

# Building and Development Certifiers Act 2018

## No 63

[2018-63]



New South Wales

### Status Information

#### Currency of version

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#### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

#### Responsible Minister

- Minister for Better Regulation and Fair Trading
- Minister for Building

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

#### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Building and Development Certifiers Act 2018 No 63



New South Wales

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# Building and Development Certifiers Act 2018 No 63



New South Wales

An Act to provide for the registration 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.

## 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 registration 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 61.

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

**certificate of registration** means a certificate of registration issued under section 6.

**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) an 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 of a registered certifier under the certification legislation or under another 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 registration means a class of registration prescribed under section 6 (4).

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

**Department** means the department in which this Act is administered.

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

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

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

**registered certifier** means a person who is registered under this Act and whose registration is in force.

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

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

**registration** means registration granted under this Act and in force.

**regulated work**—see section 52.

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

**relevant offence** means the following offences (whether committed in this or another 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 condition of registration 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 Registration of certifiers**

### **Division 1 Preliminary**

#### **5 Certification work requires registration**

- (1) A person must not carry out certification work unless—
  - (a) the person is registered and the registration authorises the person to carry out the certification work, or
  - (b) the person is otherwise lawfully authorised to carry out the certification work.
- (2) The following persons are not required to be registered to carry out certification work—
  - (a) a local council,
  - (b) the Minister administering the *Environmental Planning and Assessment Act 1979* or a delegate of the Minister.
- (3) A person must not falsely represent that the person—
  - (a) can carry out certification work, or
  - (b) is registered or is registered in 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 Registration of persons to carry out certification works**

- (1) The Secretary may, by granting registration under this Part, authorise a person to carry out certification work.
- (2) Registration authorises only the class of certification work authorised by the class of registration granted.
- (3) Registration is subject to conditions of registration.

(4) The regulations may prescribe different classes of registration that authorise the carrying out of different classes of certification work.

(5) The Secretary may issue a certificate of registration to a person who is registered under this Part.

**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 being registered, 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 is registered in a class of registration 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 (including, 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 another 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 be registered exercises a significant influence over the person or the operation and management of the person's business,
- (h) a circumstance prescribed by the regulations.

## **Division 2 Application for registration**

### **8 Application for registration**

- (1) A person may apply to the Secretary for a grant of registration.

**Note—**

The definition of **grant** registration in section 4 (1) includes grant a renewal or restoration of registration.

- (2) An application must—

- (a) be in a form approved by the Secretary, and
- (b) include or be accompanied by information or evidence that the Secretary reasonably requires to assess the application.

**Note—**

Part 5A of the *Crimes Act 1900* contains offences relating to the making of false or misleading applications or providing false or misleading information or documents. Those offences have a maximum penalty of imprisonment for 2 years or a fine of \$22,000 (or both).

- (3) The regulations may provide for a fee to be paid for an application for the grant of registration.
- (4) The Secretary may require the fee to accompany the application.
- (5) If the Secretary considers it necessary to do so, the Secretary may require either or both of the following—
- (a) further documents or information to be provided by the applicant,
  - (b) in the case of an applicant who is an individual, that the applicant attend an interview, undertake an oral or written examination or provide a demonstration of the applicant's skills.
- (6) If an application for the grant of a renewal of registration is duly made to the Secretary before the expiry of registration, the registration is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.

## **9 Secretary may obtain information from third parties**

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

## **10 Grant or refusal of registration**

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

### **11 Duration of registration**

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

### **12 Variation of registration**

- (1) The Secretary may, at any time, by written notice to a registered certifier, vary the registration of the registered certifier (including conditions of registration imposed by the Secretary).
- (2) A variation includes the imposition of new conditions on registration, the substitution of a condition, or the removal or amendment of a condition.
- (3) The regulations may make further provision for or with respect to the variation of registration, including—
  - (a) applications for variation, and
  - (b) fees for applications for variation.

