regardless of whether the licensed certifier concerned is subject to criminal or civil proceedings that relate to the same matters or incident and that the decision to take disciplinary action does not affect the liability of the licensed certifier for any offence.

## **Part 5 Accreditation of persons carrying out regulated work**

**Clause 52** defines *regulated work* which means the carrying out of work as a competent fire safety practitioner under the *Environmental Planning and Assessment Act 1979* or other work declared to be regulated work.

**Clause 53** creates offences (with a maximum penalty of \$110,000 in the case of a body corporate or \$33,000 in any other case) if a person carries out regulated work without an accreditation that authorises the person to carry out that work or if a person falsely represents that the person can carry out regulated work or holds an accreditation or class of accreditation.

**Clause 54** permits an accreditation authority to authorise a person to carry out regulated work by granting accreditation to the person.

**Clause 55** permits the regulations under the proposed Act to authorise a licensed certifier who holds a particular class of licence to carry out specified regulated work in addition to persons who hold an accreditation.

## Part 6 Approval of accreditation authorities

### Division 1 Accreditation authorities

**Clause 56** provides that an *accreditation authority* means a body corporate approved by the Secretary to exercise the functions of an accreditation authority and the *regulating accreditation authority* with respect to an accreditation is the accreditation authority that granted the accreditation. However, the Secretary can change the regulating accreditation authority with respect to an accreditation by written direction.

**Clause 57** sets out the functions of an accreditation authority which are to accredit persons to carry out regulated work, to ensure that the holder of an accreditation (with respect to which the accreditation authority is the regulating accreditation authority) complies with the requirements of the accreditation and to investigate and exercise disciplinary functions with respect to any such holder who fails to comply with those requirements.

**Clause 58** creates offences (with a maximum penalty of \$110,000 in the case of a body corporate or \$33,000 in any other case) if a person improperly exercises a function of an accreditation authority or falsely represents that the person can grant an accreditation, grant an accreditation of a particular class or exercise any other function of an accreditation authority or if an accreditation authority falsely represents that an accreditation authorises the holder to carry out particular regulated work.

**Clause 59** permits the Secretary to approve a company or an incorporated association to exercise the functions of an accreditation authority with respect to the accreditation of persons. The approval may be limited to a particular class of accreditation.

**Clause 60** provides that an approved company or association may exercise accreditation authority function in accordance with the proposed Act.

**Clause 61** requires the Secretary to adopt an accreditation authority approval guidelines with respect to the approval of bodies corporate as accreditation authorities.

### Division 2 Approval procedure

**Clause 62** sets out how an application for approval is made.

**Clause 63** provides that the Secretary may grant or refuse an application for approval. The grounds for refusing an application are that the application did not comply with a requirement of the proposed Act, the Secretary is of the opinion that it is not in the or the public interest to approve the application or the applicant is not a suitable person to be approved as an accreditation authority, the applicant's proposed accreditation scheme (which is a document that sets out how the applicant proposes to exercise its functions as an accreditation authority) does not comply with the requirements of the proposed Act, the regulations made under that Act or the accreditation authority approval guidelines, the Secretary is not satisfied that the applicant has met all the requirements for the grant of an approval set out in the accreditation authority approval guidelines or any other ground that may be prescribed by the regulations under the proposed Act. On the grant of an approval the proposed accreditation scheme becomes the accreditation scheme of the accreditation authority.

**Clause 64** provides that an approval may be granted for 1, 3 or 5 years and that an approval has no effect during any period in which it is suspended.

**Clause 65** provides for the variation of an approval by the Secretary.

### Division 3 Conditions of approval

**Clause 66** permits an approval to be subject to conditions.

**Clause 67** makes it a condition of an approval that the accreditation authority will exercise its functions only in accordance with its accreditation scheme.

**Clause 68** makes it a condition of an approval that the functions of an accreditation authority will be exercised only by individuals who are notified to the Secretary.

**Clause 69** makes it a condition of an approval that an accreditation authority must act in the public interest in the exercise of its functions.

**Clause 70** makes it a condition of an approval that an accreditation authority must provide the Secretary with any information relating to the exercise of its functions as the Secretary may require. Failure to comply with this condition is an offence with a maximum penalty of \$5,500.

**Clause 71** makes it a condition of an approval that an accreditation authority must engage an auditor (approved by the Secretary) to conduct an audit of the exercise of its functions if required to do so by the Secretary.

**Clause 72** makes it a condition of an approval that an accreditation authority must provide reasonable assistance to the Secretary with respect to any investigation or audit of the accreditation authority by the Secretary.

**Clause 73** makes it a condition of an approval that an accreditation authority must make available to the public any information relating to the exercise of its functions (including identifying information about the holders of accreditation) as may be specified by the Secretary. Failure to comply with this condition is an offence with a maximum penalty of \$11,000.

**Clause 74** makes it a condition of an approval that an accreditation authority must keep the records prescribed by the regulations made under the proposed Act. Failure to comply with this condition is an offence with a maximum penalty of \$11,000.

## **Division 4      Suspension or cancellation of approval**

**Clause 75** sets out the grounds for suspending or cancelling an approval which include (amongst other grounds) because the Secretary is of the opinion that the accreditation authority has contravened a requirement imposed by or under the proposed Act, is not a suitable person to be approved to exercise the functions of an accreditation authority, should not have been granted an approval or is no longer exercising the functions of an accreditation authority.

**Clause 76** provides for the suspension of an approval.

**Clause 77** provides for the cancellation of an approval.

**Clause 78** permits the suspension or cancellation of an approval to be subject to conditions.

## **Division 5      Miscellaneous**

**Clause 79** sets out what must be set out in an accreditation scheme and the matters for which such a scheme must provide.

**Clause 80** creates an offence (with a maximum penalty of \$220,000) if an accreditation authority or former accreditation authority contravenes a condition of its approval or a condition of a suspension or cancellation of its approval.

**Clause 81** creates an offence (with a maximum penalty of \$110,000) if a person who holds an approval that is suspended purports to grant an accreditation.

**Clause 82** permits an accreditation authority to apply to the Secretary for a cancellation of its approval.

**Clause 83** permits a person who is aggrieved by certain decisions of the Secretary under the proposed Part to apply to the Tribunal for an administrative review of the decision.

**Clause 84** authorises an accreditation authority to disclose to the Secretary any information obtained by the accreditation authority in the exercise of its functions.

## **Part 7      Powers of authorised officers**

### **Division 1      Preliminary**

**Clause 85** sets out a number of definitions used in the proposed Part.

**Clause 86** provides that an authorised officer may exercise functions conferred by the proposed Part for an *authorised purpose* (being to investigate, monitor and enforce compliance with the proposed Act, to obtain information or records for purposes connected with the administration of the proposed Act or to enforce, administer or execute the proposed Act).

## **Division 2 Authorised officers**

**Clause 87** permits the Secretary to appoint persons as authorised officers.

**Clause 88** provides that a person's authorisation as an authorised officer may be subject to conditions, limitations or restrictions or be for limited purposes.

**Clause 89** provides for authorised officers to be issued with identification cards and to produce identification cards when requested to do so.

## **Division 3 Information gathering powers**

**Clause 90** provides that any power conferred under the proposed Division may be exercised whether or not a power of entry is being exercised.

**Clause 91** permits an authorised officer to direct a person to furnish information or records for an authorised purpose.

**Clause 92** permits an authorised officer to direct a person whom the authorised officer suspects to have knowledge of matters with respect to which information is required for an authorised purpose to answer questions with respect to those matters.

**Clause 93** permits an authorised officer to record questions and answers given under the proposed Division.

## **Division 4 Entry to premises**

**Clause 94** provides a power of entry to premises for authorised officers.

**Clause 95** prevents an authorised officer from entering any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant.

**Clause 96** provides for the issuing of search warrants to authorised officers.

**Clause 97** permits an authorised officer to direct the owner or occupier of premises or persons on those premises to provide reasonable assistance to the authorised officer.

**Clause 98** sets out the powers that an authorised officer may exercise when on premises.

## **Division 5 Miscellaneous**

**Clause 99** permits the Secretary to retain records that an authorised officer has obtained under the proposed Part until the completion of proceedings in which they may be used as evidence. The person from whom the records are taken must be provided with a certified copy of the records.

**Clause 100** creates an offence (with a maximum penalty of \$110,000 in the case of a body corporate or \$22,000 in any other case) if a person obstructs, hinders or interferes with an authorised officer.

**Clause 101** creates an offence (with a maximum penalty of \$110,000 in the case of a body corporate or \$22,000 in any other case) if a person fails to comply with a direction of an authorised officer.

## **Part 8 Other functions of the Secretary**

**Clause 102** requires the Secretary to maintain a register of licences and approvals issued under the proposed Act.

**Clause 103** permits the Secretary to authorise publication of notices warning persons about dealing with a specified licensed certifier, former licensed certifier, accreditation authority or

former accreditation authority or any other person that the Secretary reasonably believes may have breached the proposed Act or the regulations made under that Act.

**Clause 104** permits the Secretary to accept a written undertaking from a licensed certifier as to the manner in which the licensed certifier will conduct the licensed certifier's business as a licensed certifier. Failure to comply with an undertaking is a ground for taking disciplinary action against the licensed certifier.

**Clause 105** permits the Secretary to apply to the Supreme Court for an injunction restraining an apprehended or actual contravention of the proposed Act or the regulations made under the Act.

**Clause 106** permits the Secretary to investigate any licensed certifier, former licensed certifier, accreditation authority or former accreditation authority, the carrying out of any certification work, the exercise of any function of an accreditation authority or any other matter that may constitute a breach of the proposed Act or the regulations made under that Act. The Secretary is also authorised to conduct an audit of a licensed certifier or an accreditation authority at any time.

**Clause 107** permits the Secretary to investigate the work and activities of a council in its capacity as a certifier.

**Clause 108** permits the Secretary to enter into an information sharing arrangement with certain agencies to share information with respect to the licensing of certifiers, the regulation of certification work and insurance required to be held by licensed certifiers (and the equivalent of those matters in other Australian jurisdictions).

**Clause 109** permits the Secretary to exercise the functions of an accreditation authority.

## Part 9 Miscellaneous

**Clause 110** creates an offence (with a maximum penalty of \$5,500) if a person to disclose or use certain information obtained in the administration of the proposed Act except in specified circumstances. The clause also creates an offence (with a maximum penalty of \$5,500) if a person influences the determination of a development application, the carrying out of certification work or the giving of a development control order under Division 9.3 of the *Environmental Planning and Assessment Act 1979*.

**Clause 111** creates an offence (with a maximum penalty of \$110,000) if a council fails to ensure that certain prescribed certification work is carried out on behalf of the council only by a licensed individual whose licence authorises the individual to carry out that certification work.

**Clause 112** permits the Secretary to delegate the exercise of functions under the proposed Act.

**Clause 113** protects persons exercising functions under the proposed Act from personal liability.

**Clause 114** makes a director of a body corporate, or a person concerned in the management of a body corporate, liable for an offence under the proposed Act or regulations under the proposed Act that is committed by the body corporate if the director or person knowingly authorised or permitted the contravention.

**Clause 115** provides for the means of service of documents under the proposed Act.

**Clause 116** provides for the issuing and effect of evidentiary certificates by the Secretary as to matters relating to licensed certifiers and licences.

**Clause 117** makes provision for the giving of penalty notices (on-the-spot fines) for offences against the proposed Act or the regulations made under the proposed Act.

**Clause 118** provides for proceedings for offences against the proposed Act to be taken before the Local Court or before the Land and Environment Court in its summary jurisdiction and for proceedings for offences against the regulations to be taken before the Local Court.

**Clause 119** permits regulations to be made under the proposed Act.

**Clause 120** repeals the *Building Professionals Act 2005*, the *Building Professionals Amendment Act 2008* and the *Building Professionals Regulation 2007*.

