

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

[2020-9]



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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New South Wales

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



New South Wales

An Act with respect to compliance with, and the enforcement of, certain building and construction legislation and codes; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

### 2 Commencement

This Act commences on 1 September 2020.

### 3 Definitions

(1) In this Act—

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

- (a) approved plans and specifications issued with respect to a construction certificate or complying development certificate for the building work under the *Environmental Planning and Assessment Act 1979*, together with any variations to those plans and specifications for the purposes of those certificates effected or approved in accordance with that Act,
- (b) regulated designs under the *Design and Building Practitioners Act 2020*,
- (c) any other plans prescribed by the regulations for the purposes of this definition.

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

**Building Commissioner** means the Building Commissioner referred to in section 61.

**building element** has the same meaning as in the *Design and Building Practitioners Act 2020*, and includes any element of a building that is prescribed by the regulations

for the purposes of this definition.

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

**building work**—see section 5.

**building work rectification order**—see section 33.

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

**completion**, in relation to building work, means the date that the occupation certificate for the building or part of a building to which the building work relates was issued.

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

**developer**—see section 4.

**expected completion amendment notice**—see section 8.

**expected completion notice**—see section 7.

**expected date**—see section 7(2).

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

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

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

**prohibition order**—see section 9.

**rectification bond**—see section 28.

**residential apartment building** means a class 2 building within the meaning of the *Building Code of Australia*, and includes any building containing a part that is classified as a class 2 component, but does not include any building or part of a building excluded from this definition by the regulations.

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

**serious defect**, in relation to a building, means—

- (a) a defect in a building element that is attributable to a failure to comply with the performance requirements of the *Building Code of Australia*, the relevant

- Australian Standards or the relevant approved plans, or
- (b) a defect in a building product or building element that—
- (i) is attributable to defective design, defective or faulty workmanship or defective materials, and
  - (ii) causes or is likely to cause—
    - (A) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
    - (B) the destruction of the building or any part of the building, or
    - (C) a threat of collapse of the building or any part of the building, or
- (c) a defect of a kind that is prescribed by the regulations as a serious defect, or
- (d) the use of a building product (within the meaning of the [Building Products \(Safety\) Act 2017](#)) in contravention of that Act.

**stop work order**—see section 29.

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

**strata plan** has the same meaning as in the [Strata Schemes Development Act 2015](#).

**strata scheme** has the same meaning as in the [Strata Schemes Development Act 2015](#).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

#### **4 Meaning of “developer”**

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

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



- (c) the principal contractor for the building work within the meaning of the *Environmental Planning and Assessment Act 1979*,
- (d) in relation to building work for a strata scheme—the developer of the strata scheme within the meaning of the *Strata Schemes Management Act 2015*,
- (e) any other person prescribed by the regulations for the purposes of this definition.

## **5 Meaning of “building work”**

- (1) For the purposes of this Act, **building work**—
  - (a) means any physical activity involved in the erection of a building, and
  - (b) includes work involved in, or involved in coordinating or supervising work involved in, one or more of the following—
    - (i) the construction of a building or part of a building,
    - (ii) the making of alterations or additions to a building or part of a building,
    - (iii) the repair, renovation or protective treatment of a building or part of a building.
- (2) The regulations may—
  - (a) prescribe additional work that is building work for the purposes of this Act, and
  - (b) exclude work from being building work for the purposes of this Act.

## **6 Act applies only to residential apartment building work**

- (1) The exercise of any function under this Act applies only to building work in respect of a residential apartment building that—
  - (a) is or was authorised to commence in accordance with a construction certificate or complying development certificate issued under the *Environmental Planning and Assessment Act 1979*, or is required to be authorised by a construction certificate or complying development certificate, and
  - (b) has not been completed or has been completed within the period of 10 years before the exercise of that function.
- (2) The regulations may provide that a specified provision, or specified provisions, of this Act extend to other classes of buildings (within the meaning of the *Building Code of Australia*).

## **6A Levy may be imposed by Secretary**

- (1) The Secretary may, in accordance with the regulations, impose a levy on a developer

in relation to building work.

- (2) The levy is to be paid into the Fund.
- (3) The regulations may deal with the imposition of levies, including in relation to the following—
  - (a) the determination of rate of levies, including the charging of interest on unpaid levies,
  - (b) providing for the period within which a levy is payable,
  - (c) describing the grounds on which any particular type of levy may be imposed,
  - (d) the developers or class of developers on which a levy may be imposed,
  - (e) the recovery of levies,
  - (f) the waiver, reduction, postponement or refund of a levy by the Secretary.
- (4) A levy under this section may be recovered by the Secretary as a debt due to the Crown in a court of competent jurisdiction and must be paid into the Fund.
- (5) In this section—

**Fund** means the Home Building Administration Fund, established under the [Home Building Act 1989](#), Part 7.

## Part 2 Completion of residential apartment building work

### 7 Notification to Secretary of intended completion of building work

- (1) A developer in relation to building work must not cause or permit an application to be made for an occupation certificate for any part of a residential apartment building for which the building work is being or was carried out unless, at least 6 months, but not more than 12 months, before that application is made, the developer notified the Secretary, or caused the Secretary to be notified, of that proposed application (an **expected completion notice**).
- (2) The expected completion notice must set out the date that the developer expects to make the application for the occupation certificate for the building or part of the building (the **expected date**).
- (3) Despite subsection (1), if, at the commencement of building work for a new building, the developer expects to make the application for the occupation certificate for the building or part of the building within less than 6 months, the developer must give the Secretary, or cause the Secretary to be given, an expected completion notice within 30 days of the commencement of that building work.