## **Division 3 Conditions of registration**

### **13 Conditions of registration**

- (1) Registration is subject to the following conditions—
  - (a) conditions prescribed by this Act or the regulations,
  - (b) conditions imposed by the Secretary.
- (2) The Secretary may impose conditions on registration—
  - (a) at the time of the grant of registration, or
  - (b) at another time by variation of the registration.
- (3) A provision of this Division that authorises a type of condition to be imposed on registration 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—

**registered certifier** includes a former registered certifier.

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

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

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

#### **16 Grounds for suspension or cancellation of registration**

Each of the following constitutes grounds for suspending or cancelling registration—

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

#### **17 Suspension of registration**

- (1) The Secretary may, by written notice to a registered certifier, suspend the registration of the registered certifier if the Secretary is satisfied that there are grounds for the suspension of the registration.
- (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 registration**

- (1) The Secretary may, by written notice to a registered certifier, cancel the registration



of the registered certifier if the Secretary is satisfied that there are grounds for the cancellation of registration.

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

## **Division 5 Miscellaneous**

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

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

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

Maximum penalty—300 penalty units.

### **21 Registration not transferable**

Registration is not transferable.

### **22 Offence of lending certificate registration**

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

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

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

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

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

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

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

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

### **25 Recovery of unpaid fees**

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

## Part 3 Requirements on certifiers

### Division 1 Insurance or other arrangement

#### 26 Registered certifiers to be indemnified

(1) A registered certifier must not—

- (a) carry out certification work, or
- (b) hold out that the registered certifier is adequately insured with respect to certification work,

unless the registered certifier is adequately insured with respect to the certification work.

Maximum penalty—100 penalty units.

(2) For the purposes of this section, a registered certifier is **adequately insured** with respect to certification work if the registered certifier—

- (a) is indemnified by insurance that complies with the regulations against any liability to which the registered certifier may become subject as a result of carrying out the certification work, or
- (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.

(3) It is a condition of registration that a registered certifier must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the registered certifier is adequately insured with respect to certification work.

(4) This section does not apply to certification work carried out on behalf of a local council (whether within or outside the local council's area) by a registered certifier in the course of the registered certifier's employment by the local council.

#### 27 Regulations under Division

Without limiting the matters for which the regulations may provide with respect to insurance or any other arrangement, the regulations may make provision for or with respect to the following—

- (a) the persons or bodies who may provide indemnity,
- (b) the period for which a registered certifier is to be indemnified,
- (c) the amount for which a registered certifier is to be indemnified,
- (d) the risks for which a registered certifier is to be indemnified,

- (e) the nature and terms of any insurance or arrangement,
- (f) the obligations on a person or body who provides indemnity,
- (g) the issue of indemnity for liability incurred by a person who was formerly a registered certifier.

## **Division 2 Conflicts of interest**

### **28 Conflicts of interest**

(1) A registered certifier must not carry out the following certification work if the registered 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 registered certifier, exempt the registered 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 registered 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 registered 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 registered certifier has a conflict of interest in certification work—

- (a) if a reasonable person would conclude that—
  - (i) the registered certifier has a private interest with respect to the certification work, and
  - (ii) the private interest comes into conflict with, and may affect, the duty of a registered certifier to act in the public interest when undertaking the certification work, or

(b) in any other circumstances prescribed by the regulations.

(2) Without limiting subsection (1) (a), a registered certifier has a private interest with respect to certification work if the registered 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 (for example a swimming pool fence) or part of a structure.

(c) a person who has provided professional services (other than services that are certification work) with respect to the construction or design of the development or building to which the certification work relates,

(d) a person who has provided professional services (other than services that are certification work) with respect to 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 local council other than on behalf of the local council—a person who is a councillor or an employee of the local council,

(f) a person who has a relationship (whether family, personal, employment, or business) with a person referred to in paragraph (a), (b), (c), (d) or (e),

(g) any person prescribed by the regulations.

### **30 Meaning of having a pecuniary interest**

(1) For the purposes of this Division, a registered 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 registered certifier, or to a person with whom the registered certifier has a relationship (whether family, personal, employment, or business).

(2) However, a registered certifier does not have a pecuniary interest if—

(a) the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the registered certifier might make with respect to the certification work, or

(b) the interest is merely the lawful payment for the carrying out of certification work.