## **Schedule 1 Savings, transitional and other provisions**

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

## **Schedule 2 Amendment of Home Building Act 1989 No 147**

**Schedule 2 [1]** amends the *Home Building Act 1989* to insert proposed Division 1A of Part 2. The proposed Division imposes additional requirements with respect to certain contracts for residential building work or specialist work. The proposed Division makes it a requirement that the holder of a contractor licence, before entering a contract with a person, provide to the person information about the role of licensed certifiers. Failure to do so is an offence with a maximum penalty of \$4,400 in the case of a corporation and \$2,200 in any other case. The proposed Division also creates an offence (with a maximum penalty of \$110,000 in the case of a corporation and \$33,300 in any other case) if a holder of a contractor licence tries to unduly influence the appointment of a licensed certifier with respect to work carried out under certain contracts. **Schedule 2 [1] and [4]** also include a compulsory term in certain contracts for work for which a licensed certifier will be required making it clear that the selection of a licensed certifier is the sole responsibility of the person who engaged the building contractor and the contractor cannot object to the certifier who is selected. **Schedule 1 [3]** makes a consequential amendment. **Schedule 2 [2]** inserts a definition of *licensed certifier*. **Schedule 1 [5]** includes savings and transitional provisions.

## **Schedule 3 Amendment of other Acts and instruments**

**Schedule 3** makes consequential amendments to the Acts and instruments specified in the Schedule other than **Schedule 3.3 [11] and [12]** which permit regulations under the *Environmental Planning and Assessment Act 1979* to prescribe circumstances in which the Secretary may appoint a principal certifier or prescribe classes of development in which the principal certifier is to be appointed in a manner prescribed by the regulations. **Schedule 3.3 [11] and [12]** also permit the regulations to require that a council or other person must not refuse to accept any such appointment.

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# public consultation draft

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public consultation draft

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**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Building and Development Certifiers Bill 2018**

No. , 2018

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**A Bill for**

An Act to provide for the licensing of persons carrying out certification work and the accreditation of persons carrying out other regulated work; to repeal the *Building Professionals Act 2005* and other legislation; to amend other Acts and instruments consequentially; and for other purposes.

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Building and Development Certifiers Act 2018*.

### 2 Commencement

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

### 3 Objects of Act

The objects of this Act are as follows:

- (a) to provide for the licensing of persons to carry out certification work and the accreditation of persons to carry out other regulated work,
- (b) to recognise that certification work is an important public function with potential impacts on public health, safety and amenity and to ensure that it is carried out impartially, ethically and in the public interest,
- (c) to provide for the approval of certain bodies corporate as accreditation authorities to exercise accreditation functions under this Act,
- (d) to ensure appropriate scrutiny and review of actions taken by persons exercising functions under this Act and the certification legislation,
- (e) to provide a framework to permit the continuous improvement of the carrying out of certification work.

### 4 Definitions

- (1) In this Act:

**accreditation authority**—see section 56.

**accreditation authority approval guidelines** means the guidelines adopted under section 60.

**accreditation scheme** of an accreditation authority—see section 63 (2).

**certification legislation** means the following Acts or provisions of Acts and the regulations under those Acts or provisions:

- (a) this Act,
- (b) the *Environmental Planning and Assessment Act 1979*,
- (c) Part 4 of the *Strata Schemes Development Act 2015*,
- (d) Division 5 of Part 2 of the *Swimming Pools Act 1992*,
- (e) any Act or provision of an Act, prescribed by the regulations.

**certification work** means the following:

- (a) the exercise of a function of a certifier (including a principal certifier) specified in section 6.5 of the *Environmental Planning and Assessment Act 1979*,
- (b) the determination of an application for a strata certificate within the meaning of the *Strata Schemes Development Act 2015*,
- (c) the inspection of swimming pools under Division 5 of Part 2 of the *Swimming Pools Act 1992* and the issuing of certificates of compliance and notices under that Division,
- (d) the exercise of any other function imposed on a licensed certifier by the certification legislation or under any other Act or law,

(e) any other work of a kind prescribed by the regulations, but does not include work of a kind that is excluded from this definition by the regulations.

**class** of accreditation means a class of accreditation prescribed under section 54 (5).

**class** of licence means a class of licence prescribed under section 6 (4).

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

**Department** means the Department of Finance, Services and Innovation.

**equivalent authorisation** means a licence, certificate, accreditation, registration or other authorisation or qualification that is issued or conferred under the laws of another jurisdiction and that authorises the holder to carry out work that is similar to certification work.

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

**functions of an accreditation authority**—see section 57.

**grant** a licence, approval or an accreditation includes grant a renewal or restoration of a licence, approval or accreditation.

**licence** means a licence granted under this Act and in force.

**licensed body corporate** means a body corporate that is a licensed certifier.

**licensed certifier** means a person who holds a licence under this Act and that licence is in force.

**licensed director** means a licensed individual who is a director of a licensed body corporate.

**licensed individual** means an individual who is a licensed certifier.

**register** means the register maintained by the Secretary under section 102.

**regulated work**—see section 52.

**regulating accreditation authority**—see section 56.

**relevant offence** means any of the following offences (whether committed in this or any other Australian jurisdiction):

- (a) an offence against the certification legislation,
- (b) an offence with respect to the carrying out of certification work or work authorised to be carried out under an equivalent authorisation,
- (c) an offence with respect to a failure to comply with a licence or an equivalent authorisation,
- (d) an offence involving fraud or dishonesty,
- (e) an offence or class of offences prescribed by the regulations.

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

**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.
- (3) Words and expressions used in this Act (but not defined in this section) have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

## Part 2 Licensing of certifiers

### Division 1 Preliminary

#### 5 Certification work requires licence

- (1) A person (other than a council) must not carry out certification work unless the person holds a licence that authorises the person to carry out that certification work or the person is otherwise lawfully authorised to carry out the certification work.
- (2) A person must not falsely represent that the person:
  - (a) can carry out certification work, or
  - (b) holds a licence or a licence of a particular class.Maximum penalty: 1,000 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).

#### 6 Licensing of persons to carry out certification works

- (1) The Secretary may, by granting a licence under this Part, authorise a person to carry out certification work.
- (2) A licence authorises only the class of certification work authorised by the class of licence granted.
- (3) The licence is subject to any conditions of the licence.
- (4) The regulations may prescribe different classes of licence that authorise the carrying out of different classes of certification work.

#### 7 Grounds for finding that a person is not a suitable person to carry out certification work

- (1) A person is not a suitable person to carry out certification work if:
  - (a) the person is disqualified from holding a licence, or
  - (b) the person (including, if the person is a body corporate, a director of the body corporate) is a natural person who is under 18 years of age, or
  - (c) the person does not have the qualifications, skills, knowledge and experience required to carry out the certification work, or
  - (d) the person (including, if the person is a body corporate, a director of the body corporate) is not a fit and proper person to carry out the certification work, or
  - (e) the person is a mentally incapacitated person, or
  - (f) the person is a body corporate and no director of the body corporate holds a licence that would authorise the director to carry out the certification work, or
  - (g) the Secretary is of the opinion that the person is not a suitable person to carry out the certification work.
- (2) The Secretary may form an opinion that a person is not a suitable person to carry out certification work in any 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, within the previous 10 years, been convicted of a relevant offence,
  - (b) the Independent Commission Against Corruption, within the previous 10 years, has made a finding or has been of the opinion that the person (including, if the person is a body corporate, a director of the body corporate) has engaged in corrupt conduct,

- (c) the person (or if the person is a body corporate, a director of the body corporate) is an undischarged bankrupt,
- (d) the person has contravened a requirement imposed by or under this Act or a requirement imposed with respect to certification work under any other Act or law,
- (e) 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,
- (f) 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,
- (g) a close associate of the person who would not be a fit and proper person to hold a licence exercises a significant influence over the person or the operation and management of the person's business,
- (h) any circumstance prescribed by the regulations.

## Division 2 Application for licence

### 8 Application for a licence

- (1) A person may apply to the Secretary for the grant of a licence.  
**Note.** The definition of **grant** a licence in section 4 (1) includes grant a renewal or restoration of a licence.
- (2) An application must:
  - (a) be in a form approved by the Secretary, and
  - (b) include or be accompanied by any 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 a licence.
- (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 any or all 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 of a renewal of a licence is duly made to the Secretary before the expiry of a licence, the licence is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.

### 9 Secretary may obtain information from third parties

- (1) The Secretary may, by notice in writing, require an applicant or a close associate of the applicant:
  - (a) to authorise a person described in the notice:
    - (i) to provide such information as is specified in the notice as is relevant to the investigation of the application, or

- (ii) to produce, in accordance with directions in the notice, such records relevant to the investigation of the application as 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 such authorities and consents as the Secretary directs for the purpose of enabling the Secretary to obtain information (including financial and other confidential information) from other persons concerning the person 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.

## **10 Grant or refusal of licence**

- (1) The Secretary may, on application, grant or refuse a licence.
- (2) The Secretary may grant a licence of a class that the Secretary considers appropriate even if the application was for a different class of licence.
- (3) The Secretary may refuse a licence:
  - (a) if the application for the licence does not comply with any requirement imposed by or under this Act, or
  - (b) if the applicant is not a suitable person to carry out the certification work authorised by the licence, or
  - (c) on any grounds prescribed by the regulations.
- (4) The Secretary is to give the applicant notice in writing of a decision to grant or refuse a licence.
- (5) If the Secretary fails to give an applicant for a licence notice of a decision to grant or refuse the licence within the period prescribed by the regulations, the Secretary is taken to have refused to grant the licence.

## **11 Duration of licence**

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

## **12 Variation of licence**

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

### **Division 3 Conditions of a licence**

#### **13 Conditions of a licence**

- (1) A licence is subject to the following conditions:
  - (a) any conditions prescribed by the regulations,
  - (b) any conditions imposed by the Secretary.
- (2) The Secretary may impose conditions on a licence:
  - (a) at the time of the grant of a licence, or
  - (b) at any other time by variation of the licence.
- (3) A provision of this Division that authorises a type of condition to be imposed on a licence does not prevent other types of conditions being imposed, or limit the matters that can be provided for by conditions, except where expressly provided for by this Division.
- (4) In this Division:  
*licensed certifier* includes a former licensed certifier.

#### **14 Compliance with standards or methodologies**

The conditions of a licence may require the licensed certifier to carry out certification work in accordance with specified standards or methodologies, including but not limited to, standards or methodologies prepared by the Secretary.

#### **15 Conditions may provide that authorisation takes effect later**

The conditions of a licence may provide that an authorisation conferred by the licence does not take effect until the end of a specified period or on the happening of a particular event or on the occurrence of a specified state of affairs.

### **Division 4 Suspension or cancellation of a licence**

#### **16 Grounds for suspension or cancellation of a licence**

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

- (a) the licensed certifier is not a suitable person to carry out the certification work authorised by the licence,
- (b) the licensed certifier is not entitled to hold the licence,
- (c) the licensed certifier has applied for the licence to be suspended or cancelled,
- (d) it is a condition of the licence that the person may carry out certification work only as an employee of a council and the person has ceased to be so employed or has ceased to be employed in a position that includes the function of carrying out such work,
- (e) the licence was granted in error,
- (f) the Secretary has determined to suspend or cancel the licence under Part 4,
- (g) any other grounds prescribed by the regulations.

#### **17 Suspension of a licence**

- (1) The Secretary may, by notice in writing to a licensed certifier, suspend the licence of the licensed certifier if the Secretary is satisfied that there are grounds for the suspension of the licence.
- (2) Notice of the suspension must specify:

- (a) the date or time from which suspension takes effect, and
- (b) the period of suspension, and
- (c) the grounds for the suspension.

## **18 Cancellation of a licence**

- (1) The Secretary may, by notice in writing to a licensed certifier, cancel the licence of the licensed certifier if the Secretary is satisfied that there are grounds for the cancellation of a licence.
- (2) Notice of the cancellation must specify:
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.

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

- (1) A licence may be suspended or cancelled unconditionally or subject to such conditions as the Secretary imposes.
- (2) Those conditions may include (but are not limited to) any conditions to which the licence was subject immediately before it was suspended or cancelled.
- (3) The Secretary may, by notice in writing given to the former licensed certifier, attach new conditions to, or vary or revoke any existing conditions of, the suspension or cancellation of the licence.