- (4) The expected completion notice is to be given in a manner and form approved by the Secretary.
- (5) The regulations may provide that the expected completion notice may be given to another person in the manner and form prescribed as an alternative to being given to the Secretary.
- (6) If there is more than 1 developer in relation to a residential apartment building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the required expected completion notice to the Secretary (or other person prescribed under subsection (5)).

Maximum penalty—

- (a) for a body corporate—3,000 penalty units and in addition, in the case of a continuing offence, 300 penalty units for each day the offence continues, or
- (b) otherwise—1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues.

## **8 Notification of change to expected date**

- (1) If a developer becomes aware that circumstances have changed so that the developer expects an application for the occupation certificate for a residential apartment building or part of a residential apartment building to be made on a different date than the expected date specified in an expected completion notice, the developer must notify the Secretary of the new expected date (an **expected completion amendment notice**).
- (2) The expected completion amendment notice must be given—
  - (a) within 7 days of the developer becoming aware of the change in circumstances, and
  - (b) in a manner and form approved by the Secretary.
- (3) The regulations may provide that the expected completion amendment notice may be given to another person in the manner and form prescribed as an alternative to being given to the Secretary.
- (4) This section does not apply if the new expected date is within 60 days of the expected date specified in the expected completion notice given to the Secretary in relation to the building work.
- (5) A developer may give more than 1 expected completion amendment notice in accordance with this section and, for the purposes of any subsequent notice, a reference in this section to the expected date specified in an expected completion notice is to be taken to be a reference to the new expected date specified in the most

recent expected completion amendment notice given by the developer.

- (6) If there is more than 1 developer in relation to a residential apartment building, it is a defence to a prosecution for an offence under this section if the defendant proves that another developer gave the required expected completion amendment notice to the Secretary (or other person prescribed under subsection (3)).

Maximum penalty—

- (a) for a body corporate—500 penalty units and in addition, in the case of a continuing offence, 50 penalty units for each day the offence continues, or
- (b) otherwise—100 penalty units and in addition, in the case of a continuing offence, 10 penalty units for each day the offence continues.

## **9 Occupation certificates and strata plan registrations not to occur in certain circumstances**

- (1) The Secretary may make an order prohibiting the issue of an occupation certificate in relation to a residential apartment building and, if relevant, the registration of a strata plan for a strata scheme in relation to a residential apartment building (a **prohibition order**) if any one or more of the following apply—
- (a) the expected completion notice required to be given to the Secretary under this Part was not given or was given less than 6 months before the application for the occupation certificate was made (unless the expected completion notice was duly given under section 7(3)),
- (b) an expected completion amendment notice of a new expected date required to be given to the Secretary under this Part was not given or was given less than 6 months before the application for the occupation certificate was made,
- (c) the Secretary is satisfied that a serious defect in the building exists,
- (c1) a rectification bond required under the terms of an undertaking given by the developer relating to the residential apartment building has not been provided to the Secretary,
- (d) any building bond required under section 207 of the *Strata Schemes Management Act 2015* in relation to the building has not been given to the Secretary,
- (e) a developer, in relation to building work of the residential apartment building, fails to comply with a direction of an authorised officer under section 17 or 18,
- (f) other circumstances prescribed by the regulations for the purposes of this section exist.
- (2) Without limiting subsection (1)(c), the Secretary may be satisfied that a serious defect

in a building exists if—

- (a) a building work rectification order has been made in relation to the building and has not been revoked, or
  - (b) a development control order under the *Environmental Planning and Assessment Act 1979* relating to defects in building work has been made in relation to the building and has not been revoked.
- (3) If the Secretary makes a prohibition order, the Secretary must give the following persons notice of the making of the order—
- (a) the relevant local council,
  - (b) if the local council is not the certifier in relation to the building work—the principal certifier,
  - (c) a developer in relation to the building work,
  - (d) if the owner of the land concerned is not the developer—the owner of the land concerned,
  - (e) the Registrar-General,
  - (f) any other person prescribed by the regulations.
- (4) A prohibition order remains in force until one of the following occurs—
- (a) the order is revoked by the Secretary,
  - (b) the term (if any) of the order ends.
- (5) The Secretary is not required to give notice to a person under subsection (3) if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person to whom notice would otherwise be required to be given.
- (6) An occupation certificate issued in contravention of a prohibition order is invalid.
- (7) A principal certifier (other than a council) must not issue an occupation certificate in contravention of a prohibition order.

Maximum penalty (subsection (7))—1,000 penalty units (in the case of a body corporate) or 200 penalty units (in any other case).

## **10 Appeals against prohibition orders**

- (1) A developer in relation to a residential apartment building to which a prohibition order applies may appeal against the order to the Land and Environment Court within 30 days of notice of the order being given unless the Court grants leave for it to be made after that time.

- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the order appealed against.

## Part 3 Investigations

### Division 1 Preliminary

#### 11 Definitions

In this Part—

**authorised officer** means—

- (a) the Building Commissioner, and
- (b) any person appointed under Division 2.

**motor vehicle** has the same meaning as in the [Road Transport Act 2013](#).

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

**premises** includes—

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

**records** includes plans, specifications, maps, reports, books and other documents (whether in writing, 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.

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

- (1) An authorised officer may exercise the functions conferred by this Part for 1 or more of the following purposes—
- (a) investigating, monitoring and enforcing compliance with the following in carrying out building work—
    - (i) this Act and the regulations,

- (ii) the performance requirements of the *Building Code of Australia*,
  - (iii) the relevant Australian Standards,
  - (iv) the relevant approved plans,
- (b) investigating whether buildings have serious defects,
- (c) obtaining information or records for purposes connected with the administration of this Act,
- (d) enforcing, administering or executing this Act.
- (2) In this Part, a reference to an **authorised purpose** is a reference to a purpose referred to in subsection (1).

## **Division 2 Authorised officers**

### **13 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 who is a council investigation officer within the meaning of Division 9.2 of the *Environmental Planning and Assessment Act 1979*,
- (d) a person belonging to a class of persons prescribed by the regulations.

### **14 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.

### **15 Identification**

- (1) Every authorised officer is to be provided with an identification card as an authorised officer by the Secretary.
- (2) The Secretary may decide not to issue an identification card to an investigator within the meaning of the *Fair Trading Act 1987* who is appointed as an authorised officer.
- (3) In that case, the person's certificate of identification as an investigator is taken to be

the person's identification card as an authorised officer.

- (4) An authorised officer must, if requested to do so when exercising a function under this Act by a person affected by the exercise of the function, produce to the person the officer's identification card as an authorised officer.

## **Division 3 Information gathering powers**

### **16 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.

### **17 Power of authorised officers to require information and records**

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

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

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



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

## **19 Recording of evidence**

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

## **Division 4 Entry to premises**

### **20 Power of authorised officers to enter premises**

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

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

- (1) This Division does not empower an authorised officer to enter a part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant.
- (2) This section does not limit entry onto common property under a strata scheme (within the meaning of the [Strata Schemes Development Act 2015](#)) or association property under a scheme (within the meaning of the [Community Land Management Act 2021](#)).

### **22 Search warrants**

- (1) An authorised officer under this Act may apply to an issuing officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that—
  - (a) a requirement imposed by or under this Act is being or has been contravened at

any premises, or

(b) there is, in or on any premises, a matter or thing that is connected with an offence under this Act or the regulations.

(2) An issuing officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant—

(a) to enter the premises, and

(b) to exercise any function of an authorised officer under this Part.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer—

(a) may accompany an authorised officer executing a search warrant issued under this section, and

(b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.

(5) In this section—

**issuing officer** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

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

(1) An authorised officer may direct the owner or occupier of premises, or a person in or on premises (other than a public place), to provide any reasonable assistance that the authorised officer specifies for the purposes of exercising the authorised officer's functions under this Division with respect to those premises.

(2) The direction may be given orally to the person or by written notice served on the person.

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

(1) An authorised officer may, at premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for an authorised purpose, including (but not limited to) the things specified in subsection (2).

(2) An authorised officer may do any or all of the following—

(a) examine and inspect any thing,

- (b) take and remove samples of a thing,
  - (c) make examinations, inquiries, measurements or tests that the authorised officer considers necessary,
  - (d) take photographs or other recordings that the authorised officer considers necessary,
  - (e) direct a person to produce records for inspection,
  - (f) examine and inspect any records,
  - (g) copy any records,
  - (h) seize a thing that the authorised officer has reasonable grounds for believing is connected with—
    - (i) an offence against this Act or the regulations, or
    - (ii) a serious defect in a building,
  - (i) move a seized thing from the place where it is seized or leave it at the place where it is seized and take reasonable action to restrict access to the thing,
  - (j) direct the occupier of the premises where a thing is seized to retain it at those premises or at another place under the control of the occupier,
  - (k) open up, cut open or demolish building work, if the authorised officer has reasonable grounds for believing that it is necessary to do so because it is connected with—
    - (i) an offence against this Act or the regulations, or
    - (ii) a serious defect in a building,
  - (l) anything else authorised by or under this Act.
- (3) An authorised officer may also direct a developer in relation to building work being carried out on the premises to do the following—
- (a) carry out building work at a specified time or in a specified manner to enable the authorised officer to exercise a further function under this Part for an authorised purpose,
  - (b) carry out specified building work only after giving the authorised officer notice in advance (as specified in the direction).
- (4) The power to examine and inspect a thing includes a power to use reasonable force to break open or otherwise access a thing, including a floor or wall containing the thing.

