

Building Bill 2024

Contents

	Page
Chapter 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
4 Objects of Act	2
5 Functions of Secretary under Act	2
6 Close associate	3
7 Extraterritorial application	3
8 Mutual recognition	4
Chapter 2 Key definitions	
9 Building elements	5
10 Building work	5
11 Certification work	6
12 General building design work	6
13 Home building work	6
14 Licensed work	7
15 Owner-builder work	7
16 Prefabricated buildings	8
17 Prefabricated building work	8
18 Professional engineering work	8

	Page
19 Specialist work	9
Chapter 3 Licensing for licensed work	
Part 1 Preliminary	
20 Definitions	10
Part 2 Licensing of persons carrying out licensed work	
Division 1 Preliminary	
21 Licensed work may be carried out only by persons who are authorised	11
22 Licensing of persons to carry out licensed work	12
23 Persons not suitable person to carry out licensed work	12
24 When Secretary may form opinion that person not suitable person	12
Division 2 Applications for licences	
25 Application for licence	13
26 Competency assessment to accompany application for licence	13
27 Secretary may obtain information from third parties	14
28 Grant or refusal of licence	14
29 Duration of licence	15
30 Variation of licence	15
Division 3 Competency assessments by accredited industry bodies	
31 Competency assessments for licence applicants	15
32 Regulations about competency assessments	16
33 Accreditation of industry bodies to issue competency assessments	16
34 Conditions of accreditation	17
Division 4 Conditions and endorsements of licences	
35 Conditions of licence	17
36 Compliance with standards or methodologies	17
37 Conditions may provide authorisation takes effect later	18
38 Endorsements	18
Division 5 Suspension or cancellation of licences	
39 Grounds for suspension or cancellation of licence	18
40 Suspension of licence	18
41 Cancellation of licence	19
42 Suspension or cancellation may be subject to conditions	19
Division 6 Miscellaneous	
43 Offence of contravening condition	19
44 Offence of lending licence	19
45 Voluntary surrender or suspension of licence	20
46 Recovery of unpaid fees	20
47 Licence register	20

Part 3 Requirements on licence holders

Division 1 Insurance and other arrangements

48	Licence holders must be indemnified	21
49	Regulations about insurance arrangements	21

Division 2 General requirements

50	Qualifications, skills and experience	22
51	Secretary may publish practice standards for supervision	22
52	Codes of conduct	22
53	Licence holder to notify other persons of certain changes	23
54	Licence holder to notify Secretary of certain events	23
55	Licence holder to notify of changes to information recorded in register	24
56	Directions to prevent use of cancelled, suspended and varied licences	24

Division 3 Additional requirements for licensed bodies corporate

57	Directors must ensure licensed work carried out lawfully	24
58	Directors must report certain conduct	24
59	Licensed work must be carried out by licensed individual	25
60	Nominees of licensed bodies corporate	25
61	Duties of licensed bodies corporate	26
62	Duties of nominee	26

Part 4 Miscellaneous

63	Falsely representing work	26
64	Secretary may require information about insurance policies	27

Chapter 4 Home building work

Part 1 Contract requirements

Division 1 Preliminary

65	Definitions	28
66	Application of part	28
67	Contractors	28
68	Persons who may enter contracts	29
69	Contracts generally	29
70	Requirement to have contract	29
71	Exceptions to requirement to have contract	29

Division 2 Major work contracts

Subdivision 1 Requirements for major work contracts

72	Application of division	30
73	Form of major work contracts	30
74	Content of major work contracts	30
75	Variations	31
76	Display homes	31
77	Maximum progress payments	32

	Page
Subdivision 2 Rescission and cooling-off periods	
78 Application of subdivision	32
79 Rescission	32
80 Variation or avoidance of cooling-off period	33
81 Person may rescind contract if cooling-off statement not included	33
Division 3 Minor work contracts	
82 Application of division	34
83 Form of minor work contracts	34
84 Content minor work contracts	34
Division 4 Other requirements	
85 Terms of home building work contracts	35
86 Certain terms and conditions void in home building work contracts	35
87 Arbitration provision prohibited	35
88 Deposits	35
89 Undue influence relating to appointment of approval authority	36
90 Consumer information	36
91 Copy of contract	37
92 Interests in land under contract	37
93 Enforceability of contracts and other rights	37
Part 2 Statutory warranties	
94 Definitions	38
95 Major defects	38
96 Warranties	38
97 Warranty beneficiary	39
98 Warranty provider	39
99 Duties of warranty beneficiaries	39
100 Warranty period	40
101 Proceedings for breaches involving certain defects	41
102 Defences	41
103 Warranties may not be excluded	42
Part 3 Completion of home building work	
104 When home building work is complete	42
Chapter 5 Owner-builder work	
105 Definitions	44
106 Application for owner-builder permit	44
107 Grant or refusal of application	44
108 Authority of owner-builder permit	45
109 Duration of owner-builder permit	45
110 Cancellation of owner-builder permit	45
111 Unlicensed contracting	45