## **Division 3 General requirements**

### **31 Requirements relating to contracts for certification work**

- (1) It is a condition of registration that a registered certifier must not carry out certification work for a person unless the work is carried out under a written contract between—
  - (a) the person and a council, if the person has appointed the council to carry out the certification work, or
  - (b) the person and the registered certifier or the employer of the registered certifier, in any other case.
- (2) A contract under this section must comply with any requirements prescribed by the regulations.
- (3) Without limiting subsection (2), 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 registered 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 who is appointed as the principal certifier with respect to development must give written notice to the person who made the appointment, of—
  - (a) the suspension or cancellation of the appointed person's registration, or
  - (b) any change in the registration (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 notice under this section must give the notice within 7 days after the person becomes aware of the matters to which the notice relates.
- (3) A local council is not required to give a notice under this section.

#### **34 Registered 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 written notice to the person's employer, of—
  - (a) the suspension or cancellation of the person's registration, or
  - (b) any change in the registration (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 notice under this section must give the notice within 7 days after the person becomes aware of the matters to which the notice relates.

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

- (1) A registered 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 registered certifier being suspended or cancelled (other than at the request of the registered certifier),
  - (b) proceedings being instituted against the registered certifier (including, if the registered certifier is a registered body corporate, proceedings being instituted against a director of the body corporate) for a relevant offence,
  - (c) the registered certifier (including, if the registered certifier is a registered body corporate, a director of the body corporate) being found guilty of a relevant offence,
  - (d) the registered certifier (including, if the registered certifier is a registered body corporate, a director of the body corporate) being investigated in another Australian jurisdiction by a government agency or a body that issues an equivalent authorisation with respect to the carrying out of work authorised to be carried out under an equivalent authorisation or a failure to comply with an equivalent authorisation,
  - (e) the registered certifier (including, if the registered certifier is a registered body

corporate, a director of the body corporate) becoming bankrupt or making a composition, arrangement or assignment for the benefit of creditors,

- (f) the registered 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 registered certifier,
- (g) if the registered certifier is a registered body corporate—the registered body corporate becoming the subject of a winding up order or having a controller or administrator appointed,
- (h) if the registered certifier is a registered body corporate—the registered body corporate having no director who is registered in a class that would authorise the director to carry out the certification work authorised to be carried out by the registration of the body corporate,
- (i) any event prescribed by the regulations.

Maximum penalty—50 penalty units.

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

Maximum penalty—10 penalty units.

### **36 Return of certificate of registration**

- (1) The Secretary may at any time by written notice require a person whose registration has been suspended, varied or cancelled to return to the Secretary within a specified time a certificate of registration 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 registered body corporate or council**

A registered director of a registered body corporate or a registered individual who carries out certification work on behalf of a registered body corporate or a local 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 local council, and



- (b) is subject to the same requirements with respect to the carrying out of the functions of a registered certifier on behalf of the local council or the registered body corporate as if he or she were carrying out the work on his or her own behalf.

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

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

Each registered director of a registered 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 registered individual whose registration 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 registered individual who is carrying out the certification work.

Maximum penalty—300 penalty units.

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

Each registered director of a registered body corporate must report to the Secretary conduct by any of the following persons as soon as practicable after becoming aware of the conduct if the director suspects, or should reasonably suspect, that the conduct is a ground for taking disciplinary action against the person under Part 4—

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

Maximum penalty—300 penalty units.

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

- (1) A registered body corporate must ensure that any certification work that is carried out on behalf of the body corporate is carried out by a registered individual whose registration 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 local council that has engaged the body corporate to carry out that work on its behalf.

#### **41 Registered body corporate with insufficient registered directors**

- (1) A registered 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 registered 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 registered individual whose registration authorises the individual to carry out that work.

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

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

- (1) A registered certifier must not, on an understanding that the registered 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 registered certifier's own behalf or on behalf of any other person.

- (2) A person must not, on an understanding that a registered 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 registered 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 registered 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 registered certifier unless the work is certification work.

Maximum penalty—300 penalty units.