- (5) The power to test a thing includes a power to destructively test a thing or a sample of a thing, if that is a reasonable test in the circumstances.
- (6) The power to seize a thing connected with an offence includes a power to seize—
  - (a) a thing with respect to which the offence has been committed, and
  - (b) a thing that will afford evidence of the commission of the offence, and
  - (c) a thing that was used for the purpose of committing the offence.
- (7) The power to do a thing under this section includes a power to arrange for that thing to be done (whether at the premises or elsewhere).
- (8) A power to do something under this section with respect to a thing may be exercised without the consent of the owner of the thing.
- (9) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

## **Division 5 Miscellaneous**

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

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

### **26 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).

### **27 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—

- (a) for a body corporate—10,000 penalty units and in addition, in the case of a continuing offence, 1,000 penalty units for each day the offence continues, or
- (b) otherwise—2,000 penalty units and in addition, in the case of a continuing offence, 200 penalty units for each day the offence continues.

## Part 4 Remedial actions

### 28 Undertakings

- (1) The Secretary may accept a written undertaking from a developer regarding the carrying out of building work.
- (2) Without limiting subsection (1), the Secretary may accept a written undertaking given by the developer that the developer will do one or more of the following—
  - (a) refrain from conduct that constitutes a contravention of this Act or the regulations,
  - (b) take action to prevent or remedy a contravention of this Act or the regulations,
  - (c) provide the Secretary with a rectification bond that may be claimed or realised by the Secretary to meet the costs of eliminating, minimising or remediating a serious defect or a potential serious defect in a residential apartment building.
- (2A) If an undertaking requires a developer to provide a rectification bond, the undertaking must include—
  - (a) the circumstances in which the rectification bond may be claimed or realised, and
  - (b) the procedure for claiming or realising the rectification bond.
- (2B) A person may carry out work without consent or approval under the *Environmental Planning and Assessment Act 1979* if the work is carried out—
  - (a) to eliminate, minimise or remediate a serious defect, or a potential serious defect, in a residential apartment building, and
  - (b) in compliance with a requirement of an undertaking accepted by the Secretary.
- (3) A developer who contravenes an undertaking accepted by the Secretary commits an offence.

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

- (4) In this section—

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

## 29 Stop work orders

- (1) The Secretary may, by order in writing given to a developer in relation to building work (a **stop work order**), order the developer to ensure that the building work stops if the Secretary is of the opinion that the building work is, or is likely to be, carried out in a manner that could result in significant harm or loss to the public or occupiers or potential occupiers of the building to which the work relates or significant damage to property.
- (2) A stop work order takes effect on the day it is given to the developer or on a later day specified in the order.
- (3) A stop work order may be unconditional or subject to conditions.
- (4) The Secretary may, by written notice given to a developer who is subject to a stop work order, impose a condition on the order or revoke or vary a condition of the order.
- (5) A stop work order remains in force until one of the following occurs—
  - (a) the order is revoked by the Secretary,
  - (b) the term (if any) of the order ends,
  - (c) the period of 12 months from the day on which the order takes effect ends.
- (6) If the Secretary makes a stop work order, the Secretary must give the following persons notice of the making of the order—
  - (a) the relevant local council,
  - (b) if the local council is not the certifier in relation to the building work—the principal certifier.
- (7) The Secretary is not required to give notice to a person under subsection (6) if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person to whom notice would otherwise be required to be given.
- (8) A person must not fail to comply with an order in force under this section.

Maximum penalty—3,000 penalty units and in addition, in the case of a continuing offence, 300 penalty units for each day the offence continues (in the case of a body corporate) and 1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues (in any other case).

## 30 Appeals against stop work orders

- (1) A person given a stop work order may appeal against the order to the Land and Environment Court within 30 days of the notice of the order being given unless the Court grants leave for it to be made after that time.

- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the order appealed against.

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

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

### **32 Complaints and investigations of practitioners**

- (1) The Secretary may, whether or not the Secretary has received a complaint, investigate the following—
  - (a) developers and former developers of residential apartment buildings,
  - (b) residential apartment buildings,
  - (c) the carrying out of building work (including, without limitation, building work carried out by any contractor or subcontractor of a developer),
  - (d) other matters that may constitute a breach of this Act or the regulations or an order under this Act.
- (2) The Secretary may require that a complaint made to the Secretary about a matter referred to in subsection (1) be in a form approved by the Secretary.
- (3) However, the Secretary is not required to investigate a matter even if a complaint is made in the approved form.
- (4) This section does not limit other powers that the Secretary may have under this Act or another Act or law to receive a complaint or investigate a matter.

## Part 5 Rectification of serious defects

### Division 1 Building work rectification orders

#### 33 Power to order rectification

- (1) The Secretary may give an order under this Part to a developer in relation to building work (a **building work rectification order**) if the Secretary has a reasonable belief that—
  - (a) the building work was or is being carried out in a way that could result in a serious defect in a residential apartment building, or
  - (b) a residential apartment building has a serious defect.
- (2) A building work rectification order may require the developer in relation to building work to do one or more of the following to eliminate, minimise or remediate the serious defect—
  - (a) ensure specified building work is carried out or not carried out,
  - (b) take other action specified in the order.
- (3) A building work rectification order—
  - (a) is to be made by notice in writing given to the developer, and
  - (b) may be unconditional or subject to conditions.
- (4) Without limiting subsection (3)(b), a building work rectification order may be subject to a condition requiring notification to the Secretary of compliance with the order.
- (5) The Secretary may, by written notice given to a developer who is subject to a building work rectification order, impose a condition on the order or revoke or vary a condition of the order.
- (6) A building work rectification order remains in force until one of the following occurs—
  - (a) the order is revoked by the Secretary,
  - (b) the term (if any) of the order ends.
- (7) A person is not required to obtain consent or approval under the [Environmental Planning and Assessment Act 1979](#) to carry out work in compliance with a requirement of a building work rectification order.
- (8) A building work rectification order cannot be given in respect of the following land unless the written consent of the Minister has first been obtained—
  - (a) vacant Crown land within the meaning of the [Crown Land Management Act 2016](#),



(b) Crown managed land within the meaning of the *Crown Land Management Act 2016*.