Chapter 6 Approvals relating to building work

Part 1 Preliminary

112	Definitions	47
113	Regulated design	48
114	Design compliance declarations	48
115	Building work compliance declarations	48

Part 2 Building approvals

116	Building work requires building approval	48
117	Applications for building approval—general	49
118	Applications—building work involving building element	49
119	Applications—building work involving performance solution	49
120	Applications—building work involving prefabricated building work	49
121	Applications—staged building work	50
122	Deciding to issue building approval	50
123	Issue of building approval	51
124	Cannot issue building approval after work commences	51
125	Variation to building approval	51
126	Carrying out building work	51

Part 3 Completion approvals

127	Occupation approval	51
128	Completion of work approval	52
129	Applications for completion approval—general	52
130	Applications—building work involving building element	52
131	Applications—building work involving prefabricated building work	53
132	Applications—staged building work	53
133	Deciding to issue completion approval	53
134	Fire safety certificates	54
135	Effect of occupation approval on earlier occupation approvals	54

Part 4 Declared building work

136	Definitions	54
137	Application of part	54
138	Declared building work	55
139	Requirements before starting declared building work	55
140	Declared building work must comply with regulated design	55
141	Building work compliance declaration for declared building work	56
142	Strata certificates for declared building work	56

Part 5 Prefabricated buildings

143	Definition	56
144	Prefabricated building declaration	56
145	Transportation and building instructions	56
146	Information to be provided for erection of prefabricated building	57
147	Certification of prefabricated buildings	57
148	Prefabricated buildings built outside New South Wales	57

	Page
Part 6 Miscellaneous	
149 Definition	57
150 Reliance on compliance declaration	57
151 False or reckless compliance declarations and instructions	58
152 Improper influence in making declarations	58
153 Improper influence—approval authority	59
154 Regulations	59
 Chapter 7 Dispute resolution	
Part 1 Preliminary	
155 Definitions	60
 Part 2 Dealing with building disputes	
156 Meaning of “building dispute”	60
157 Notification of disputes	60
158 Secretary may accept or decline notifications	61
159 Secretary may determine disputes	62
160 Conciliations	62
 Part 3 Tribunal may determine building claims	
161 Meaning of “building claim”	63
162 Application for determination of building claim	64
163 Transfer of proceedings from court to Tribunal	64
164 Jurisdiction for actions against refusal of insurance claims	64
 Part 4 Powers of Tribunal	
165 Determining building claim	65
166 Making orders	65
167 Matters to be considered by Tribunal when making orders	65
168 Joint liability	66
 Part 5 Miscellaneous	
169 Requirement to notify Secretary of Tribunal orders	66
170 Secretary must be informed of compliance with order	67
171 Failure to inform of compliance	67
172 Requirement to notify Secretary of court order to pay money in relation to building claim	68
 Chapter 8 Architects—special provisions	
Part 1 NSW Architects Registration Board	
173 Constitution of Architects Board	69
174 Members of Architects Board	69
175 Issue of licences by Architects Board	69
176 General functions of Architects Board	70
177 Subcommittees of Architects Board	70

	Page
178 Staff of Architects Board	70
Part 2 Architects Fund	
179 Establishment of Fund	70
180 Payments to and from Fund	70
Part 3 Offences	
181 Offence of falsely claiming to be architect	71
182 Arranging for carrying out of work by architect	71
Chapter 9 Gas and electrical work	
Part 1 Preliminary	
183 Definitions	73
184 Application	73
Part 2 Electrical and gas installations	
Division 1 Work to comply with regulations	
185 Work to comply with regulations	73
Division 2 Electrical and gas installations	
186 Safety of electrical or gas installations	73
187 Prohibition on use of unsafe electrical or gas installation	74
188 Interfering with electrical or gas installations	74
189 Restrictions on connection of gas appliances to certain gas installations	75
190 Regulations about electrical and gas installations	75
Division 3 Electrical meter installations	
191 Definitions	76
192 Installation of advanced meters by retailers and metering co-ordinators	76
193 Metering safety management system requirements	76
Part 3 Medical gas	
Division 1 Carrying out work	
194 Standards to be met	77
Division 2 Medical gas installations	
195 Safety of medical gas installations	78
196 Prohibition on use of unsafe medical gas installation	78
197 Interfering with medical gas installations	79
198 Notice of defective medical gas installation	79
199 Regulations about medical gas installations	80

Part 4 Accident reporting and investigations

Division 1 Serious accidents

200	Definitions	80
201	Notification of serious accidents	80
202	Secretary may arrange investigation of serious accident	81
203	Interference with site of serious electrical or gas accident	81
204	Secretary may publish details of serious electrical or gas accident	81