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

- (1) A registered certifier must not issue any of the following certificates if the registered certifier knows 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 certificate 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 registered certifier on any one or more of the following grounds—

- (a) the registered certifier has engaged in conduct in connection with the carrying out of certification work that has fallen short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent registered certifier,
- (b) the registered certifier has contravened the certification legislation, whether or not the registered certifier is prosecuted or convicted for the contravention,
- (c) the registered 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 registered 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) registration or an equivalent authorisation,
  - (iii) fraud or dishonesty,
- (d) the registered certifier has failed to comply with a statutory or other duty, or a

contractual obligation, imposed on the registered 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 registered certifier has carried out certification work in a partial manner or in a manner that is not in the public interest,
- (f) the registered certifier has wilfully disregarded matters to which the registered certifier is required to have regard in the carrying out of certification work,
- (g) the registered certifier has failed to comply with a condition of the registration,
- (h) the registered certifier has breached an undertaking given by the registered certifier,
- (i) the registered certifier has failed to comply with an order of the Secretary or the Tribunal,
- (j) the registered certifier has failed to comply with a direction or requirement under Part 7,
- (k) the registered certifier has wilfully misled or obstructed the Secretary or an authorised officer in the exercise of any function under this Act,
- (l) the registered certifier has engaged in improper or unethical conduct that indicates that the registered certifier is not a fit and proper person to 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 registered 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 local council (of this or any other Australian jurisdiction) or a body corporate that is registered or holds 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 registered certifier.
- (2) The Secretary may serve a written notice on the registered certifier, inviting the certifier to show cause why the certifier should not be dealt with under this Part.
- (3) The notice must state the grounds on which the registered certifier is required to show

cause and must specify the period, being at least 14 days, during which it must be done.

- (4) A registered 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 are made, if any, and the evidence adduced, if any, by or on behalf of the registered 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.

#### **47A Power to suspend registration when notice to show cause served**

- (1) The Secretary may, by written notice to a registered certifier, suspend the registration of the registered certifier in accordance with Part 2 pending a determination by the Secretary of whether to take disciplinary action under this Act against the holder if—
  - (a) a notice to show cause has been served on the registered certifier under section 47, and
  - (b) in the Secretary's opinion, there are reasonable grounds to believe that—
    - (i) the registered certifier has engaged in conduct that constitutes grounds for suspension of the registration, and
    - (ii) it is likely the registered certifier will continue to engage in the conduct, and
    - (iii) there is a danger a person or persons may suffer significant harm, or significant loss or damage, as a result of the conduct unless action is taken urgently.
- (2) The Secretary may suspend a registration under this section only if satisfied that the grounds for disciplinary action specified in the notice to show cause would, if established, justify the suspension or cancellation of the registration.
- (3) A suspension must not be imposed for a period of more than 60 days after the notice to show cause is served, but may, if the Secretary remains of the opinion referred to in subsection (1)(b), be extended, by written notice, for further periods of 60 days.

- (4) The period of initial suspension must be specified in the notice imposing the suspension.
- (5) The Secretary is not required to give a person an opportunity to be heard before taking action against the person under this section.
- (6) The Secretary may revoke a suspension under this section at any time by written notice to the suspended person.
- (7) This section does not limit or otherwise affect another power to suspend a registration or licence under the *Fair Trading Act 1987*, section 79A.

#### **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 registered certifier has been established, do any one or more of the following—
  - (a) determine to take no further action against the registered certifier,
  - (b) caution or reprimand the registered certifier,
  - (c) make a determination requiring the registered certifier to pay to the Secretary, as a penalty, an amount not exceeding \$220,000 (in the case of a body corporate) or \$110,000 (in the case of an individual) within a specified time,
  - (d) impose a condition on the registration of the registered certifier, including a condition requiring the registered 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 registration of the registered certifier in accordance with Part 2,
  - (f) disqualify the registered certifier, either temporarily or permanently, from being registered or being registered in a particular class.
- (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 Civil and Administrative Tribunal**

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

- (a) a decision under section 47A to suspend the registration of a registered certifier pending a determination of whether to take disciplinary action,
- (b) a decision to take disciplinary action under this part.

#### **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) registration held by the person required to pay is taken to be suspended until that amount is paid to the Secretary, and
  - (b) that amount may be recovered by the Secretary as a debt in 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 that case, that subsection does not have effect with respect to the person during the extension of time.
- (3) The Secretary's failure to enter into an agreement under this section cannot be reviewed by the Tribunal in an application for an administrative review made under this Act.