(9) A person must not fail to comply with an order in force under this section.

Maximum penalty—3,000 penalty units and in addition, in the case of a continuing offence, 300 penalty units for each day the offence continues (in the case of a body corporate) and 1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues (in any other case).

### **34 Order may specify standards and building work that will satisfy those standards**

(1) The Secretary may give a building work rectification order that does the following instead of specifying in the order building work the developer to whom the order is given must do or refrain from doing—

(a) specifies the standard that the building work concerned is required to meet,

(b) indicates the nature of the building work that, if carried out, would satisfy that standard.

(1A) If the building work rectification order specifies the standard that building work is required to meet, the order may require the developer to—

(a) submit particulars of the work the person intends to carry out to meet the standard, or

(b) engage a suitably qualified person or specialist to prepare a report on how the standard will be met.

(2) An order under this section forms part of the building work rectification order to which it relates.

### **35 Giving and taking effect of orders**

(1) A building work rectification order is given by serving a copy of the order on the developer to whom it is addressed and takes effect from the time of service or a later time specified in the order.

(2) The copy of the building work rectification order is to be accompanied by a notice stating—

(a) that the developer to whom the order is addressed may appeal to the Land and Environment Court against the order, and

(b) the period within which an appeal may be made.

#### **Note—**

Under section 49(2), an appeal must be made within 30 days after the building work rectification order is given to the developer unless the Land and Environment Court grants leave for it to be made after

that time.

### **36 Reasons for orders to be given**

- (1) The Secretary must give the developer to whom a building work rectification order is addressed the reasons for the order.
- (2) The reasons may be given in the building work rectification order or in a separate instrument.
- (3) The reasons must be given when the building work rectification order is given, except in an emergency. In an emergency, the reasons may be given within 7 days of giving the order.

### **37 Notice to be given to other persons and bodies of order**

- (1) The Secretary must give the following persons notice of the making of a building work rectification order—
  - (a) the relevant local council,
  - (b) if the local council is not the certifier in relation to the building work—the principal certifier,
  - (c) if the owner of the land concerned is not the developer to whom the proposed order is to be directed—the owner of the land concerned,
  - (d) the Registrar-General,
  - (e) if the order relates to a strata building—the relevant owners corporation,
  - (f) any other person prescribed by the regulations.
- (2) If an owners corporation is given notice of the making of a building work rectification order under subsection (1)(e), the owners corporation must give written notice to the owners of lots in the strata scheme of the receipt of that notice not later than 14 days after receiving the notice.

Maximum penalty—5 penalty units.

- (3) The Secretary is not required to give notice to a person under subsection (1) if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person to whom notice would otherwise be required to be given.

### **38 Modification of orders**

The Secretary may, at any time, modify a building work rectification order (including a modification of the period specified for compliance with the order).

### **39 Period for compliance with order**

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

### **40 Continuing effect of orders**

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

### **41 Occupier of land may be required to permit developer to carry out work**

- (1) If the Secretary gives a building work rectification order, the Secretary may order the occupier of any land to permit the developer to carry out specified work on the land, being work that is, in the Secretary's opinion, necessary to enable the requirements of this Act or the regulations or of any building work rectification order to be complied with.
- (2) An occupier of land on whom an order under this section is served must, within 28 days after the order is served, permit the developer to carry out the work specified in the order.
- (3) An occupier of land must not, without reasonable excuse, refuse or fail to comply with an order in force under this section.

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

- (4) If an order under this section is in force, the developer is not guilty of an offence arising from the developer's failure to comply with the requirements of this Act or the regulations, or of any building work rectification order, that is caused by the occupier of the land refusing to permit the developer to carry out the work specified in the order.
- (5) Subsection (4) applies only if the developer satisfies the Court that the developer has, in good faith, tried to comply with the requirements concerned.

### **42 Failure to comply with order—carrying out of work by Secretary**

- (1) If the Secretary gives a building work rectification order, the Secretary may do

anything that is necessary or convenient to give effect to the terms of the order (including the carrying out of any work required by the order) if the developer to whom the order was given fails to comply with the terms of the order.

- (2) If the Secretary takes action under this section to give effect to a building work rectification order by demolishing a building or part of a building, the Secretary may remove any materials concerned.
- (3) Materials removed that are not saleable may be destroyed or otherwise disposed of.
- (4) Any expenses incurred under this section by the Secretary, together with all associated costs, may be recovered by the Secretary in any court of competent jurisdiction as a debt due to the Secretary by the person required to comply with the order.
- (5) The expenses are to be reduced by the amount of any proceeds of any sale under this section.
- (6) Nothing in this section affects the owner's right to recover any amount from any lessee or other person liable for the expenses concerned.
- (7) The recovery of costs and expenses by the Secretary under this section does not include the costs and expenses of court proceedings, but nothing in this section prevents the Secretary from receiving costs as between party and party in respect of those proceedings.