Division 2 Serious incidents

205	Meaning of “serious incident”	82
206	Meaning of “relevant regulator”	82
207	Arrangements for investigating serious incidents	82

Chapter 10 Certification work

Part 1 Responsibility for certification work

208	Responsibilities of individuals acting on behalf of body corporate or council	84
209	Functions exercised on behalf of council or body corporate	84
210	Body corporate must ensure certification work carried out by licensed individual	84
211	Responsibilities of councils carrying out certain prescribed certification work	84

Part 2 Conflicts of interest

212	Meaning of “conflict of interest”	85
213	Meaning of “pecuniary interest”	85
214	Offence of carrying out certification work with conflict of interest	86
215	Exemptions	86

Part 3 Offences

216	Knowingly issuing false certificate	86
217	Improper influence—certification work	87

Chapter 11 Certificates of compliance for specialist work

Part 1 Preliminary

218	Definitions	88
-----	-------------	----

Part 2 Notifiable work

219	Certain specialist work must be pre-notified to Secretary	88
220	Emergency work does not have to be pre-notified	89
221	Notice of defective installation or system	89

Part 3 Inspection of specialist work

222	Inspection of specialist work by Secretary	89
-----	--	----

	Page
223 Responsible person to notify Secretary when work is ready for inspection	90
Part 4 Obligations to supply certificates of compliance and plans	
224 Person to give certificate of compliance after specialist work completed	91
225 Supply of plans	91
Part 5 Miscellaneous	
226 Obligation to prevent threats to public health or safety	92
227 Authorised fittings required for specialist work	92
Chapter 12 Miscellaneous	
Part 1 Review of decisions by Tribunal	
228 Review by Tribunal	93
229 Time limits for review of Secretary's decisions	93
230 Determination of reviews	94
Part 2 Duty of care	
231 Definitions	94
232 Extension of duty of care	94
233 Limitation on time when action for defective building work may be brought	94
234 Economic loss suffered by owners corporations and associations	95
235 Duty must not be delegated	95
236 No contracting out of part	95
237 Relationship with other duties of care and law	95
Part 3 Premises affected by loose-fill asbestos insulation	
238 Definitions	95
239 Asbestos insulation register	96
240 Warning signs	96
Part 4 Offences	
241 Compliance with National Construction Code	97
242 Disclosure and misuse of information	97
243 Secrecy of information	97
244 Onus of proof for reasonable excuse	98
245 Penalty notices	99
246 Proceedings for offences	99
Part 5 General provisions for building legislation	
247 Definition	99
248 Acts to bind Crown	99
249 Service of documents	100
250 Delegation	100
251 Personal liability	100

	Page
Part 6	Miscellaneous
252	Jurisdiction of Tribunal in relation to unjust contracts 101
253	Building Administration Fund 101
254	Exchange of information 102
255	Certificate evidence 103
256	Regulations 104
257	Review of Act 104
258	Repeals 104
Schedule 1	Constitution and procedure of NSW Architects Registration Board 106
Schedule 2	Savings, transitional and other provisions 111
Schedule 3	Amendment of other legislation 112
Schedule 4	Dictionary 113

DRAFT

Building Bill 2024

No. 1, 2024

A Bill for

An Act relating to the building and construction industry and certain specialist work; to repeal a number of Acts and instruments; and for other purposes.

The Legislature of New South Wales enacts—

Chapter 1 Preliminary

Drafting note 3.1 *Penalties in this draft Bill have not been settled and are indicative only.*

1 Name of Act

This Act is the *Building Act 2024*.

Note— This Act is part of the building enforcement legislation for the purposes of the *Building Compliance and Enforcement Act 2024*. That Act contains compliance and enforcement provisions that apply in relation to this Act, including investigation powers.

2 Commencement

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

3 Definitions

- (1) The dictionary in Schedule 4 defines words used in this Act.

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

- (2) Words used in this Act have the same meaning as in the Standard Instrument, unless otherwise defined in this Act.

4 Objects of Act

The objects of this Act are to—

- (a) support an integrated building and approvals system to ensure competent persons create safe, compliant and trustworthy buildings, and
- (b) establish a modern regulatory framework that protects owners, tenants and businesses, and
- (c) implement end-to-end accountability for building work, and
- (d) enable building regulators and industry participants to adapt to new and emerging trends in construction, and
- (e) enable a competitive, professional and capable construction sector to meet built environment needs.

5 Functions of Secretary under Act

- (1) The Secretary has the following functions—

- (a) to promote and protect the interests of owners, tenants and users of the built environment and essential services,
- (b) to set, assess and maintain standards of competence of persons carrying out licensed work,
- (c) to complement the work of industry organisations, public authorities and educational institutions in promoting standards,
- (d) to give general advice and guidance to the public,
- (e) to monitor the operation of insurance for licensed and other work that is required under the building enforcement legislation or other Acts or laws,
- (f) other functions conferred on the Secretary under this or another Act.