## **Division 5 Miscellaneous**

### **20 Offence of contravening condition**

A licensed certifier (including a former licensed certifier) who contravenes any of the following is guilty of an offence:

- (a) a condition of the licence (other than a condition for which a different maximum penalty is prescribed),
- (b) a condition of a suspension or cancellation of a licence.

Maximum penalty: 300 penalty units.

### **21 A licence not transferable**

A licence is not transferable.

### **22 Offence of lending a licence**

- (1) A licensed certifier must not let out, hire or lend the licence to any other person or permit any other person to use the licence.  
Maximum penalty: 600 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).
- (2) A court that convicts a person of an offence against this section is to order the cancellation of the licence concerned. The licence is cancelled on the making of the order.

### **23 Voluntary surrender or suspension of a licence**

- (1) A licensed certifier may apply to the Secretary for a cancellation or suspension of a licence.
- (2) An application must:
  - (a) be in a form approved by the Secretary, and

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

## **24 Review by NCAT**

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 to grant a licence,
- (b) a decision of the Secretary to suspend or cancel a licence,
- (c) a decision of the Secretary to refuse an application to vary a licence,
- (d) a decision of the Secretary to impose any condition on a licence, or on the suspension or cancellation of a licence,
- (e) a decision of the Secretary to vary a licence,
- (f) a decision of the Secretary to refuse an application by a licensed certifier for the cancellation or suspension of the licensed certifier's licence.

## **25 Recovery of unpaid fees**

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

## Part 3 Requirements on certifiers

### Division 1 Insurance

#### 26 Licensed certifiers to have required insurance policy

- (1) A licensed certifier must not:
  - (a) carry out certification work, or
  - (b) hold out that the licensed certifier is covered by the required insurance policy with respect to certification work,unless the licensed certifier is covered by the required insurance policy.  
Maximum penalty: 100 penalty units.
- (2) For the purposes of this section, a licensed certifier is covered by the *required insurance policy* with respect to certification work if the licensed certifier is indemnified by an insurance policy that complies with the regulations against any liability to which the licensed certifier may become subject as a result of carrying out the certification work.
- (3) This section does not apply to certification work carried out on behalf of a council (whether within or beyond the council's area) by a licensed certifier in the course of the licensed certifier's employment by the council.

#### 27 Regulations under this Division

Without limiting the matters for which the regulations may provide with respect to an insurance policy, the regulations may make provision for or with respect to the following:

- (a) the persons or bodies who may be the insurers under such a policy,
- (b) the period for which the insured is to be indemnified under such a policy,
- (c) the amount for which the insured is to be indemnified under such a policy,
- (d) the risks for which the insured is to be indemnified under such a policy,
- (e) the form in which such a policy must be expressed,
- (f) the obligations on a person who is the insurer under such a policy,
- (g) the issue of such a policy for liability incurred by a person who was formerly a licensed certifier.

### Division 2 Conflicts of interest

#### 28 Conflicts of interest

- (1) A licensed certifier must not carry out the following certification work if the licensed certifier has a conflict of interest in the certification work:
  - (a) carry out any inspection,
  - (b) issue any certificate (other than a compliance certificate issued under Part 6 of the *Environmental Planning and Assessment Act 1979* by a certifier who is not issuing the certificate as a principal certifier),
  - (c) carry out any certification work prescribed by the regulations.Maximum penalty: 300 penalty units.
- (2) The regulations may create exemptions to subsection (1).

- (3) The Secretary may, on the written application of a licensed certifier, exempt the licensed certifier from subsection (1) with respect to specified certification work or a class of certification work.
- (4) An exemption under this section may be unconditional or subject to conditions.
- (5) A licensed certifier who has a conflict of interest in certification work does not commit an offence under this section if an exemption applies to the certification work and the licensed certifier carries out the certification work in accordance with any conditions to which that exemption is subject.

## 29 Meaning of “conflict of interest”

- (1) For the purposes of this Division, a licensed certifier has a conflict of interest in certification work if a reasonable person would conclude that the licensed certifier has a private interest that comes into conflict with, and may affect, the duty of a licensed certifier to act in the public interest when undertaking certification work.
- (2) Without limiting subsection (1), a licensed certifier has a private interest with respect to certification work if the licensed certifier is any of the following:
  - (a) a person who is obtaining the benefit of the certification work,
  - (b) a person who has a pecuniary interest in the development or building to which the certification work relates,

**Note.** The definition of **building** in the *Environmental Planning and Assessment Act 1979* (which because of section 4 (3) of this Act has the same meaning in this Act) includes part of a building, a structure (such as a swimming pool fence) or part of a structure.
  - (c) a person who has worked on the construction or design of the development or building to which the certification work relates,
  - (d) a person who has worked on a development application for the development or building to which the certification work relates,
  - (e) if the certification work is to be carried out in the area of a council other than on behalf of the council—a person who is a councillor or an employee of the council,
  - (f) a person who has a relationship (whether family, personal, employment, business or other) with a person referred to in paragraph (a), (b), (c), (d) or (e),
  - (g) any circumstance prescribed by the regulations.

## 30 Meaning of having a pecuniary interest

- (1) For the purposes of this Division, a licensed certifier has a pecuniary interest in the development or building if there is a reasonable likelihood or expectation of appreciable financial gain or loss to the licensed certifier, or to a person with whom the licensed certifier has a relationship (whether family, personal, employment, business or other).
- (2) However, a licensed certifier does not have such a pecuniary interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the licensed certifier might make with respect to the certification work.

## Division 3 General requirements

### 31 Requirements relating to contracts for certification work

- (1) It is a condition of a licence that a licensed certifier must not carry out certification work unless the work is carried out under a written contract that complies with any requirements that may be prescribed by the regulations.

- (2) A contract under this section must be between the person who appoints a licensed certifier to carry out the certification work and the licensed certifier or the employer of the licensed certifier.
- (3) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
  - (a) requiring contracts to contain provisions to the effect of those prescribed by the regulations,
  - (b) providing that contracts must not contain provisions to the effect of those prescribed by the regulations,
  - (c) requiring specified particulars or information to be included in contracts or to accompany contracts, for example, an information document published by the Secretary or another person or body,
  - (d) the time or times at which fees and charges under contracts are to be paid.

### **32 Code of conduct**

- (1) The regulations may prescribe a code of conduct for licensed certifiers.
- (2) The code of conduct may specify requirements relating to the carrying out of certification work or the operation of a business that carries out certification work.
- (3) The regulations may create offences for failing to comply with the code of conduct or provisions of the code of conduct.

### **33 Principal certifier to notify client of certain changes**

- (1) A person (other than a council) who is appointed as the principal certifier with respect to development must give notice, in accordance with this section, to the person who made the appointment, of:
  - (a) the suspension or cancellation of the person's licence, or
  - (b) any change in the licence (including its conditions) that would prevent the appointed person from exercising the person's functions as principal certifier for the development.

Maximum penalty: 50 penalty units.

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

### **34 Licensed certifier to notify employer of certain changes**

- (1) A person who, in the course of the person's employment carries out certification work must give notice, in accordance with this section, to the person's employer, of:
  - (a) the suspension or cancellation of the person's licence, or
  - (b) any change in the licence (including its conditions) that would prevent the person from carrying out the certification work.

Maximum penalty: 50 penalty units.

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

### **35 Licensed certifier to notify Secretary of certain events**

- (1) A licensed certifier 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 licensed certifier being suspended or cancelled (other than at the request of the licensed certifier),
- (b) proceedings being instituted against the licensed certifier (including, if the licensed certifier is a licensed body corporate, proceedings being instituted against a director of the body corporate) for a relevant offence,
- (c) the licensed certifier (including, if the licensed certifier is a licensed body corporate, a director of the body corporate) being found guilty of a relevant offence,
- (d) the licensed certifier (including, if the licensed certifier is a licensed 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 licensed certifier (including, if the licensed certifier is a licensed body corporate, a director of the body corporate) becoming bankrupt or making a composition, arrangement or assignment for the benefit of creditors,
- (f) the licensed certifier no longer being covered by insurance that is required with respect to the carrying out of certification work by or on behalf of the licensed certifier,
- (g) if the licensed certifier is a licensed body corporate—the licensed body corporate becoming the subject of a winding up order or having a controller or administrator appointed,
- (h) if the licensed certifier is a licensed body corporate—the licensed body corporate having no director who holds a licence that would authorise the director to carry out the certification work authorised to be carried out by the licence of the body corporate,
- (i) any event prescribed by the regulations.

Maximum penalty: 50 penalty units.

- (2) A licensed certifier must notify the Secretary in writing of any change required to the particulars recorded in the register with respect to the licensed certifier (other than an event that the Secretary has already been notified of) within 14 days of the licensed certifier becoming aware of the need for the change.

Maximum penalty: 10 penalty units.

### **36 Return of licence**

- (1) The Secretary may at any time by notice in writing require a person whose licence has been suspended, varied or cancelled to return to the Secretary within a specified time any licence issued to the person.
- (2) The notice may be included as part of a statement of a decision by the Secretary to take disciplinary action against the person.
- (3) A person must comply with a notice under this section.

Maximum penalty: 40 penalty units in the case of a body corporate and 20 penalty units in any other case.

### **37 Responsibilities of individuals acting on behalf of licensed body corporate or council**

A licensed director of a licensed body corporate or a licensed individual who carries out certification work on behalf of a licensed body corporate or a council:

- (a) is not excused from compliance with any of the person's obligations under this or any other Act with respect to any certification work done by the person on behalf of or in the name of the body corporate or council, and
- (b) is subject to the same requirements with respect to the carrying out of the functions of a licensed certifier on behalf of the council or the licensed body corporate as if he or she were carrying out the work on his or her own behalf.

## **Division 4 Additional requirements for licensed body corporate**

### **38 Licensed directors must ensure certification work carried out lawfully**

Each licensed director of a licensed body corporate must ensure the following with respect to certification work carried out by or on behalf of the body corporate:

- (a) that the body corporate complies with the requirements of this and any other Act with respect to the carrying out of the certification work and that appropriate management systems are in place to ensure that the body corporate complies with those requirements,
- (b) that the certification work is allocated to, and carried out by a licensed individual whose licence authorises the individual to carry out that work,
- (c) that the person for whom the certification work is carried out is kept informed as to the identity of the licensed individual who is carrying out the certification work.

Maximum penalty: 300 penalty units.

### **39 Licensed directors must report certain conduct**

Each licensed director of a licensed 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 Part 4:

- (a) the body corporate,
- (b) any other licensed director of the body corporate,
- (c) any licensed individual who is carrying out certification work on behalf of the body corporate.

Maximum penalty: 300 penalty units.

### **40 Licensed body corporate must ensure certification work carried out by individual**

- (1) A licensed body corporate must ensure that any certification work that is carried out on behalf of the body corporate is carried out by a licensed individual whose licence authorises the individual to carry out that work.

Maximum penalty: 1,000 penalty units.

- (2) A reference in this section to certification work that is carried out on behalf of a body corporate includes a reference to certification work carried out on behalf of a council that has engaged the body corporate to carry out that work on its behalf.

### **41 Licensed body corporate with insufficient licensed directors**

- (1) A licensed body corporate must not carry out any certification work during any period during which it does not have at least 1 suitably qualified director.

Maximum penalty: 1,000 penalty units.

- (2) A licensed body corporate that has not had for a continuous period of 3 months at least 1 suitably qualified director must not carry out any certification work until:

- (a) it has a suitably qualified director, and
- (b) it has notified the Secretary in writing that it now has a suitably qualified director.

Maximum penalty: 1,000 penalty units.

- (3) In this section:

*suitably qualified director*, in relation to certification work, means a director who is a licensed individual whose licence authorises the individual to carry out that work.

## **Division 5 Miscellaneous offences relating to certification**

### **42 Improper influence with respect to carrying out certification work**

- (1) A licensed certifier must not, on an understanding that the licensed certifier will act otherwise than impartially in the carrying out of any certification work, seek or accept, or offer or agree to accept, any benefit of any kind, whether on the licensed certifier's own behalf or on behalf of any other person.
- (2) A person must not, on an understanding that a licensed certifier will act otherwise than impartially in the carrying out of any certification work, give, or offer or agree to give, any benefit of any kind, whether to the licensed certifier or to any other person.

Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.

### **43 Representing work is work requiring a licensed certifier**

A person must not, for the purposes of securing work for the person or for any other person, represent that work is work that can be carried out only by a licensed certifier unless the work is certification work.

Maximum penalty: 300 penalty units.

### **44 Knowingly issuing a false certificate**

- (1) A licensed certifier must not issue any of the following certificates if the licensed certifier knows, or ought reasonably to have known, that the certificate is false or misleading in a material particular:
  - (a) a complying development certificate under the *Environmental Planning and Assessment Act 1979* or a certificate referred to in section 6.4 of that Act,
  - (b) a strata certificate within the meaning of the *Strata Schemes Development Act 2015*,
  - (c) a certificates of compliance under Division 5 of Part 2 of the *Swimming Pools Act 1992*.

Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.

- (2) A person cannot be prosecuted under this section in respect of a certificate if proceedings have been brought under section 4.31 or 6.32 of the *Environmental Planning and Assessment Act 1979* for an order declaring the certificate to be invalid and the Land and Environment Court has refused to make the order.

## Part 4 Disciplinary action against certifiers

### 45 Grounds for taking disciplinary action

The Secretary may take disciplinary action against a licensed certifier on any one or more of the following grounds:

- (a) the licensed certifier has engaged in conduct in connection with the carrying out of certification work that has fallen short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent licensed certifier,
- (b) the licensed certifier has contravened the certification legislation, whether or not the licensed certifier is prosecuted or convicted for the contravention,
- (c) the licensed certifier has contravened a law of this or any other Australian jurisdiction (whether or not the contravention is an offence and whether or not the licensed certifier is prosecuted or convicted for the contravention) with respect to any of the following:
  - (i) the carrying out of certification work or work authorised to be carried out under an equivalent authorisation,
  - (ii) a licence or an equivalent authorisation,
  - (iii) fraud or dishonesty,
- (d) the licensed certifier has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the licensed certifier by or in accordance with a law of this or any other Australian jurisdiction with respect to the carrying out of certification work or work authorised to be carried out under an equivalent authorisation,
- (e) the licensed certifier has carried out of certification work in a partial manner or in a manner that is not in the public interest,
- (f) the licensed certifier has wilfully disregarded matters to which the licensed certifier is required to have regard in the carrying out of certification work,
- (g) the licensed certifier has failed to comply with a condition of the licence,
- (h) the licensed certifier has breached an undertaking given by the licensed certifier,
- (i) the licensed certifier has failed to comply with an order of the Secretary or the Tribunal,
- (j) the licensed certifier has failed to comply with a direction or requirement under Part 7,
- (k) the licensed certifier has wilfully misled or obstructed the Secretary or an authorised officer in the exercise of any function under this Act,
- (l) the licensed certifier has engaged in improper or unethical conduct that indicates that the licensed certifier is unfit to properly carry out certification work,
- (m) any other ground prescribed by the regulations.

### 46 Functions exercised on behalf of council or body corporate

A reference in this Part (however expressed) to the carrying out of certification work or work authorised to be carried out under an equivalent authorisation by a licensed certifier includes a reference to the carrying out of certification work or work authorised to be carried out under an equivalent authorisation on behalf of a council (of this or any other Australian jurisdiction) or a body corporate that holds a licence or an equivalent authorisation.

## **47 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 licensed certifier.
- (2) The Secretary is to serve a notice in writing on the licensed certifier, inviting the holder to show cause why he, she or it should not be dealt with under this Part.
- (3) The notice must state the grounds on which the licensed certifier is required to show cause and must specify the period, being at least 14 days, during which it must be done.
- (4) A licensed certifier on whom a notice to show cause has been served 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 made, if any, and the evidence adduced, if any, by or on behalf of the licensed certifier 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.

## **48 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 licensed certifier has been established, do any one or more of the following:
  - (a) determine to take no further action against the licensed certifier,
  - (b) caution or reprimand the licensed certifier,
  - (c) make a determination requiring the licensed certifier to pay to the Secretary, as a penalty, an amount not exceeding \$110,000 (in the case of a body corporate) or \$55,000 (in the case of an individual) within a specified time,
  - (d) impose a condition on the licence of the licensed certifier, including a condition requiring the licensed certifier 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 licence of the licensed certifier in accordance with Part 2,
  - (f) disqualify the licensed certifier, either temporarily or permanently, from holding a licence or a specified class of licence.
- (2) In determining the disciplinary action to take, the Secretary:
  - (a) must take into account any other disciplinary action taken against the person under this Part, and
  - (b) may take into account any written undertaking that the person proposes to give under Part 8.
- (3) The Secretary is to provide a written statement of a decision made under this section to the person concerned 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.

#### **49 Review by NCAT**

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.

#### **50 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) any licence 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 any court of competent jurisdiction.
- (2) The Secretary may agree in writing to extend the time for payment by a person of any amount referred to in subsection (1) and, in any such case, that subsection does not have effect with respect to the person during any such 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.

#### **51 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 any 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 licensed certifier concerned is subject to criminal or civil proceedings that relate to the same matters or incident to which the disciplinary action relates.

## **Part 5 Accreditation of persons carrying out regulated work**

### **52 Meaning of “regulated work”**

In this Act, *regulated work* means the following:

- (a) the carrying out of work as an accredited practitioner under the *Environmental Planning and Assessment Act 1979*,
- (b) any other work declared by this or any other Act to be regulated work.

### **53 Regulated work requires accreditation**

- (1) A person must not carry out regulated work unless the person holds an accreditation that authorises the person to carry out that regulated work or the person is otherwise lawfully authorised to carry out the regulated work.
- (2) A person must not falsely represent that the person:
  - (a) can carry out regulated work, or
  - (b) holds an accreditation of a particular class.

Maximum penalty: 1,000 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).

### **54 Accreditation of persons to carry out regulated work**

- (1) An accreditation authority may, by granting accreditation under this Part, authorise a person to carry out regulated work.
- (2) An accreditation authorises only the class of regulated work authorised by the class of accreditation granted.
- (3) An accreditation is subject to any conditions of the accreditation.
- (4) An accreditation is suspended during any period where:
  - (a) there is no regulating accreditation authority with respect to the accreditation, or
  - (b) there is a regulating accreditation authority with respect to the accreditation but the approval of the regulating accreditation authority is suspended.
- (5) The regulations may prescribe different classes of accreditation that authorise the carrying out of different classes of regulated work.

### **55 Regulations may authorise licensed certifiers to carry out regulated work**

The regulations may authorise a licensed certifier who holds a particular class of licence to carry out regulated work or specified regulated work and in such a case the regulated work is taken to be certification work when carried out by a licensed certifier.

## Part 6 Approval of accreditation authorities

### Division 1 Accreditation authorities

#### 56 Accreditation authority—meaning

- (1) For the purposes of this Act, an **accreditation authority** means a body corporate for the time being approved by the Secretary under this Part to exercise the functions of an accreditation authority.  
**Note.** Section 109 provides that the Secretary may exercise the functions of an accreditation authority.
- (2) A reference in this Act to an accreditation authority, with respect to any function of an accreditation authority, includes a reference to a body corporate approved by the Secretary to exercise the functions of an accreditation authority only if the accreditation authority is approved to exercise the function concerned.
- (3) An accreditation authority that grants an accreditation to a person under this Act is the **regulating accreditation authority** with respect to that accreditation.
- (4) The Secretary may, in writing, direct an accreditation authority to be the regulating accreditation authority with respect to an existing accreditation on and from a specified day and on that day:
  - (a) the accreditation authority becomes the regulating accreditation authority with respect to that accreditation for the remaining period of that accreditation, and
  - (b) the accreditation authority that was the regulating accreditation authority with respect to that accreditation immediately before that day ceases to be the regulating accreditation authority.
- (5) A direction of the Secretary under this section may specify particular accreditations or all accreditations belonging to a particular class.

#### 57 Functions of an accreditation authority

- (1) For the purposes of this Act, the **functions** of an accreditation authority are as follows:
  - (a) to accredit persons to carry out regulated work in accordance with the accreditation authority's approved accreditation scheme,
  - (b) with respect to the holders of accreditations for which the accreditation authority is the regulating accreditation authority to do the following in accordance with the accreditation authority's approved accreditation scheme:
    - (i) to ensure that those persons comply with the requirements of their accreditation, and
    - (ii) to investigate possible failures by those persons to comply with those requirements, and
    - (iii) to exercise disciplinary functions where a failure to comply is found, including if necessary, by suspending or cancelling a person's accreditation,
  - (c) any other function imposed on an accreditation authority by this or any other Act or prescribed by the regulations.
- (2) Subject to the regulations and the conditions or limitations of its approval as an accreditation authority, the manner in which an accreditation authority exercises its functions is to be determined by the accreditation authority.

## **58 Person must be approved to exercise functions of accreditation authority**

- (1) A person must not exercise any function of an accreditation authority unless the person is an accreditation authority that is able to exercise that function.
- (2) A person must not falsely represent that the person can:
  - (a) grant an accreditation, or
  - (b) grant an accreditation of a particular class, or
  - (c) exercise any other function of an accreditation authority.
- (3) An accreditation authority must not falsely represent that an accreditation granted by the accreditation authority authorises the holder to carry out particular regulated work.

Maximum penalty: 1,000 penalty units (in the case of a body corporate) or 300 penalty units (in any other case).

## **59 Approval of accreditation authority to exercise functions**

- (1) The Secretary may, by instrument in writing, approve any of the following bodies corporate to exercise the functions of an accreditation authority with respect to the accreditation of persons for the purposes of this Act:
  - (a) a company registered under the *Corporations Act 2001* of the Commonwealth,
  - (b) an association within the meaning of the *Associations Incorporation Act 2009* or an incorporated association created under the legislation of another Australian jurisdiction.
- (2) Approval may be unconditional, or subject to conditions or limitations.
- (3) In particular, an approval may be limited to issuing a specified class of accreditation.

## **60 Effect of approval**

- (1) A body corporate that is approved to exercise the functions of an accreditation authority may exercise those functions in accordance with this Act.
- (2) Nothing in this Act authorises or requires an accreditation authority to act in contravention of the conditions or limitations of the accreditation authority's approval as an accreditation authority.

## **61 Accreditation authority approval guidelines**

- (1) The Secretary is required to adopt guidelines relating to the approval of bodies corporate as accreditation authorities for the purposes of this Act.
- (2) The guidelines may make provision for or with respect to the following matters:
  - (a) the suitability of a body corporate to be approved as an accreditation authority, including the qualifications, skills, knowledge and experience required,
  - (b) the insurance required to be held by an accreditation authority,
  - (c) the matters to be set out in an accreditation scheme,
  - (d) any other matters prescribed by the regulations.
- (3) The Secretary is to make the guidelines publicly available.
- (4) The Secretary may amend or replace the guidelines.
- (5) The Secretary may adopt different guidelines with respect to the approval of accreditation authorities that grant different classes of accreditation.
- (6) A reference in this Act to the accreditation authority approval guidelines with respect to the approval of a body corporate as an accreditation authority is, if the Secretary

has adopted different guidelines with respect to different classes of accreditation, the guidelines relevant to the class of accreditation that the body corporate would grant if it were to be approved.

## Division 2 Approval procedure

### 62 Application for approval

- (1) A body corporate may apply to the Secretary for a grant of approval to exercise the functions of an accreditation authority.
- (2) An application must:
  - (a) be in a form approved by the Secretary, and
  - (b) set out the applicant's proposed accreditation scheme, and
  - (c) include or be accompanied by any information or evidence of a kind prescribed by the regulations, and
  - (d) include or be accompanied by any other information or evidence that the Secretary reasonably requires to assess the application.
- (3) The regulations may provide for a fee to be paid for an application for the grant of approval.
- (4) The Secretary may require the fee to accompany the application.
- (5) If an application for a grant of renewal of approval is duly made to the Secretary before the expiry of approval, approval is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.