#### **43 Use of building work rectification orders in proceedings**

- (1) A building work rectification order must be considered by the Civil and Administrative Tribunal for the purposes of determining a building claim under Part 3A of the [Home Building Act 1989](#) and by any other court in proceedings relating to the building work the subject of the order, if the order is brought to the attention of the Tribunal or the court in the proceedings.
- (2) Nothing in this section binds the Tribunal or court.

### **Division 2 Natural justice requirements**

#### **44 Notice to be given of proposed order to person who will be subject to order**

- (1) Before giving a building work rectification order, the Secretary must give notice to the person to whom the proposed order is directed of the following—
  - (a) the intention to give the order,
  - (b) the terms of the proposed order,
  - (c) the period proposed to be specified as the period within which the order is to be

complied with,

(d) that the person to whom the order is proposed to be given may make written representations to the Secretary as to why the order should not be given or as to the terms of or period for compliance with the order.

(2) The notice may provide that the written representations are to be made to the Secretary on or before a nominated date, being a date that is reasonable in the circumstances.

(3) The Secretary is not required to comply with subsection (1) if the Secretary believes there is a serious risk to public safety or it is an emergency.

#### **45 Notice to be given to other persons and bodies of proposed order**

(1) The Secretary must give the following persons notice of the Secretary's intention to make a building work rectification order—

(a) the relevant local council,

(b) if the local council is not the certifier in relation to the building work—the principal certifier,

(c) if the owner of the land concerned is not the developer to whom the proposed order is to be directed—the owner of the land concerned,

(d) (Repealed)

(e) if the order relates to a strata building—the relevant owners corporation,

(f) any other person prescribed by the regulations.

(2) If an owners corporation is given notice of the Secretary's intention to make a building work rectification order under subsection (1), the owners corporation must give written notice to the owners of lots in the strata scheme of the receipt of that notice not later than 14 days after receiving the notice.

Maximum penalty—5 penalty units.

(3) The Secretary is not required to give notice to a person under subsection (1) if the Secretary is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person to whom notice would otherwise be required to be given.

#### **46 Making of written representations**

A person who is given notice under this Division of the intention to give a building work rectification order may make written representations concerning the proposed order in accordance with the notice.

#### **47 Consideration of representations**

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

#### **48 Procedure after consideration of written representations**

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

### **Division 3 Appeals**

#### **49 Appeals concerning orders**

- (1) A developer who is given a building work rectification order may appeal to the Land and Environment Court against the order.
- (2) The appeal may only be made within 30 days after the building work rectification order is given to the developer unless the Court grants leave for it to be made after that time.
- (3) On hearing an appeal, the Court may—
  - (a) revoke the building work rectification order, or
  - (b) modify the building work rectification order, or
  - (c) substitute for the building work rectification order any other order that the Secretary could have given, or
  - (d) find that the building work rectification order is sufficiently complied with, or
  - (e) make any order with respect to compliance with the building work rectification order as the Court thinks fit, or
  - (f) make any other order with respect to the building work rectification order as the Court thinks fit.

## 50 Effect of appeal on order

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

## Division 4 Compliance cost notices

### 51 Compliance cost notices

- (1) If the Secretary gives a building work rectification order to a developer, the Secretary may at that time or at a later date serve a compliance cost notice on the developer.
- (2) A **compliance cost notice** is a notice in writing requiring the developer on whom it is served to pay all or any reasonable costs and expenses incurred by the Secretary (including remuneration and other staff expenses) in connection with—
  - (a) monitoring action under the building work rectification order, and
  - (b) ensuring that the building work rectification order is complied with, and
  - (c) the investigation that led to the giving of the building work rectification order, and
  - (d) the preparation of the building work rectification order, and
  - (e) any other matters associated with the building work rectification order.
- (3) A compliance cost notice is to specify the amount required to be paid and a reasonable period within which the amount is to be paid or, if the regulations prescribe the period to be allowed for payment, that period.
- (4) The Secretary may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (5) If the developer on whom a compliance cost notice is served complies with the notice but was not the developer who was responsible for the situation giving rise to the issue of the notice, the cost of complying with the notice may be recovered by the developer who complied with the notice as a debt in a court of competent jurisdiction from the developer who was responsible.
- (6) The regulations may make provision for or with respect to the following—
  - (a) the issue of compliance cost notices,
  - (b) the form of compliance cost notices,
  - (c) limiting the amounts that may be required to be paid under compliance cost notices or the matters in respect of which costs and expenses may be required to be paid under those notices.