- (2) The Secretary may establish an industry advisory panel for the following purposes—

- (a) to support the oversight and capability of the industry in the State,
 - (b) to support reviews of legislation, reports, advice and other matters relevant to the industry,
 - (c) to respond to unforeseen consequences from the enactment of this Act,
 - (d) to carry out other functions prescribed by the regulations.
- (3) The Secretary may establish more than 1 panel to carry out specified functions.

6 Close associate

- (1) In this Act, a person is a *close associate* of another person if the person—
- (a) is a business partner of the other person, or
 - (b) has in the previous 12 months been an employee or agent of the other person, or
 - (c) is a person who has a relationship of a kind prescribed by the regulations with the other person, or
 - (d) is a body corporate, or a member of a body corporate, partnership, trust, syndicate or joint venture, in which the other person or a person referred to in paragraph (a)–(c) has a beneficial interest, or
 - (e) is a body corporate that is a parent company or subsidiary, within the meaning of the Corporations Act, of the other person, or
 - (f) is able to exercise a significant influence, directly, or indirectly, over the other person or the operation or management of the person's business because of—
 - (i) a relevant financial interest, or
 - (ii) a relevant position, or
 - (iii) a relevant power, or
 - (g) is a person prescribed by the regulations.
- (2) In this section—
- relevant financial interest*** means—
- (a) a share in the capital of the business, or
 - (b) an entitlement to receive income derived from the business, whether the entitlement arises at law, in equity or otherwise.
- relevant position*** means the position of director, manager and other executive positions and secretary, however described.
- relevant power*** means a power—
- (a) to—
 - (i) participate in a directorial, managerial or an executive decision, or
 - (ii) elect or appoint a person to a relevant position, and
 - (b) that may be exercised as follows—
 - (i) by voting or otherwise,
 - (ii) directly or indirectly,
 - (iii) alone or in association.

7 Extraterritorial application

- (1) It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament.
- (2) Without limiting subsection (1), it is the intention of the Parliament that the operation of this Act is, as far as possible, to include operation in relation to the following—

- (a) things situated in or outside the territorial limits of this State,
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this State.

8 Mutual recognition

A reference in this Act to a holder of a licence includes a reference to a person who holds an authorisation from another jurisdiction that because of mutual recognition legislation authorises the holder to carry out work that is authorised by the licence.

DRAFT

Chapter 2 Key definitions

9 Building elements

- (1) In this Act, **building element** means the following in relation to a building—
 - (a) the fire safety systems for the building within the meaning of the National Construction Code,
 - (b) waterproofing,
 - (c) an internal or external load-bearing component of the building that is essential to the stability of the building, or a part of it, including—
 - (i) in-ground components and other foundations and footings,
 - (ii) floors,
 - (iii) walls,
 - (iv) roofs,
 - (v) columns,
 - (vi) beams.
 - (d) a component of that building that is part of the building enclosure,
 - (e) the aspects of the following for the building that are required to achieve compliance with the National Construction Code—
 - (i) mechanical, plumbing and electrical services,
 - (ii) vertical transportation products,
 - (f) other things prescribed by the regulations for the purposes of this section.
- (2) The regulations may exclude things from being building elements for the purposes of this Act.
- (3) In this section—

building enclosure means the parts of the building that physically separates the interior environment of the building from the exterior environment, including—

 - (a) roof systems,
 - (b) walls, including walls below the level of the ground,
 - (c) windows and doors.

10 Building work

- (1) In this Act, **building work** means the following—
 - (a) work, including specialist work, involved in the—
 - (i) erection of a new building, or
 - (ii) alteration of an existing building, including demolition incidental to the alteration,
 - (b) subdivision work,
 - (c) general building design work,
 - (d) prefabricated building work,
 - (e) professional engineering work,
 - (f) certification work,
 - (g) work (**fire safety work**) involved in the design, installation, commissioning or maintenance of a fire safety system within the meaning of the National Construction Code.
 - (h) the preparation of designs for work referred to in paragraphs (a)–(b),

- (i) supervising, directing, coordinating, managing or having substantive control over work referred to in paragraph (a)–(h),
 - (j) other work prescribed by the regulations.
- (2) The regulations may exclude work from being building work.

11 Certification work

- (1) In this Act, **certification work** means the following—
 - (a) the issue of an approval under Chapter 6,
 - (b) the carrying out of inspections of building work and subdivision work,
 - (c) the determination of an application for a strata certificate within the meaning of the *Strata Schemes Development Act 2015*,
 - (d) the inspection of swimming pools under the *Swimming Pools Act 1992*, Part 2, Division 5 and the issuing of certificates of compliance and notices under that division,
 - (e) other work prescribed by the regulations,
- (2) The regulations may exclude work from being certification work.