### 63 Grant or refusal of approval

- (1) The Secretary may, on application, grant or refuse approval to exercise the functions of an accreditation authority.
- (2) On the granting of an approval, the applicant's proposed accreditation scheme becomes, for the purposes of this Act, the ***accreditation scheme of the accreditation authority*** and is taken to form part of the approval.
- (3) The Secretary may refuse approval to exercise the functions of an accreditation authority:
  - (a) if the application for approval does not comply with any requirement imposed by or under this Act, or
  - (b) if the Secretary is of the opinion that it is not in the public interest to approve the application, or
  - (c) if the Secretary is of the opinion that the applicant is not a suitable person to be approved as an accreditation authority, or
  - (d) if the Secretary is of the opinion that the proposed accreditation scheme does not comply with the requirements of this Act, the regulations or the accreditation authority approval guidelines, or
  - (e) if the Secretary is not satisfied that the applicant has met all the requirements for the grant of an approval set out in the accreditation authority approval guidelines, or
  - (f) on any other ground prescribed by the regulations.
- (4) A decision about the suitability of a person for approval may be made having regard to any of the following:
  - (a) any matter prescribed by the regulations,

- (b) any other circumstances that the Secretary considers relevant.
- (5) The Secretary is to give the applicant notice in writing of a decision to grant or refuse approval.
- (6) If the Secretary fails to give an applicant for approval notice of a decision to grant or refuse approval within the period prescribed by the regulations, the Secretary is taken to have refused approval.
- (7) The Secretary is to cause notice of any approval granted to be published in the Gazette.

#### **64 Duration of approval**

- (1) An approval to exercise the functions of an accreditation authority remains in force for a period of 1, 3 or 5 years as specified by the Secretary in the notice by which approval is granted, unless sooner cancelled.
- (2) Approval has no effect during any period in which the approval is suspended.

#### **65 Variation of approval**

- (1) The Secretary may, at any time, by notice in writing to a person who has been approved to exercise the functions of an accreditation authority, vary the approval of the person (including the accreditation scheme or any conditions of approval imposed by the Secretary).
- (2) A variation includes the imposition of new conditions on an approval, the substitution of a condition, or the omission or amendment of a condition.
- (3) The regulations may make further provision for the variation of approval, including:
  - (a) applications for variation, and
  - (b) fees for applications for variation.

### **Division 3 Conditions of approval**

#### **66 Conditions of approval**

- (1) An approval to exercise the functions of an accreditation authority is subject to the following conditions:
  - (a) any conditions prescribed this Act or the regulations,
  - (b) any conditions imposed by the Secretary.
- (2) The Secretary may impose conditions on an approval:
  - (a) at the time of the grant of the approval, or
  - (b) at any other time by variation to the approval.

#### **67 Condition that functions are exercised in accordance with approved accreditation scheme**

It is a condition of approval as an accreditation authority that the functions of the accreditation authority will be exercised only in accordance with the accreditation scheme of the accreditation authority.

#### **68 Condition that functions are exercised only by individuals notified to Secretary**

It is a condition of approval as an accreditation authority that the functions of the accreditation authority will be exercised only by individuals who are notified to the Secretary as individuals who are to exercise those functions for the accreditation authority.

**69 Condition that functions be exercised in the public interest**

It is a condition of approval as an accreditation authority that the accreditation authority must act in the public interest in the exercise of its functions.

**70 Condition requiring provision of information to the Secretary**

- (1) It is a condition of approval as an accreditation authority that the accreditation authority must, when requested in writing by the Secretary to do so, provide the Secretary with any information relating to the exercise of its functions as an accreditation authority as the Secretary may require.
- (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) An accreditation authority that fails to comply with the condition set out in this section is guilty of an offence.  
Maximum penalty: 50 penalty units.

**71 Condition relating to independent audits**

- (1) It is a condition of approval as an accreditation authority that the accreditation authority must, when requested in writing by the Secretary to do so, engage an auditor (approved by the Secretary) to conduct an audit of the accreditation authority's exercise of its functions or such of its functions as may be specified by the Secretary.
- (2) The audit must, if the Secretary specifies a time within which it must be completed, be completed within that time and a copy the report of the audit must be provided to the Secretary as soon as practicable.
- (3) The regulations may make further provision with respect to audits under this section.

**72 Condition relating to investigations and audits conducted by Secretary**

It is a condition of approval as an accreditation authority that the accreditation authority must provide reasonable assistance to the Secretary with respect to any investigation or audit of the accreditation authority by the Secretary.

**73 Condition requiring publication of information**

- (1) It is a condition of approval as an accreditation authority that the accreditation authority must, when requested in writing by the Secretary to do so, make available to the public information relating to the exercise of its functions as an accreditation authority (including identifying information about the holders of accreditation) as may be specified by the Secretary.
- (2) The information must, if the Secretary specifies a manner in which it must be made available, be made available in that manner.
- (3) The regulations may make further provision with respect to making information available under this section.
- (4) An accreditation authority that fails to comply with the condition set out in this section is guilty of an offence.  
Maximum penalty: 100 penalty units.

## 74 Condition requiring the keeping of records

- (1) It is a condition of approval as an accreditation authority that the accreditation authority must, keep such records as are prescribed by the regulations.
- (2) The regulations made under this section may prescribe the manner and form in which the records are to be kept and the time for which those records must be retained.
- (3) A requirement to retain records continue to apply to a body corporate even if the body corporate ceases to be an accreditation authority.
- (4) An accreditation authority or former accreditation authority that fails to comply with a condition or requirement set out in this section is guilty of an offence.  
Maximum penalty: 100 penalty units.

## Division 4 Suspension or cancellation of approval

### 75 Grounds for suspension or cancellation of approval

- (1) Each of the following constitutes grounds for suspending or cancelling approval to exercise the functions of an accreditation authority:
  - (a) the Secretary is of the opinion that the accreditation authority has contravened a requirement imposed by or under this Act,
  - (b) the Secretary is of the opinion that the accreditation authority is no longer a suitable person to be approved to exercise the functions of an accreditation authority,
  - (c) the Secretary is of the opinion that the accreditation should not have been granted an approval because the Secretary has received information about the accreditation authority and is of the opinion that, had the information been received at the time when the application for approval or renewal of the approval was made, the Secretary would have refused the application,
  - (d) the Secretary is of the opinion that the accreditation authority is no longer exercising the functions of an accreditation authority,
  - (e) any other grounds prescribed by the regulations.
- (2) A decision about the suitability of a person for approval may be made having regard to any of the following:
  - (a) the fact that the accreditation authority has been found guilty of an offence under this Act or the regulations, or an offence under any other Act or law,
  - (b) any matter prescribed by the regulations,
  - (c) any other circumstances that the Secretary considers relevant.
- (3) In this Division:  
***accreditation authority*** includes a former accreditation authority.

### 76 Suspension of approval

- (1) The Secretary may, by notice in writing to an accreditation authority, suspend approval to exercise the functions of an accreditation authority if there are grounds for the suspension of approval.
- (2) Notice of the suspension must specify:
  - (a) the date or time from which suspension takes effect, and
  - (b) the period of suspension, and
  - (c) the grounds for the suspension.

## **77 Cancellation of approval**

- (1) The Secretary may, by notice in writing to an accreditation authority, cancel approval to exercise the functions of an accreditation authority if:
  - (a) the Secretary is satisfied that there are grounds for the cancellation of approval, or
  - (b) the accreditation authority applies for cancellation of approval.
- (2) Notice of the cancellation must specify:
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.

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

- (1) An approval to exercise the functions of an accreditation authority may be suspended or cancelled unconditionally or subject to such conditions as the Secretary imposes.
- (2) Those conditions may include (but are not limited to) any conditions to which the approval was subject immediately before it was suspended or cancelled.
- (3) The Secretary may, by notice in writing given to the former accreditation authority, attach new conditions to, or vary or revoke any existing conditions of, the suspension or cancellation of the approval.

## **Division 5 Miscellaneous**

### **79 Requirements for an accreditation scheme**

- (1) An accreditation scheme for an accreditation authority must set out the following:
  - (a) the procedures that the accreditation authority will follow with respect to the receipt of applications for accreditation, the assessment of those applications and the granting or refusal of accreditation,
  - (b) the fees (if any) that the accreditation authority will charge,
  - (c) the process by which aggrieved persons can seek a review of decisions of the accreditation authority,
  - (d) the procedures that the accreditation authority will follow with respect to the handling of complaints made against the holders of accreditations for which the accreditation authority is the regulating accreditation authority,
  - (e) the procedures that the accreditation authority will follow with respect to investigating potential misconduct by any such holder and the disciplinary action that will be taken by the accreditation authority if misconduct is found,
  - (f) any matter required to be set out in the accreditation scheme by the regulations or the accreditation scheme approval guidelines.
- (2) An accreditation scheme must provide for the following:
  - (a) a merit based assessment process for the accreditation of persons,
  - (b) a process by which an aggrieved person can obtain an independent review of a decision of the accreditation authority to refuse to grant accreditation, suspend or cancel accreditation, take disciplinary action or impose a restriction on accreditation,
  - (c) any matter prescribed by the regulations.

### **80 Offence of contravening condition**

An accreditation authority or former accreditation authority who contravenes any of the following is guilty of an offence:

- (a) a condition of its approval (other than a condition for which a different maximum penalty is prescribed),
  - (b) a condition of a suspension or cancellation of its approval.
- Maximum penalty: 2,000 penalty units.

## **81 Offence of carrying out accreditation authority functions during suspension**

A body corporate that holds an approval that is suspended must not purport to grant an accreditation.

Maximum penalty: 1,000 penalty units.

## **82 Surrender of approval**

- (1) An accreditation authority may apply to the Secretary for a cancellation of an approval.
- (2) An application must:
  - (a) be in a form approved by the Secretary, and
  - (b) include or be accompanied by any 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 an approval.
- (4) The Secretary may require the fee to accompany the application.
- (5) An approval must not be cancelled by the Secretary under this section until at least 180 days after the application is made.

## **83 Review by NCAT**

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 to grant approval as an accreditation authority,
- (b) a decision of the Secretary to suspend or cancel approval as an accreditation authority,
- (c) a decision of the Secretary to impose any condition on the grant of approval as an accreditation authority, or on the suspension or cancellation of an approval,
- (d) a decision of the Secretary to vary approval as an accreditation authority,
- (e) a decision of the Secretary to refuse an application by an accreditation authority for the cancellation or suspension of the accreditation authority's approval.

## **84 Disclosure of information**

An accreditation authority is authorised to disclose to the Secretary any information (including personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*) obtained by the accreditation authority in the exercise of its functions under this Act.

## Part 7 Powers of authorised officers

### Division 1 Preliminary

#### 85 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, 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.

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

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

### Division 2 Authorised officers

#### 87 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.

#### 88 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 such 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.

## **89 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 determine 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 and in such a case the person's certificate of identification as an investigator is taken to be the person's identification card as an authorised officer.
- (3) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such 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**

### **90 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.

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

- (1) An authorised officer may, by notice in writing given to a person, direct the person to furnish to the officer such information or records (or both) as he or she may require for an authorised purpose.
- (2) A notice under this Division 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) A notice under this Division 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 any record is furnished under this Division may take copies of it.
- (5) If any 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.

### **92 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 notice in writing, 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) The place and time at which a person may be directed to attend under subsection (2) is to be a place and time nominated by the authorised officer that is reasonable in the circumstances.

## **93 Recording of evidence**

- (1) An authorised officer may cause any 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 any other method determined by the authorised officer.
- (3) A copy of any such 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 any other law.

## **Division 4 Entry to premises**

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

- (1) An authorised officer may enter any premises at any reasonable hour in the daytime or at any hour during which business 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 any 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 such assistants as the authorised officer considers necessary.

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

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant.

### **96 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, matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An issuing officer to whom such 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*.

## 97 Requiring assistance

- (1) An authorised officer may direct the owner or occupier of premises, or any 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 notice in writing served on the person.