## **52 Appeals concerning compliance cost notices**

- (1) A person on whom a compliance cost notice is served under this Division may appeal against the notice to the Land and Environment Court within 30 days after the notice is served on the person unless the Court grants leave for it to be made after that time.
- (2) If an appeal is lodged against a building work rectification order in relation to which a compliance cost notice has been issued—
  - (a) an appeal may be lodged against the compliance cost notice in the same way as, and at the same time as, the appeal against the building work rectification order concerned, and
  - (b) the Court may deal with the appeal against the compliance cost notice at the same time as it deals with the appeal against the building work rectification order.
- (3) On hearing an appeal against a compliance cost notice, the Court may—
  - (a) revoke the notice, or
  - (b) modify the notice, or
  - (c) make any other order with respect to the notice as the Court thinks fit.

## **Division 5 Miscellaneous**

### **53 Combined orders**

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

### **54 Orders may be given to 2 or more persons**

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

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

### **55 Notice in respect of building work caused to be carried out by more than 1 developer**

- (1) If there are 2 or more developers in relation to building work—
  - (a) a building work rectification order in respect of the building work is not invalid merely because it was not given to all of those developers, and
  - (b) any of those developers may comply with a building work rectification order without affecting the liability of the other developers to pay for or contribute towards the cost of complying with the order.



- (2) Nothing in this Division affects the right of a developer to recover from any other developer all or any of the expenses incurred by the developer in complying with a building work rectification order.

## **Part 6 Offences**

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

### **56A Publicity orders**

- (1) If a person is convicted by a court of an offence under this Act or the regulations, the

court may order the person to take specified action to publicise—

- (a) the offence, including the circumstances of the offence, and
- (b) the consequences of the offence, and
- (c) a prohibition order, building work rectification order or stop work order made in connection with the person, and
- (d) a penalty imposed on the person under this Act or the regulations.

- (2) The court may, in the order, fix a period for compliance and impose other requirements the court considers necessary or expedient for enforcement of the order.
- (3) If a person fails to comply with an order, the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise the failure to comply with the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the person.

#### **56B Additional orders**

- (1) If a person is convicted by a court of failing to comply with an order or direction under this Act or the regulations, the court may order the person to comply with the order or direction.
- (2) The court may, in the order, fix a period for compliance and impose other requirements the court considers necessary or expedient for enforcement of the order.
- (3) A person who fails to comply with an order under this section is guilty of an offence.  
Maximum penalty—
  - (a) for a body corporate—3,000 penalty units and in addition, in the case of a continuing offence, 300 penalty units for each day the offence continues, or
  - (b) otherwise—1,000 penalty units and in addition, in the case of a continuing offence, 100 penalty units for each day the offence continues.
- (4) If an order is made under this section, conduct to which the order relates is only to be prosecuted under this section and not by way of a continuing offence under another section of this Act.

#### **57 Penalty notices**

- (1) A penalty notice officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.

(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

(3) The *Fines Act 1996* applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

(4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

(5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(6) In this section—

**penalty notice officer** means any of the following persons designated by the Secretary as a penalty notice officer for the purposes of this section—

(a) a member of staff of the Department,

(b) a person prescribed by the regulations.

## **58 Offences by bodies corporate**

(1) If a body corporate contravenes, whether by act or omission, a provision of this Act or the regulations, each person who is a director of the body corporate or who is concerned in the management of the body corporate is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act or the regulations.

## **59 Continuing offences**

(1) A person who is guilty of an offence because the person fails to comply with a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or in any other way) to do or cease to do something, or cause something to cease, (whether or not within a specified period or before a particular time)—

(a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the

requirement, and

(b) is guilty of a continuing offence for each day the contravention continues.

(2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.

(3) This section does not apply to the extent that a requirement of a notice is revoked.

#### **60 Onus of proof regarding reasonable excuse**

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

#### **61 Building Commissioner**

A Building Commissioner is to be employed under the [Government Sector Employment Act 2013](#).

### **Part 7 Miscellaneous**

#### **62 Register of orders and undertakings**

(1) The Secretary must keep the following information in a register and make the information publicly available—

(a) copies of all prohibition orders, building work rectification orders and stop work orders in force,

(b) other information prescribed by the regulations.

(2) The Secretary may include the following information in the register and make some or all of the information publicly available—

(a) copies of written undertakings accepted under section 28,

(b) information related to the undertakings.

(3) In this section—

**publicly available** means publicly available for inspection free of charge by the public on the Department's website.

#### **63 Delegation**

(1) The Secretary may delegate the exercise of any function of the Secretary under this Act (other than this power of delegation) to—

(a) the Building Commissioner and any other person employed in the Department, or

- (b) an employee of Fire and Rescue NSW, or
  - (c) an employee of a council who is an authorised person under the *Local Government Act 1993*, or
  - (d) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) Without limiting subsection (1), the Secretary must delegate the functions of the Secretary under section 9 to the Building Commissioner.

#### **64 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 the giving of any order under this Act.
- (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.