#### **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 registered 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 the 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 registered certifiers to carry out regulated work**

The regulations may authorise a registered certifier who is registered in a particular class to carry out regulated work or specified regulated work and in those circumstances, the



regulated work is taken to be certification work when carried out by a registered 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 110 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,
  - (ii) to investigate possible failures by those persons to comply with those requirements,
  - (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 must 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—
- (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, a reference to 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 an approval to exercise the functions of an accreditation authority—
- (a) if the application for an 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 written notice 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) An 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 written notice 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 by 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 of 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 those of its functions that 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 of 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) that 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 the records that 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 continues 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 authority 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 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 written notice 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 written notice 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 any conditions that 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 written notice given to the 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 holder of accreditation 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 condition 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

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 Civil and Administrative Tribunal**

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

- (a) a decision of the Secretary to refuse 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 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) investigating, monitoring and enforcing compliance with the requirements imposed by or under this Act,
  - (b) obtaining information or records for purposes connected with the administration of this Act,
  - (c) enforcing, administering or executing this Act.
- (2) In this Part, a reference to an **authorised purpose** is a reference to 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 an authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

## **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 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 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 written notice given to a person, direct the person to furnish to the officer information or records (or both) as the authorised officer 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 written notice, direct a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (3) 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 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 any assistants that 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 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 written notice 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, including 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 registrations and approvals**

- (1) The Secretary is to maintain a register of the particulars of registrations 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 registration or approval—

- (a) details of the registration or approval including details of the holder of the registration 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 any warning notices published under this Part,
  - (g) details of any conditions on the registration or approval,
  - (h) details of any cancellation or suspension of the registration 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 registration 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 registered certifier, former registered 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 2 business days to make representations to the Secretary about publication of the warning notice, unless—
  - (a) the Secretary, after making reasonable efforts to do so, is not able to contact the person promptly and advise the person of that opportunity, or
  - (b) the person refuses to make any representations.
- (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 registered certifier as to the manner in which the registered certifier will carry out certification work or conduct the registered certifier's business as a registered certifier (or both).

**Note—**

Part 4 provides that a breach of an undertaking is grounds for taking disciplinary action against a registered certifier.

#### **105 Applying for injunctions**

- (1) On the application of the Secretary, the Land and Environment 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) a registered certifier, former registered certifier, accreditation authority or former

accreditation authority, or

(b) the carrying out of certification work or the exercise of a 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 registered 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 local council in its capacity as a certifier.
- (2) The Secretary may make a decision to undertake an investigation under this section on the Secretary's own motion or following a complaint relating to the local council concerned in its capacity as a certifier.
- (3) The Secretary must prepare a report of the results of any investigation and send a copy of the report to the Chief Executive of the Office of Local Government and to the local council.
- (4) A report furnished to the local council under this section must be presented at the next meeting of the local council after the report is received.
- (5) Within 40 days after it receives a report under this section, a local 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 the report.
- (7) If the Secretary revises the report, the Secretary must send a copy of the revised report to the Chief Executive of the Office of Local Government and to the local council.
- (8) The Secretary is to make a copy of the report in the final form publicly available.

- (9) Nothing in this section prevents the Secretary from taking disciplinary action under Part 4 against a registered 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—

**government sector agency** means—

- (a) a Public Service agency or other government sector agency within the meaning of the *Government Sector Employment Act 2013*, or
- (b) a NSW Government agency, or

**Note—**

See the *Interpretation Act 1987*, section 13A.

- (c) an entity constituted by or under an Act or exercising public functions, such as a State owned corporation, being an entity prescribed by the regulations for this

definition.

**relevant agency** means—

- (a) a local 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
- (c1) a government sector agency, or
- (d) any other person or body prescribed by the regulations.

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

- (a) registration, an approval or an equivalent authorisation, or
- (b) the regulation of certification work, building 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 building work or an equivalent authorisation, or
- (d) any other function prescribed by the regulations.

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

- (1) The Secretary may direct a person that issues an insurance policy to a registered certifier with respect to certification work (a **certifier policy**), to provide to the Secretary any of the following information about certifier policies or particular classes of certifier policies issued by the person as may be specified by the Secretary—
  - (a) the terms of the policies,
  - (b) the premiums payable,
  - (c) the number of policies issued,
  - (d) the registered certifiers to whom policies have been issued,
  - (e) the number and value of claims made under the policies,
  - (f) any other information prescribed by the regulations.
- (2) The Secretary may direct that the information under subsection (1) be provided in the time specified in the direction.
- (3) A direction under this section must be given in writing.