## 98 Powers that may be exercised on premises

- (1) An authorised officer may, at any 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) direct a reasonably qualified person to open, cut into or pull down any work if the authorised officer has reason to believe or suspect that the work or something contained in the work is in contravention of the certification legislation,
  - (d) make any examinations, inquiries, measurements or tests that the authorised officer considers necessary,
  - (e) take any photographs or other recordings that the authorised officer considers necessary,
  - (f) direct a person to produce records for inspection,
  - (g) examine and inspect any records,
  - (h) copy any records,
  - (i) seize any thing that the authorised officer has reasonable grounds for believing is connected with an offence against the certification legislation,
  - (j) move any 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,
  - (k) 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,
  - (l) do anything else authorised by or under this Act.
- (3) The power to examine and inspect any thing includes a power to use reasonable force to break open or otherwise access anything such as a floor or wall containing the thing.
- (4) The power to seize any 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**

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

- (1) If an authorised officer takes possession of any records under this Part for the purpose of obtaining evidence or protecting evidence from destruction, they 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.

### **100    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).

### **101    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 Other functions of the Secretary

### 102 Register of licences and approvals

- (1) The Secretary is to maintain a register of the particulars of licences and approvals as are required to be kept in the register by the regulations.
- (2) The 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.
- (3) Without limiting the particulars that may be prescribed by the regulations with respect to the register, the regulations may require that the register include any of the following particulars with respect to a licence or approval:
  - (a) details of the licence or approval including details of the holder of the licence or approval,
  - (b) the results of any relevant disciplinary determination,
  - (c) the results of any prosecutions under this Act,
  - (d) details of any penalty notices issued,
  - (e) any instance of non-compliance with an order of the Secretary or the Tribunal to do work or to pay money,
  - (f) details of the warning notices published under this Part,
  - (g) details of any conditions or restrictions on the licence or approval,
  - (h) details of any cancellation or suspension of the licence or approval.
- (4) The Secretary may remove any particular from, or otherwise amend, the 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 licence or approval concerned.

### 103 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 licensed certifier, former licensed certifier, accreditation authority or former accreditation authority, 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 any one or more of the following ways:
  - (a) to any 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. However, the Secretary must conduct an investigation before authorising the publication.
- (4) Before authorising publication of a warning notice, the Secretary must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the Secretary about publication of such a 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.

- (5) 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.
- (6) 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.

## **104 Undertakings**

The Secretary may accept a written undertaking from a licensed certifier as to the manner in which the licensed certifier will carry out certification work or conduct the licensed certifier's business as a licensed certifier (or both).

**Note.** Part 4 provides that a breach of such an undertaking is grounds for taking disciplinary action against a licensed certifier.

## **105 Applying for injunctions**

- (1) On the application of the Secretary, the Supreme Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of this Act or the regulations.
- (2) An injunction may be granted without the Secretary being required to show a likelihood of damage.
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) When the Secretary makes an application for the grant of an injunction under this section, the Court is not to require the Secretary or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

## **106 Complaints, Investigations and audits of certifiers and accreditation authorities**

- (1) The Secretary may, whether or not the Secretary has received a complaint, investigate:
  - (a) any licensed certifier, former licensed certifier, accreditation authority or former accreditation authority, or
  - (b) the carrying out of any certification work or the exercise of any function of an accreditation authority, or
  - (c) any other matter that may constitute a breach of this Act or the regulations.
- (2) The Secretary may require that a complaint made to the Secretary about any matter referred to in subsection (1) (a)–(c) be in a form approved by the Secretary. However, the Secretary is not required to investigate a matter even if a complaint is made in the approved form.
- (3) The Secretary may conduct an audit of a licensed certifier or an accreditation authority at any time.
- (4) This section does not limit any other power that the Secretary may have under this or any other Act or law to receive a complaint, investigate a matter or conduct an audit.

## **107 Investigation of councils acting as certifier**

- (1) The Secretary may investigate the work and activities of a council in its capacity as a certifier.
- (2) The Secretary may make a decision to undertake an investigation under this section on its own motion or following a complaint relating to the council concerned in its capacity as a certifier.

- (3) The Secretary must prepare a report of the results of any such investigation and send a copy of the report to the Chief Executive of the Office of Local Government and to the council.
- (4) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.
- (5) Within 40 days after it receives a report under this section, a council must give written notice to the Chief Executive of the Office of Local Government and to the Secretary of the things done or proposed to be done to give effect to any recommendations contained in the report and may make submissions with respect to any matter contained in the report.
- (6) The Secretary must take into account any submissions received in accordance with subsection (5) and may revise its report.
- (7) If the Secretary revises its report, the Secretary must send a copy of the revised report to the Chief Executive of the Office of Local Government and to the council.
- (8) The Secretary is to make a copy of its report in its final form publicly available.
- (9) Nothing in this section prevents the Secretary from taking disciplinary action under Part 4 against a licensed certifier if the Secretary is satisfied, as a result of an investigation under this section, that there may be grounds for doing so.

## 108 Exchange of information

- (1) The Secretary may enter into an arrangement with a relevant agency for the purpose of sharing or exchanging information held by the Secretary or the agency.
- (2) The information to which an arrangement may relate is limited to information that is reasonably necessary to:
  - (a) assist in the exercise of the functions of the Secretary, or
  - (b) assist in the exercise of a relevant function by the relevant agency.
- (3) Under an arrangement, each party to the arrangement is authorised:
  - (a) to disclose information to another party to the arrangement, and
  - (b) to request and receive information held by another party to the arrangement.
- (4) This section does not:
  - (a) require the Secretary to provide information to a relevant agency only in accordance with an arrangement under this section if that information can otherwise be lawfully provided, or
  - (b) limit the operation of any other Act or law under which a relevant agency is authorised or required to request and receive, or disclose, information to another person or body.
- (5) The authority to request and receive, or to disclose, information under this section is subject to the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*.
- (6) In this section:

**relevant agency** means:

  - (a) a council, or
  - (b) an agency of this or any other Australian jurisdiction that exercises, under legislation, a relevant function, or
  - (c) an insurer that provides insurance required by this Act, or
  - (d) any other person or body prescribed by the regulations.

***relevant function*** means a function in connection with:

- (a) a licence, an approval or an equivalent authorisation, or
- (b) the regulation of certification work or work authorised to be carried out under an equivalent authorisation, or
- (c) insurance required by or under this Act or required by law with respect to an equivalent authorisation, or
- (d) any other function prescribed by the regulations.

**109 Secretary may exercise functions of an accreditation authority**

- (1) The Secretary may exercise the functions of an accreditation authority.
- (2) Before exercising any such function the Secretary is to adopt an accreditation scheme that complies with section 79 and is to exercise those functions in accordance with that scheme.

## Part 9 Miscellaneous

### 110 Disclosure and misuse of information

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act unless that 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 any such proceedings, or
  - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
  - (e) with other lawful excuse.
- (2) A person acting in the administration or execution of this Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for the person, or a person with whom the person is associated.
- (3) A person acting in the administration or execution of this Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for himself or herself, or a person with whom the person is associated, influence:
  - (a) the determination of a development application, or
  - (b) the carrying out of any certification work, or
  - (c) the giving of a development control order under Division 9.3 of the *Environmental Planning and Assessment Act 1979*.
- (4) In this section, a person is associated with another person if the person is the spouse, de facto partner, sibling, parent or child of the other person.  
Maximum penalty: 50 penalty units.

### 111 Responsibilities of councils carrying out certain prescribed certification work

- (1) A council must ensure that any certification work of a class prescribed by the regulations that is carried out on behalf of the council is carried out by a licensed individual whose licence authorises the individual to carry out that certification work.  
Maximum penalty: 1,000 penalty units.
- (2) A council is taken to satisfy subsection (1) if it engages a licensed body corporate to carry out the certification work.
- (3) The Secretary may, with the approval of the Minister, exempt a council by notice in writing given to the council from the requirements of subsection (1).
- (4) The approval of the Minister:
  - (a) may be given with respect to a particular case or a class of cases, and
  - (b) may be subject to conditions, and
  - (c) may be amended from time to time.
- (5) Any exemption given under this section:
  - (a) may be limited in time or subject to conditions, or both, and

- (b) may be revoked by the Secretary by notice in writing given to the council and must be revoked if the relevant approval of the Minister is no longer in force.

## **112 Delegation**

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.

## **113 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 authorised officer.
- (2) However, any such liability attaches instead to the Crown.

## **114 Offences by bodies corporate**

- (1) If a body corporate contravenes, whether by act or omission, any 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.

## **115 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served 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 such an address—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 any other 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 any other method authorised by the regulations for the service of documents of that kind.

- (2) Nothing in this section affects the operation of any 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, *serve* includes give or send.

## 116 Certificate evidence of certain matters

- (1) A document signed by the Secretary (or by an officer prescribed by the regulations) and certifying any one or more of the relevant matters specified in subsection (2) is 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 relevant matters are as follows:
  - (a) that a specified person was or was not, at a specified time or during a specified period, a licensed certifier,
  - (b) that a licence held by a specified person was or was not, at a specified time or during a specified period, subject to a specified condition or was or was not suspended,
  - (c) that a specified person was or was not, at a specified time or during a specified period, an accreditation authority,
  - (d) that an approval 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,
  - (e) that a specified person was or was not, at a specified time or during a specified period, an authorised officer,
  - (f) that any particular or other matter was or was not, at a specified time or during a specified period, included on the register,
  - (g) any other matter prescribed by the regulations.

## 117 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) However, section 22A (1) of the *Fines Act 1996* does not apply in relation to disciplinary action under this Act.
- (5) 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).
- (6) 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.
- (7) In this section, *penalty notice officer* means a member of staff of the Department designated by the Secretary as a penalty notice officer for the purposes of this section.

## 118 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 that 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, that 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 3 years after the date alleged to be the date on which the offence was committed.

## 119 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 to hold a licence or approval, including the approval of courses of training and the approval of persons to conduct the training or to assess persons undergoing the training,
  - (b) the insurance required to be held in order to exercise functions under this Act,
  - (c) the keeping of records and the provision of information to the Secretary by licensed certifiers and councils with respect to certification work (including information about individuals carrying out certification work on behalf of the licensed certifier or council),
  - (d) the keeping of records and the provision of information to the Secretary by accreditation authorities with respect to the exercise of their functions (including information about individuals exercising functions on behalf of the accreditation authority),
  - (e) the fees payable under this Act or the regulations and the refund, reduction or waiver of any such fees.
- (3) A regulation may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.
- (4) The regulations may exempt specified persons or bodies or classes of persons or bodies, or specified certification work or classes of certification work, or specified licences or approvals or classes of licences or approvals, from any specified provision of this Act.
- (5) 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.

## 120 Repeal

The following are repealed:

- (a) *Building Professionals Act 2005*,

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- (b) *Building Professionals Amendment Act 2008,*
- (c) *Building Professionals Regulation 2007.*

## 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 Definitions

In this Part:

**existing certificate of accreditation** means a certificate of accreditation under the former Act.

**former Act** means the *Building Professionals Act 2005*.

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

#### 3 Saving of existing certificates of accreditation

- (1) Subject to the regulations, an existing certificate of accreditation that is in force immediately before the repeal day:
  - (a) is taken to be a licence of the corresponding class (as prescribed by the regulations) granted under this Act, and
  - (b) continues, unless it is sooner surrendered by the holder or suspended or revoked under this Act, in force for the unexpired portion of its term, and
  - (c) cannot be renewed.
- (2) The conditions to which an existing certificate of accreditation are subject are, subject to the regulations, taken to be conditions imposed by an accreditation authority under this Act and any such condition may be varied or revoked in accordance with this Act.
- (3) An existing certificate of accreditation that, on the repeal day, is suspended is taken to be in force for the purposes of subclause (1) but the suspension continues for the unexpired portion of its term.

## 4 Pending applications

- (1) An application for an existing certificate of accreditation that was made under the former Act and that was not determined before the repeal day is taken to be an application for a licence of the corresponding class (as determined under clause 3) made to the Secretary under this Act and is to be dealt with accordingly subject to the other provisions of this clause.
- (2) Any fee paid under the former Act with respect to the application for the existing certificate of accreditation is taken to have been paid towards the application that is taken to have been made under this Act and any difference between the fee paid and the appropriate fee required to be paid under this Act is to be addressed by requiring the applicant to pay the balance of any underpayment or refunding to the applicant the balance of any overpayment.