12 General building design work

- (1) In this Act, **general building design work** means the following—
 - (a) work involved in the development of design documentation, specifications and reports relating to the design of—
 - (i) the construction of a building of a type prescribed by the regulations,
 - (ii) the making of alterations or additions to a building of a type prescribed by the regulations,
 - (iii) the repair, maintenance, renovation or protection treatment of a building,
 - (b) other work prescribed by the regulations.
- (2) Design work by a person that is incidental to the carrying out of licensed work by the person is not general building design work.
- (3) The regulations may exclude work from being general building design work.

13 Home building work

- (1) In this Act, **home building work** means the following building work carried out in relation to a home—
 - (a) work, including specialist work, involved in the—
 - (i) erection of a new building, or
 - (ii) alteration of an existing building, including demolition incidental to the alteration,
 - (b) prefabricated building work,
 - (c) supervising, directing, coordinating, managing or having substantive control over work referred to in paragraphs (a) and (b),
 - (d) other work prescribed by the regulations.
- (2) The regulations may exclude work from being home building work.
- (3) In this section—
home means a relevant building designed, constructed or adapted for use as a residence, other than an precluded residence, and includes the following—

- (a) a building, other than a precluded associated structure—
 - (i) associated with the residence, and
 - (ii) used in conjunction with the residence,
- (b) a building element associated with the residence,
- (c) a structure supporting—
 - (i) the residence, or
 - (ii) a building or building element referred to in paragraph (a) or (b).

precluded residence means the following—

- (a) a prefabricated building that is—
 - (i) on land that is a community within the meaning of the *Residential (Land Lease) Communities Act 2013*, and
 - (ii) owned by the operator of the community, or
- (b) a building or premises excluded by the regulations.

precluded associated structure means the following—

- (a) a jetty,
- (b) a slipway,
- (c) a boat ramp,
- (d) a pontoon,
- (e) a farm building, including a farm shed, within the meaning of the National Construction Code,
- (f) a building prescribed by the regulations.

relevant building means the following—

- (a) a class 1a building, class 2 building or class 10 building,
- (b) for a building with a class 2 building part—
 - (i) the class 2 part of a building, and
 - (ii) the other parts of the building that service the class 2 part.
- (c) a building prescribed by the regulations.

14 Licensed work

- (1) In this Act, ***licensed work*** means—
 - (a) building work that may be carried only under a licence, and
 - (b) owner-builder work.
- (2) The regulations may prescribe the building work, or classes of building work, that may be carried only under a licence.

15 Owner-builder work

- (1) In this Act, ***owner-builder work*** means—
 - (a) home building work if—
 - (i) the work is the erection of the primary place of residence of the person carrying out the work, and
 - (ii) the primary place of residence is—
 - (A) a dwelling house, or
 - (B) a secondary dwelling, and
 - (iii) the work is carried out under a development consent.

- (b) work prescribed by the regulations.
- (2) The regulations may exclude work from being owner-builder work.

16 Prefabricated buildings

- (1) In this Act, a ***prefabricated building*** means the following if it is manufactured away from the site at which it is to be erected—
 - (a) a substantially complete building, room or pod, but not—
 - (i) a moveable dwelling, or
 - (ii) anything prescribed by the regulations,
Example— a bathroom pod.
 - (b) a building component that—
 - (i) is modular, and
 - (ii) will become a building element when properly installed, and
 - (iii) cannot be inspected without destructive testing or opening when installed on the site,
 - (c) anything prescribed by the regulations.**Note—** A manufactured home is a prefabricated building.
- (2) The Secretary may issue guidelines to assist in deciding whether something is a prefabricated building or not.
- (3) The guidelines are issued by publication in the Gazette.
- (4) A court must consider the guidelines when making a decision about whether something is a prefabricated building or not.
- (5) In this section—
pod means a part of a room comprising at least a wall, ceiling, floor and fittings appropriate for the intended function of the completed room.

17 Prefabricated building work

- (1) In this Act, ***prefabricated building work*** means the following—
 - (a) manufacturing a prefabricated building away from the site at which it will be erected,
 - (b) erecting a prefabricated building at a site,
 - (c) other work prescribed by the regulations.
- (2) The regulations may exclude work from being prefabricated building work.

18 Professional engineering work

- (1) In this Act, ***professional engineering work*** means engineering work that—
 - (a) requires, or is based on, the application of engineering principles and data to the following in relation to engineering—
 - (i) a design,
 - (ii) a construction, production, operation or maintenance activity, and
 - (b) is carried out directly in relation to the design or construction of a building prescribed by the regulations.
- (2) The following is not professional engineering work—
 - (a) work that—

- (i) is provided in accordance with a document that states the procedure or criteria for carrying out the work, and
 - (ii) does not require the application of advanced scientifically based calculations,
- (b) other work prescribed by the regulations.
- (3) In this section—
engineering means the following—
 - (a) civil engineering,
 - (b) electrical engineering,
 - (c) fire safety engineering,
 - (d) geotechnical engineering,
 - (e) mechanical engineering,
 - (f) structural engineering,
 - (g) engineering prescribed by the regulations.***engineering work*** includes engineering services provided by a person.