#### **65 Exchange of information**

- (1) The Secretary may provide information to a relevant agency that is reasonably necessary for the purposes of enabling or assisting the relevant agency to regulate or take other action in respect of one or more of the following—

- (a) developers and former developers of residential apartment buildings,
  - (b) residential apartment buildings,
  - (c) the carrying out of building work (including, without limitation, building work carried out by any contractor or subcontractor of a developer),
  - (d) prohibition orders,
  - (e) building work rectification orders,
  - (f) other matters prescribed by the regulations.
- (2) A relevant agency may provide information to the Secretary that is reasonably necessary for the purposes of enabling or assisting the Secretary to exercise the Secretary's functions under this Act.
- (3) Without limiting subsection (1), the Secretary may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the Secretary or the agency.
- (4) Under an information sharing arrangement, the Secretary and the relevant agency are, despite any other Act or law, authorised—
- (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party.
- (5) Subsection (4) applies only to the extent that the information is reasonably necessary to assist in the exercise of functions of the Secretary under this Act or the functions of the relevant agency.
- (6) This section does not—
- (a) require the Secretary to provide information to a relevant agency only in accordance with subsection (1), or with an information sharing arrangement, where that information can otherwise be lawfully provided, or
  - (b) limit the operation of another Act or law under which a relevant agency is authorised or required to disclose information to another person or body.
- (6A) To avoid doubt, information is **held** by a person or agency for this section if the person or agency has access to the information.

**Example—**

Information on the NSW planning portal to which the Secretary has access.

- (7) In this section—

**relevant agency** means any of the following—

- (a) a government sector agency within the meaning of the *Government Sector Employment Act 2013*,
- (a1) a local council,
- (b) other persons or bodies prescribed by the regulations.

#### **65A Giving information to Australian universities for research purposes**

- (1) The Secretary may give information, other than personal information, to—
  - (a) an Australian university, or
  - (b) a consultant or contractor engaged by or on behalf of the Secretary.
- (2) Information may only be given under this section—
  - (a) to assist the conduct of research into, or the carrying out of analysis of, a matter regulated by this Act, or
  - (b) to assist the Secretary in exercising the Secretary’s functions under this Act.
- (3) In this section—

**Australian university** has the same meaning as in the *Higher Education Act 2001*.

**information** includes information—

- (a) held by the Secretary or the Department, or
- (b) provided under a requirement of this Act.

**personal information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.

#### **66 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 or person so acting personally 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, that liability attaches instead to the Crown.

## 67 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be given to any person may be given by any of the following methods—
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified any 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 corporation—by post to the registered office or any other office of the corporation or by leaving it at the office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by 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, **give** includes serve or send.

## 68 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) prohibition orders and building work rectification orders,
    - (a1) undertakings given by developers,
  - (b) notices and notifications under this Act,
  - (c) appeals,
  - (d) the keeping of records for the purposes of this Act,
  - (e) the keeping of registers for the purposes of this Act,



- (f) the fees payable under this Act or the regulations and the refund, reduction or waiver of any fees.
- (3) A regulation may apply, adopt or incorporate a publication as in force at a particular time or as in force from time to time.
- (4) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units in the case of a body corporate or 100 penalty units in any other case.

## **69 Review of Act**

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

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

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision has effect despite anything to the contrary in this Schedule. The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) 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.

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

### **2 Transitional period**

In this Part, **transitional period** means the period of 6 months beginning on the commencement of this Part.

### **3 Existing building work**

- (1) Section 7 does not apply to an application for an occupation certificate for any part of a residential apartment building made during the transitional period.
- (2) A developer in relation to building work must not, during the transitional period, cause or permit an application to be made for an occupation certificate for any part of a residential apartment building for which the building work is being or was carried out unless the developer notified the Secretary, or caused the Secretary to be notified, of that proposed application within 14 days after the commencement of this Part.
- (3) Sections 7–9 apply to a developer making an application for an occupation certificate during the transitional period—
  - (a) as if references in those provisions to notice under section 7 were a reference to notice under subclause (2), and
  - (b) as if the references in those provisions to the notice being given less than 6 months before the application for the occupation certificate was made were a reference to the notice being given within 14 days after the commencement of this Part, and
  - (c) with all other necessary modifications.

### **4 Meaning of “building element” during transitional period**

- (1) During the transitional period, **building element** includes the following—
  - (a) the fire safety systems for a building within the meaning of the *Building Code of Australia*,
  - (b) waterproofing,
  - (c) an internal or external load-bearing component of a building that is essential to

the stability of the building, or a part of it (including but not limited to in-ground and other foundations and footings, floors, walls, roofs, columns and beams),

(d) a component of a building that is part of the building enclosure,

(e) those aspects of the mechanical, plumbing and electrical services of a building that are required to achieve compliance with the *Building Code of Australia*,

(f) other things prescribed by the regulations for the purposes of this clause.

(2) The regulations may exclude things from being building elements for the purposes of the Act during the transitional period.

(3) In this clause—

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

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

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

## **Part 3 Provision consequent on enactment of the [Building Legislation Amendment Act 2021](#)**

### **5 Application of Act to building work**

Section 6, as amended by the [Building Legislation Amendment Act 2021](#), extends to a function exercised under the Act before the commencement of the amendment.

## **Part 4 Provision consequent on enactment of the [Building and Other Fair Trading Legislation Amendment Act 2022](#)**

### **6 Application of amendments**

Sections 28, 33, 34 and 62, as amended or substituted by the [Building and Other Fair Trading Legislation Amendment Act 2022](#), extend to an undertaking accepted, or an order given, before the commencement of the amendment or substitution.

## **Schedule 2 (Repealed)**