## 5 Appeals and reviews

- (1) Any appeal made, or review commenced, with respect to an existing certificate of accreditation (or an application for an existing certificate of accreditation) that has not been determined before the repeal day is to be determined as if the former Act and the *Building Professionals Regulation 2007* had not been repealed.
- (2) In such a case, clause 3 applies to the existing certificate of accreditation as in force following any such review.

## 6 Offences under Building Professionals Act 2005 are relevant offences

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

## 7 Disciplinary action

- (1) Conduct of an accredited certifier occurring before the repeal day that is unsatisfactory professional conduct or professional misconduct under the former Act is a ground for taking disciplinary action under Part 4 of this Act.
- (2) Any complaint made to the Building Professionals Board under the former Act that has not been finally resolved by the repeal day is taken to be a complaint made to the Secretary under Part 4 of this Act and may be dealt with accordingly.
- (3) With respect to a matter that, because of this clause, Part 4 of this Act applies, the Secretary may rely on any step taken by the Building Professionals Board under the former Act as if it were an equivalent step taken by the Secretary under Part 4 of this Act.

## 8 Dissolution of Building Professionals Board

- (1) The Building Professionals Board is dissolved on the repeal of section 75 of the former Act.
- (2) On the dissolution of the Building Professionals Board, the assets, rights and liabilities of the Building Professionals Board immediately before its dissolution become the assets, rights and liabilities of the Crown.
- (3) The persons who were members of the Building Professionals Board immediately before its dissolution cease to be members and are not entitled to any remuneration or compensation because of the loss of that office.
- (4) In this clause:  
*assets* means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal

property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

## 9 Investigations into councils

Any investigation commenced by the Building Professionals Board under section 45 of the former Act but not finalised on the dissolution of the Board is taken to have been an investigation commenced by the Secretary under section 107 of this Act and may be carried on by the Secretary.

## 10 Requirement that certification work be carried out under written contract

Section 31 does not apply to a licensed certifier with respect to certification work if the licensed certifier (or the licensed certifier's employer) was appointed to carry out the certification work before the commencement of that section.

## 11 Principal certifier to notify client of certain changes

Section 33 applies to a person whether or not the person was appointed as a principal certifier before the commencement of that section.

## 12 Abolition of Building Professionals Board Fund

- (1) The Building Professionals Board Fund (the *former fund*) under the former Act is abolished on the repeal of section 81 of the former Act.
- (2) Any balance standing to the credit of the former fund is to be transferred to the Secretary.
- (3) Any money that was payable into the former fund immediately before its abolition is to be paid to the Secretary.
- (4) Section 110 applies to any amount paid to the Secretary under this clause in the same way as that section applies to amounts paid to the Secretary under section 4.64 of the *Environmental Planning and Assessment Act 1979*.

## 13 Licensed body corporate with insufficient licensed directors

- (1) The Secretary may grant an exemption to a licensed body corporate from the requirements of section 41 (1) if satisfied that the body corporate is taking steps to comply with that provision.
- (2) Each exemption granted under this section remains in force for 6 months or such shorter period as the Secretary may determine.
- (3) More than 1 exemption may be granted to a licensed body corporate under this clause.

## 14 Existing competent fire safety practitioners

- (1) A person who immediately before the repeal of clause 167A of the *Environmental Planning and Assessment Regulation 2000* was recognised by the Secretary as a competent fire safety practitioner for the purposes of one or more provisions of that Regulation is taken to hold an accreditation under this Act that authorises the person to carry out the regulated work under the provisions of that Regulation to which the recognition related.

- (2) The accreditation remains in force for the period for which the recognition would have remained in force had clause 167A of that Regulation not been repealed, or for 5 years from that repeal (whichever is the shorter period) but may be cancelled or suspended in accordance with this Act before the end of that period.
- (3) The Secretary is taken to be the regulating accreditation authority in respect of any such accreditation until such time as the Secretary gives a direction under section 56 (4) with respect to the accreditation.
- (4) For the purposes of this clause, the Secretary may exercise any function of an accreditation authority even if the Secretary has not adopted an accreditation scheme.
- (5) Any reference to a competent fire safety practitioner is taken to include a reference to an accredited practitioner (fire safety) within the meaning of the *Environmental Planning and Assessment Regulation 2000*.

## **15 Fast track initial approval for existing training organisations**

- (1) The Secretary may grant an approval as an accreditation authority to a body corporate that trained a person who is taken (under clause 14) to hold an accreditation.
- (2) Part 6 of this Act (other than sections 62 and 63) applies to an approval granted under this clause.
- (3) In determining to grant an approval under this clause the Secretary only needs to be satisfied that the body corporate provided training that enabled a person to be recognised by the Secretary as a competent fire safety practitioner.
- (4) The fact that a body corporate is not a body corporate of kind referred to in section 59 (1) does not prevent an approval being granted under this clause.
- (5) An approval granted under this clause cannot be renewed under this clause and must instead be renewed under Part 6 of this Act.

## **16 References to matters in the Building Professionals Act 2005**

- (1) In any Act or instrument a reference to a term (within the meaning of the former Act) set out in the table to this clause is taken to include a reference to the corresponding term within the meaning of this Act:

<b>Term under former Act</b>	<b>Corresponding term under this Act</b>
accredited body corporate	licensed body corporate
accredited certifier	licensed certifier
Building Professionals Board	the Secretary

- (2) In any Act or instrument a reference to accreditation of a particular class is taken to include a reference to a licence of the corresponding class (as determined under clause 3).

## Schedule 2 Amendment of Home Building Act 1989 No 147

### [1] Part 2, Division 1A

Insert after Division 1 of Part 2:

#### **Division 1A Additional requirements for certain contracts if certifier required**

##### **11A Application of Division**

- (1) This Division applies to a contract under which the holder of a contractor licence undertakes:
  - (a) to do, in person, or by others, any residential building work or any specialist work, or
  - (b) to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done,but only if a licensed certifier will be required with respect to some or all of the work.
- (2) Despite section (1), this Division does not apply to the following:
  - (a) a contract to do residential building work entered into between the holder of a contractor licence and a developer with respect to the work,
  - (b) a contract for which the contract price does not exceed the prescribed amount or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed the prescribed amount,
  - (c) a contract of a class prescribed by the regulations.
- (3) The requirements of this Division apply in addition to any requirements of Division 1.
- (4) In this section:

*prescribed amount* is the amount prescribed by the regulations for the purposes of section 7AAA and is inclusive of GST.

##### **11B Consumer information—certifiers**

A holder of a contractor licence must, before entering into a contract, give to the other party to the contract information, in a form approved by the Secretary, that explains the role of a licensed certifier.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

##### **11C Undue influence relating to appointment of certifiers**

- (1) A holder of a contractor licence must not unduly influence (or attempt to unduly influence) a person with whom the contractor enters a contract, in the appointment by that person, of a licensed certifier to carry out certification work with respect to work to be carried out under the contract.

Maximum penalty: 1,000 penalty units in the case of a corporation and 300 penalty units in any other case.
- (2) Without limiting subsection (1), a holder of a contractor licence is taken to have attempted to unduly influence a person in the appointment of a licensed certifier if the holder of the contractor licence:

- (a) made it a requirement of entering the contract that a specified licensed certifier or class of licensed certifier would be or would not be appointed, or
- (b) offered to change the contract price if a specified licensed certifier or class of licensed certifier would be or would not be appointed, or
- (c) refuses to carry out work under the contract if a specified licensed certifier or class of licensed certifier is or is not appointed.

## **11D Terms of contract**

A contract must include (and is taken to include) each of the terms set out in Part 1A of Schedule 2. A contract that contains a term that is inconsistent with a term set out in Part 1A of Schedule 2 is unenforceable to the extent of the inconsistency.

## **11E Provisions not to apply where health or safety or property at risk**

However, sections 11B and 11D do not apply to a contract to do residential building work or specialist work in such circumstances that:

- (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property, and
- (b) the work could not be done promptly if the requirements of the particular section were to be complied with before commencing the work.

## **[2] Schedule 1 Definitions and other interpretative provisions**

Insert in alphabetical order in clause 1 (1):

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

## **[3] Schedule 2 Terms to be included in certain contracts**

Insert “, 11D” after “(Sections 7E”.

## **[4] Schedule 2, Part 1A**

Insert after Part 1:

## **Part 1A Contracts for work requiring certifiers**

### **2A Selection of licensed certifier**

- (1) The contractor will notify the owner when a licensed certifier is required with respect to particular work done under this contract.
- (2) The selection of any licensed certifier is the sole responsibility of the owner.
- (3) The contractor will not object to the selection by the owner of any particular licensed certifier.

**[5] Schedule 4 Savings and transitional provisions**

Insert at the end of the Schedule with appropriate Part and clause numbering:

**Part Provisions consequent on enactment of Building and Development Certifiers Act 2018**

**Undue influence relating to appointment of certifiers**

Section 11C applies to the appointment of a licensed certifier that occurs after the commencement of that section even if the relevant contract was entered before that commencement.

**Term of contract regarding certifier**

Section 11D does not apply to a contract entered before the commencement of that section.

## Schedule 3 Amendment of other Acts and instruments

### 3.1 Administrative Decisions Review Regulation 2014

- [1] **Clause 4 Administratively reviewable decisions excluded from requirement to provide reasons**

Omit the clause.

- [2] **Clause 5 Administratively reviewable decisions excluded from internal review**

Omit the matter relating to the *Building Professionals Act 2005* from the Table to the clause.

### 3.2 Civil and Administrative Tribunal Act 2013 No 2

- [1] **Schedule 5 Occupational Division**

Omit “*Building Professionals Act 2005*” from clause 4 (1).

Insert instead “*Building and Development Certifiers Act 2018*”.

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

Omit the paragraph. Insert instead:

- (b) a decision for the purposes of the *Building and Development Certifiers Act 2018* concerning a licensed certifier or an accreditation authority or a former licensed certifier or former accreditation authority,

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

Omit “*Building Professionals Act 2005*”.

Insert instead “*Building and Development Certifiers Act 2018*”.

### 3.3 Environmental Planning and Assessment Act 1979 No 203

- [1] **Section 1.4 Definitions**

Omit the definitions of *accredited certifier* and *Building Professionals Board* from section 1.4 (1).

Insert in alphabetical order:

*licensed certifier* means the holder of a licence under the *Building and Development Certifiers Act 2018* acting in respect of matters to which the licence applies.

*Licensing Secretary* means the Secretary within the meaning of the *Building and Development Certifiers Act 2018*.

- [2] **Section 1.4 (1), definition of “certifier”**

Omit the note. Insert instead:

**Note.** Under Part 6, a certifier is a council or the holder of a licence as a licensed certifier under the *Building and Development Certifiers Act 2018* acting in respect of matters to which the licence applies.

- [3] **Section 1.5 Meaning of “development”**

Omit “accredited certifier” from paragraph (b) (i) of the note to section 1.5 (3).

Insert instead “licensed certifier”.

**[4] Sections 4.16 (12), 4.28 (2), (5), (6) and (7), 4.57 (2), 6.5 (3) (a), 7.21 (1) and (1A), 9.33 (1) and 9.35 (1) (c)**

Omit “an accredited certifier” wherever occurring. Insert instead “a licensed certifier”.

**[5] Sections 4.28 (1) and (3), (4), (8), (9), (10A) and (11), 7.21 (1) (a) and 9.33 (2)**

Omit “accredited certifier” wherever occurring. Insert instead “licensed certifier”.

**[6] Section 4.64 Regulations—Part 4**

Omit section 4.64 (5) and (6).

**[7] Section 6.1 Definitions: Part 6**

Omit the definition of *accredited certifier*.

**[8] Section 6.1, definition of “certifier”**

Omit “an accredited certifier”. Insert instead “a licensed certifier”.

**[9] Section 6.6 Requirements before building work commences** (cf previous s 81A)

Insert after section 6.6 (4):

- (4A) The regulations may, despite subsection (1):
  - (a) prescribe circumstances in which a principal certifier is to be appointed by the Licensing Secretary, and
  - (b) prescribe classes of development in which the principal certifier is to be appointed in a manner prescribed by the regulations (including, but not limited to, being appointed in accordance with a scheme prescribed by the regulations), and
  - (c) require that a council or other person must not refuse to be appointed as a principal certifier where the appointment is in accordance with a regulation made under this subsection.