19 Specialist work

In this Act, ***specialist work*** means the following, whether or not done in connection with building work—

- (a) electrical work within the meaning of the regulations,
- (b) gasfitting work within the meaning of the regulations,
- (c) mechanical services work within the meaning of the regulations,
- (d) medical gas technician work within the meaning of the regulations,
- (e) medical gasfitting work within the meaning of the regulations,
- (f) plumbing and drainage work within the meaning of the regulations,
- (g) waterproofing work within the meaning of the regulations,
- (h) other work prescribed by the regulations.

Chapter 3 Licensing for licensed work

Part 1 Preliminary

20 Definitions

- (1) In this chapter—

adequately insured, in relation to licensed work—see section 48(2).

class of licence means a class of licence prescribed under section 22(3).

competency assessment—see section 31(2).

grant a licence includes grant a renewal or restoration of a licence.

licence means—

- (a) for owner-builder work—an owner-builder permit for the work that is in force, or
- (b) otherwise—a licence granted under this chapter and in force.

licence holder means a person—

- (a) who is licensed under this chapter, and
- (b) whose licence is in force.

licensed body corporate means a body corporate that is a licence holder.

licensed individual means an individual who is a licence holder.

relevant authorisation means a licence, accreditation, registration or other authorisation or qualification that—

- (a) is issued or conferred under the laws of another jurisdiction, and
- (b) the Secretary considers authorises the holder to carry out work that is similar to licensed work.

relevant offence means the following offences, whether committed in this or another Australian jurisdiction—

- (a) an offence against the following Acts or provisions of Acts and the regulations under the Acts or provisions—
 - (i) the building enforcement legislation,
 - (ii) the *Environmental Planning and Assessment Act 1979*,
 - (iii) the *Strata Schemes Development Act 2015*, Part 4,
 - (iv) the *Workers Compensation Act 1987*,
 - (v) the *Workplace Injury Management and Workers Compensation Act 1989*,
 - (vi) an Act, or provision of an Act, prescribed by the regulations,
- (b) an offence relating to the carrying out of licensed work or work authorised to be carried out under a relevant authorisation,
- (c) an offence relating to a failure to comply with a condition of a licence or a relevant authorisation,
- (d) an offence involving criminal groups, money laundering, fraud, dishonesty or the provision of false or misleading information,
- (e) an offence involving violence or intimidation in relation to the carrying out of licensed work or work authorised to be carried out under a relevant authorisation,
- (f) an offence prescribed by the regulations.

- (2) A licence may be referred to as a registration.

Part 2 Licensing of persons carrying out licensed work

Division 1 Preliminary

21 Licensed work may be carried out only by persons who are authorised

- (1) A person must not carry out licensed work unless the person is authorised to carry out the licensed work.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, and for each day the offence continues, 300 penalty units, or
- (b) otherwise—600 penalty units, and for each day the offence continues, 60 penalty units.

- (2) A person must not seek or receive payment for the carrying out of licensed work by a person who is not authorised to carry out the licensed work.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, and for each day the offence continues, 300 penalty units, or
- (b) otherwise—600 penalty units, and for each day the offence continues, 60 penalty units.

- (3) A person is authorised to carry out licensed work if the person—

- (a) holds a licence that authorises the person to carry out the licensed work, or
- (b) is otherwise lawfully authorised to carry out the licensed work, or
- (c) carries out the licensed work—
 - (i) under the supervision of an individual referred to in paragraph (a) or (b) who—
 - (A) for a licence holder—holds a licence authorising the individual to supervise the person, or
 - (B) is otherwise lawfully authorised to supervise the person, or
 - (ii) in accordance with this Act.

- (4) The regulations may specify additional circumstances in which a person is lawfully authorised to—

- (a) carry out licensed work, or
- (b) supervise a person carrying out licensed work.

- (5) A person must not falsely represent that the person—

- (a) is authorised to carry out licensed work, or
- (b) holds a licence, or
- (c) holds a licence in a particular class, or
- (d) holds insurance required to carry out licensed work.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, and for each day the offence continues, 300 penalty units, or
- (b) otherwise—600 penalty units, and for each day the offence continues, 60 penalty units.

- (6) An individual convicted of a second or subsequent offence under this section is liable to a penalty not exceeding 1 or both of the following—

- (a) 3,000 penalty units,
 - (b) imprisonment for a term of 12 months.
- (7) In this section—
supervision of work includes directing, coordinating, managing and having substantive control over work.