- (4) A person must not fail to comply with a direction given to the person under this section.

Maximum penalty—500 penalty units.

### **110 Secretary may exercise functions of an accreditation authority**

- (1) The Secretary may exercise the functions of an accreditation authority.
- (2) Before exercising any accreditation authority 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**

### **111 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 those 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 the person, or another 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.

### **112 Responsibilities of councils carrying out certain prescribed certification work**

- (1) A local council must ensure that any certification work of a class prescribed by the regulations that is carried out on behalf of the local council is carried out by a registered individual whose registration authorises the individual to carry out that certification work.

Maximum penalty—1,000 penalty units.

- (2) A local council is taken to satisfy subsection (1) if it engages a registered body corporate to carry out the certification work.
- (3) The Secretary may, with the approval of the Minister, exempt a local council by written notice given to the local 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 written notice given to the local council and must be revoked if the relevant approval of the Minister is no longer in force.

### **113 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.

### **114 Personal liability**

- (1) A matter or thing done or omitted to be done by the following persons does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act, subject the person to any action, liability, claim or demand—



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

(2) However, any such liability attaches instead to the Crown.

### **115 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.

### **116 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.

### **117 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 registered certifier,
  - (b) that registration held by a specified person was or was not, at a specified time or during a specified period, subject to a specified condition or was or was not suspended,
  - (c) that a specified person was or was not, at a specified time or during a specified period, an 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.

### **118 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 any of the following designated by the Secretary as a penalty notice officer for the purposes of this section—
  - (a) a member of staff of the Department,
  - (b) a member of staff of a local council,
  - (c) a person prescribed by the regulations.

### **119 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.

### **120 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 registration or approval, including the approval 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 registered certifiers and local councils with respect to—
    - (i) certification work, including information about individuals carrying out certification work on behalf of the registered certifier or local council, or
    - (ii) building work and matters related to building work,
  - (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,
  - (f) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under this Act or the regulations.
- (2A) Without limiting subsection (2)(a), the regulations may authorise the approval of training and persons under that paragraph to be done by order of the Secretary published in the Gazette.
- (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 registrations or approvals or classes of registration or approval, 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.

## **121 (Repealed)**

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

## **Part 1 General**

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the 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 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 registration in 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 is subject are, subject to the regulations, taken to be conditions imposed by the Secretary under this Act and

the conditions 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 registration in 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) Clause 3 applies to the existing certificate of accreditation as in force following the appeal or 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 to which, 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 registered certifier with respect to certification work if the registered certifier (or the registered 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.

## **13 Registered body corporate with insufficient registered directors**

- (1) The Secretary may grant an exemption to a registered 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 a shorter period that the Secretary may determine.
- (3) More than 1 exemption may be granted to a registered 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 the *Environmental Planning and Assessment Regulation 2021* or the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* that correspond to the provisions of the *Environmental Planning and Assessment Regulation 2000* 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 the accreditation until 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 2021*.

#### **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 a 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	registered body corporate
accredited certifier	registered 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 registration in the corresponding class (as determined under clause 3).

### **Part 3 Provisions consequent on enactment of *Better Regulation and Customer Service Legislation Amendment (Bushfire Relief) Act 2020***

#### **17 Definitions**

In this Part—

***relevant period*** means the period—

- (a) starting on 18 July 2019, and
- (b) ending immediately before the commencement of this Act.

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

**repealed regulation** means a regulation in force under the repealed Act.

**18 Power to waive, reduce, postpone or refund fees applies to events before commencement**

- (1) To remove any doubt, the power of the Secretary to waive, reduce, postpone or refund, in whole or part, a fee payable or paid under this Act or the regulations applies in relation to—
  - (a) a person who was suffering financial hardship—
    - (i) during the relevant period, or
    - (ii) because of events that happened during the relevant period, or
  - (b) special circumstances—
    - (i) that existed during the relevant period, or
    - (ii) that exist because of events that happened during the relevant period.
- (2) Also to remove any doubt, the power to waive, reduce, postpone or refund fees under subclause (1) extends to a fee payable or paid under the repealed Act or repealed regulations.

**Schedules 2, 3 (Repealed)**