**[10] Section 6.12 Requirements before subdivision work commences**

Insert after section 6.12 (4):

- (4A) The regulations may, despite subsection (1):
  - (a) prescribe circumstances in which a principal certifier is to be appointed by the Licensing Secretary, and
  - (b) prescribe classes of development in which the principal certifier is to be appointed in a manner prescribed by the regulations (including, but not limited to, being appointed in accordance with a scheme prescribed by the regulations), and
  - (c) require that a council or other person must not refuse to be appointed as a principal certifier where the appointment is in accordance with a regulation made under this subsection.

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

Omit “Building Professionals Board” from section 9.3 (1).

Insert instead “Licensing Secretary”.

**[12] Section 9.3 (1)**

Omit “section 45 of the *Building Professionals Act 2005*”.

Insert instead “section 107 of the *Building and Development Certifiers Act 2018*”.

**[13] Section 9.3 (1) and (2)**

Omit “the Board” wherever occurring. Insert instead “the Licensing Secretary”.

**[14] Section 9.3 (1) (b)**

Omit the note. Insert instead:

**Note.** Section 107 of the *Building and Development Certifiers Act 2018* enables the Licensing Secretary to investigate the work and activities of a council in its capacity as a certifier.

**[15] Section 10.13 Regulations**

Insert “, including the functions to be exercised only by a holder of an accreditation under the *Building and Development Certifiers Act 2018*” after “building safety” in section 10.13 (1) (d).

**[16] Schedule 6 Liability in respect of contaminated land**

Omit “accredited certifier” from paragraph (a1) of the definition of *planning authority* in clause 1.

Insert instead “licensed certifier”.

### **3.4 Environmental Planning and Assessment Regulation 2000**

**[1] Clause 3 Definitions**

Omit the definitions of *accredited body corporate*, *competent fire safety practitioner* and *fire safety engineer* from clause 3 (1).

Insert in alphabetical order:

*accredited practitioner* means the holder of an accreditation under the *Building and Development Certifiers Act 2018* that authorises the holder to exercise the functions of an accredited practitioner.

*accredited practitioner (fire safety)* means an accredited practitioner whose class of accreditation authorises the holder to exercise the functions of an accredited practitioner (fire safety) who is acting in respect of matters to which the accreditation applies

*fire safety engineer* means a person holding a licence under the *Building and Development Certifiers Act 2018* that authorises the person to exercise the functions of a fire safety engineer.

*licensed body corporate* has the same meaning as in the *Building and Development Certifiers Act 2018*.

**[2] Clauses 103 (f), 127 (1A), 129B (1), 129C (3) (f) and (g), 130 (2E) (a), 134 (1) (b), (b1) and (f1) (v), 135 (f), 137 (1) (a) and (2), 138 (1) (b) and (b1), 143B (1), 143C (3) (f) and (g), 147 (1) (b), (b1) and (g) (v), 155 (1) (b), (b1) and (f) (v), 160 (1) (e) and (f), 162A (4A) (a), 162B (4) (e1) and 265 (1) (e)**

Omit “an accredited certifier” wherever occurring. Insert instead “a licensed certifier”.

**[3] Clauses 103 (f) (i), 103A (a), 129C (3) (g), 134 (1) (b) and (f1) (v), 135 (f) (i), 138 (1) (b), 143C (3) (g), 147 (1) (b) and (g) (v), 155 (1) (b) and (f) (v), 160 (1) (e), 162B (4) (e1), 162C (3) (d), 264 (2) (l) and 265 (1) (e) and (g)**

Omit “accreditation number” wherever occurring. Insert instead “licence number”.

- [4] **Clauses 103 (f) (iii), 126 (1) (c), 129C (3) (f) and (g), 130 (3) and (4), 134 (1) (b1), 135 (f) (iii), 137 (2), 138 (1) (b1), 143C (3) (f) and (g), 147 (1) (b1), 155 (1) (b1), 160 (1) (f) and 265 (1) (e)**  
Omit “the accredited certifier” wherever occurring. Insert instead “the licensed certifier”.
- [5] **Clauses 126 (2), 127 (1), 128, 129C (1) and (2) and 143C (1) and (2)**  
Omit “or accredited certifier” wherever occurring. Insert instead “or licensed certifier”.
- [6] **Clause 127 (1) and (2)**  
Omit “accredited certifier’s” wherever occurring. Insert instead “licensed certifier’s”.
- [7] **Clauses 129C (3) (f) and (g), 134 (1) (a) and (b), 138 (1) (a) and (b), 143C (3) (f) and (g), 147 (1) (a) and (b), 155 (1) (a) and (b), 160 (1) (d) and (e) and 162B (4) (e) and (e1)**  
Omit “an accredited body corporate” wherever occurring.  
Insert instead “a licensed body corporate”.
- [8] **Clause 130 (2E) (a)**  
Omit “another accredited certifier”. Insert instead “another licensed certifier”.
- [9] **Clause 130 (5) (a) and (b), 136AA (2) (c) (ii), 144A (3) (a) and (b), 146B (2) (c) (ii), 164B (5) (c), 175 (a) and (b) and 178**  
Omit “a competent fire safety practitioner” wherever occurring.  
Insert instead “an accredited practitioner (fire safety)”.
- [10] **Clause 134 (1) (f1) (iv) and (v), 147 (1) (g) (iv) and (v), 155 (1) (f) (iv) and (v), 164B (5) (c) and 181 (1) (j)**  
Omit “the competent fire safety practitioner” wherever occurring.  
Insert instead “the accredited practitioner (fire safety)”.
- [11] **Clause 167A Competent fire safety practitioners**  
Omit the clause.
- [12] **Clause 246A What is the maximum fee?**  
Omit clause 264A (2) (i).
- [13] **Clause 256A Proportion of development application fees to be remitted to Secretary and Licensing Secretary**  
Omit “, (i) and (j)” from section 256A (1). Insert instead “and (j)”.
- [14] **Clause 256A (1A)**  
Omit the subclause. Insert instead:  
(1A) The amount referred to in subclause (1) is to be applied by the Secretary to the services referred to in clause 246A (2) (g), (h) and (j).
- [15] **Clause 256L Additional fee for planning reform**  
Omit clause 256L (2) (c).

### 3.5 Government Information (Public Access) Regulation 2009

#### Schedule 3 Agencies declared to be part of other agencies

Omit the matter relating to the Building Professionals Board.

### 3.6 Home Building Regulation 2014

#### [1] Clause 71A Information sharing

Omit clause 71A (a).

#### [2] Schedule 2 Checklist for owners entering into contracts for residential building work worth more than \$20,000 (on and from 1 March 2015)

Insert after item 11:

- 11A Do you understand that any licensed certifier required to certify work under the contract is to be selected by you and the contractor cannot object to your selection? Yes  No

### 3.7 Independent Commission Against Corruption Act 1988 No 35

#### Section 3 Definitions

Omit paragraph (k1) of the definition of *public official* in section 3 (1). Insert instead:

- (k1) an accreditation authority or a licensed certifier within the meaning of the *Building and Development Certifiers Act 2018*,

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

#### Schedule 2 Search warrants under other Acts

Omit “*Building Professionals Act 2005*, section 57”.

Insert in alphabetical order “*Building and Development Certifiers Act 2018*, section 96”.

### 3.9 Ombudsman Act 1974 No 68

#### Section 5 Definitions

Omit paragraph (f1) of the definition of *public authority* in section 5 (1). Insert instead:

- (f1) any accreditation authority or licensed certifier within the meaning of the *Building and Development Certifiers Act 2018*,

### 3.10 Public Finance and Audit Act 1983 No 152

#### Schedule 2 Statutory bodies

Omit “Building Professionals Board”.

### 3.11 Public Interest Disclosures Act 1994 No 92

#### Section 4A Public officials

Omit section 4A (2) (e). Insert instead:

- (e) an accreditation authority or a licensed certifier (within the meaning of the *Building and Development Certifiers Act 2018*).

### 3.12 Strata Schemes Development Act 2015 No 51

**[1] Section 4 Definitions**

Omit the definition of *accredited certifier* from section 4 (1).

Insert in alphabetical order:

*licensed certifier* means the holder of a licence under the *Building and Development Certifiers Act 2018* acting in respect of matters to which the licence applies.

**[2] Part 4, Division 3, heading**

Omit “accredited”. Insert instead “licensed”.

**[3] Sections 58–60 and 62 (3)**

Omit “An accredited certifier” wherever occurring. Insert instead “A licensed certifier”.

**[4] Section 61, 62 (5), 63 (2), 65 (4), 69 (2) and 124 (1)**

Omit “an accredited certifier” wherever occurring. Insert instead “a licensed certifier”.

**[5] Section 65 (1)**

Omit “or accredited certifier”. Insert instead “or licensed certifier”.

**[6] Part 4, Division 6 Application of Building Professionals Act 2005**

Omit the Division.

**[7] Section 69 (2)**

Omit “the accredited certifier”. Insert instead “the licensed certifier”.

**[8] Section 70 Regulations**

Omit “accredited certifiers” wherever occurring in section 70 (b), (c) and (d).

Insert instead “licensed certifiers”.

### 3.13 Strata Schemes Development Regulation 2016

**[1] Clause 17 Inspection required prior to issuing a strata certificate**

Omit “accredited certifier” from clause 17 (1). Insert instead “licensed certifier”.

**[2] Clause 18 Licensed certifier strata certificates**

Omit “An accredited certifier” from clause 18 (1). Insert instead “A licensed certifier”.

**[3] Clause 18 (2)**

Omit the subclause. Insert instead:

(2) A licensed certifier must cause a copy of each strata certificate issued by the licensed certifier and each application for a strata certificate made to the licensed certifier to be kept at the licensed certifier’s business premises, or in another secure place, at all times.

(3) Subclause (2) does not require a licensed certifier to keep copies of any certificate or application for more than 10 years after the date on which the certificate was issued, or in the case of an application where no certificate was

issued, for more than 10 years after the date on which the application was made.

**[4] Clause 19 Records to be kept by local councils in respect of strata certificates**

Omit “an accredited certifier” from paragraph (b) of the definition of *relevant strata certificate* in clause 19 (1).

Insert instead “a licensed certifier”.

**3.14 Swimming Pools Act 1992 No 49**

**[1] Section 22A Definition**

Omit the definition of *accredited certifier*. Insert instead:

*licensed certifier* means the holder of a licence under the *Building and Development Certifiers Act 2018* acting in respect of matters to which the licence applies.

**[2] Sections 22C (1) and (2), 22D (2), (3) and (4), 22E (1)**

Omit “an accredited certifier” wherever occurring. Insert instead “a licensed certifier”.

**[3] Sections 22D Certificates of compliance**

Omit “or accredited certifier” wherever occurring in section 22D (2) and (7).

Insert instead “or licensed certifier”.

**[4] Clause 22E Notices by licensed certifier if pool does not comply**

Omit “An accredited certifier” wherever occurring in section 22E (2), (4) and (5).

Insert instead “A licensed certifier”.

**[5] Sections 22E (2), (3) (d), (e) and (f) (i) and (4) (a)**

Omit “the accredited certifier” wherever occurring. Insert instead “the licensed certifier”.

**3.15 Swimming Pools Regulation 2008**

**[1] Clause 18BA Certificates of non-compliance if pool does not comply**

Omit “an accredited certifier” from clause 18BA (1). Insert instead “a licensed certifier”.

**[2] Clause 18BA (2) and (3) (c)**

Omit “or accredited certifier” wherever occurring. Insert instead “or licensed certifier”.

**[3] Clause 18E**

Omit the clause. Insert instead:

**18E Authorised persons who may access Register**

Licensed certifiers within the meaning of Division 5 of Part 2 of the Act who carry out work under that Division are prescribed as authorised persons for the purposes of section 30E of the Act.

**[4] Clause 18F Alternative qualification for accredited certifiers**

Omit the clause.