22 Licensing of persons to carry out licensed work

- (1) The Secretary may, by granting a licence under this part, authorise a person to carry out licensed work.
- (2) The licence authorises only the licensed work authorised by the licence or class of licence granted.
- (3) The regulations may prescribe different licences or classes of licence to authorise the carrying out of specified licensed work.

23 Persons not suitable person to carry out licensed work

A person is not a suitable person to carry out licensed work if—

- (a) the person is disqualified from being licensed, or
- (b) the person, including, if the person is a body corporate, a director of the body corporate, is—
 - (i) an individual who is under 18 years of age, or
 - (ii) not a fit and proper person to carry out the licensed work, or
- (c) the person does not have the qualifications, skills, knowledge and experience required to carry out the licensed work, or
- (d) the person is a mentally incapacitated person, or
- (e) the person is a body corporate and the Secretary is of the opinion that a proposed nominee for the licence is not an eligible individual, or
- (f) the Secretary is of the opinion that the person is not a suitable person to carry out the licensed work.

24 When Secretary may form opinion that person not suitable person

The Secretary may form an opinion that a person is not a suitable person to carry out licensed work in 1 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—
 - (i) been convicted of a relevant offence, or
 - (ii) been subject to a finding or an opinion by the Independent Commission Against Corruption that the person has engaged in corrupt conduct,
- (b) the person, including, if the person is a body corporate, a director of the body corporate is—
 - (i) an undischarged bankrupt, or
 - (ii) insolvent,
- (c) the person has contravened a requirement imposed—
 - (i) by or under this Act, or
 - (ii) in relation to licensed work under another Act or law,
- (d) a relevant authorisation of the person has been suspended or cancelled, other than at the person's request, under the law of another Australian jurisdiction,

- (e) the person is ineligible to hold, or disqualified from holding, a relevant authorisation under the law of another Australian jurisdiction, other than on the grounds that the person—
 - (i) does not reside in the jurisdiction, or
 - (ii) is a body corporate,
- (f) a close associate of the person, who would not be a fit and proper person to be licensed, exercises a significant influence over—
 - (i) the person, or
 - (ii) the operation and management of the person's business,
- (g) a circumstance prescribed by the regulations.

Division 2 Applications for licences

25 Application for licence

- (1) A person may apply to the Secretary for the grant of a licence.
Note— The definition of **grant** a licence in section 20(1) includes grant a renewal or restoration of a licence.
- (2) An application must—
 - (a) be in a form approved by the Secretary, and
 - (b) include or be accompanied by information or evidence the Secretary reasonably requires to assess the application.
Note— The *Crimes Act 1900*, Part 5A contains offences relating to the making of false or misleading applications or providing false or misleading information or documents. Those offences have a maximum penalty of imprisonment for 2 years or a fine of \$22,000, or both.
- (3) The regulations may provide for a fee to be paid for an application for the grant of a licence.
- (4) The Secretary may require the fee to accompany the application.
- (5) The fee may include a component for services provided by the Secretary that are prescribed by the regulations.
- (6) If the Secretary considers it necessary, the Secretary may require the applicant to do 1 or more of the following—
 - (a) provide further documents or information,
 - (b) provide a National Police Check Certificate that is—
 - (i) issued by the New South Wales Police Force, and
 - (ii) issued within the period, if any, specified by the Secretary,
 - (c) for an applicant who is an individual—
 - (i) attend an interview, or
 - (ii) undertake an oral or written examination.
- (7) If an application for the grant of a renewal of a licence is duly made to the Secretary before the expiry of the licence and while the licence is in force, the licence is taken to continue in force until the Secretary notifies the applicant of a decision to grant or refuse the application.

26 Competency assessment to accompany application for licence

- (1) This section applies to an application for the grant of a licence if the regulations under section 31 provide for competency assessments for the licence.

- (2) A competency assessment issued by an accredited industry body must accompany the individual's application for the grant of a licence.
- (3) The regulations may provide for circumstances in which a competency assessment is not required to accompany an individual's application for the grant of a licence.

27 Secretary may obtain information from third parties

- (1) The Secretary may, by written notice, require an applicant or a close associate of the applicant to do either or both of the following—
 - (a) authorise a person described in the notice—
 - (i) to provide specified information that is relevant to the investigation of the application, and
 - (ii) to produce, in accordance with directions in the notice, specified records relevant to the investigation of the application, and
 - (iii) to permit examination of, the taking of extracts from and the making of copies of, the records,
 - (b) give the Secretary specified authorities and consents to enable the Secretary to obtain information, including financial and other confidential information, from other persons concerning the applicant or close associate.
- (2) If a requirement notified under this section is not complied with, the Secretary may refuse to consider the application while the non-compliance continues.
- (3) A decision of the Secretary to refuse to consider an application under subsection (2) is not a reviewable decision under this or another Act.
- (4) A person does not incur a liability to another person for complying with a requirement of a notice under this section.

28 Grant or refusal of licence

- (1) The Secretary may, on application, grant or refuse a licence.
- (2) The Secretary may grant a licence in a class the Secretary considers appropriate even if the application is for a different class of licence.
- (3) The Secretary must refuse to grant a licence—
 - (a) if the application for the licence 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 licensed work authorised by the licence, or
 - (c) on a ground prescribed by the regulations.
- (4) The Secretary may grant a licence in a provisional form if the Secretary is satisfied—
 - (a) the applicant does not meet the requirements for the grant of a licence, and
 - (b) special circumstances exist that justify the grant of the licence, and
 - (c) the applicant has a reasonable level of experience in relation to the work authorised by the licence, and
 - (d) the applicant has a reasonable opportunity to meet the requirements for the issue of the licence within—
 - (i) for a 1-year licence—1 year after the licence is issued in a provisional form, or
 - (ii) for a 3-year licence—3 years after the licence is issued in a provisional form.

- (5) A licence granted in a provisional form—
 - (a) may be cancelled by the Secretary at any time by written notice to the licence holder, and
 - (b) must not be renewed in a provisional form, and
 - (c) may be renewed other than in a provisional form if the Secretary is satisfied the holder meets the requirements for the grant of the licence.
- (6) The Secretary may consider a competency assessment as evidence of the qualifications, skills, knowledge or experience of an applicant in deciding whether to grant or refuse the licence.
- (7) The Secretary must give the applicant written notice of a decision to grant or refuse the licence.
- (8) If the Secretary fails to give an applicant for a licence notice of a decision to grant or refuse the licence within the period prescribed by the regulations, the Secretary is taken to have refused to grant the licence.

29 Duration of licence

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

30 Variation of licence

- (1) The Secretary may, at any time, by written notice to a licence holder, vary the licence of the licence holder, including conditions of the licence imposed by the Secretary.
- (2) A variation includes—
 - (a) the imposition, removal or amendment of a condition, or
 - (b) the attachment, removal or amendment of an endorsement.
- (3) The regulations may make further provision about the variation of licences, including—
 - (a) applications for variation, and
 - (b) fees for applications for variation.

Division 3 Competency assessments by accredited industry bodies

31 Competency assessments for licence applicants

- (1) The regulations may provide for an accredited industry body to assess whether an individual has the appropriate qualifications, skills, knowledge or experience to hold a licence.
- (2) An accredited industry body may issue a *competency assessment* for an individual in relation to a licence if the body—
 - (a) the individual has applied to the body for the issue of a competency assessment, and
 - (b) the body has assessed the individual in accordance with the regulations, and
 - (c) the body is satisfied the individual has the appropriate qualifications, skills, knowledge or experience to hold the licence.

- (3) A competency assessment may be issued subject to conditions.
- (4) An accredited industry body has other functions prescribed by the regulations.
- (5) The Secretary may exercise the functions of an accredited industry body.

32 Regulations about competency assessments

The regulations may make provision about the following—

- (a) the processes for assessing an individual for a competency assessment,
- (b) the form, content and conduct of a competency assessment,
- (c) the requirements for the issue of a competency assessment, including requirements relating to the following—
 - (i) qualifications, skills, knowledge or experience,
 - (ii) insurance,
 - (iii) continuing professional development,
- (d) the conditions of competency assessments,
- (e) the time in which an application for a competency assessment must be decided,
- (f) the individuals who may carry out a competency assessment on behalf of an accredited industry body, including the qualifications or experience of the individuals,
- (g) the period within which a competency assessment remains valid,
- (h) the procedures for monitoring and improving competency assessment processes,
- (i) the maximum fees that may be charged for an application for a competency assessment.

Drafting note 3.2 *Drafting on industry run competency assessment has been included to explain how the scheme could work. Consultation is ongoing and final drafting will be refined following consultation.*

33 Accreditation of industry bodies to issue competency assessments

- (1) The Secretary may grant accreditation to an industry body for the purposes of this division if satisfied the body meets the requirements specified by the regulations.
- (2) The accreditation may be limited to specified classes of licence.
- (3) The regulations may make provision about the accreditation of industry bodies, including the following—
 - (a) the process for making an application for accreditation,
 - (b) the grounds on which the Secretary must or may grant or refuse an accreditation,
 - (c) the variation of an accreditation, including the conditions of an accreditation,
 - (d) the fees that may be charged for an application for an accreditation or a variation of an accreditation,
 - (e) the duration of an accreditation,
 - (f) the suspension and cancellation of an accreditation by the Secretary, including the grounds on which the Secretary may suspend or cancel an accreditation and the imposing of conditions by the Secretary on the suspension or cancellation,

- (g) the auditing of accredited industry bodies by the Secretary,
 - (h) the issue of directions to accredited industry bodies by the Secretary in relation to compliance.
- (4) A reference in this division to the grant of accreditation includes the grant of the renewal of an accreditation.

34 Conditions of accreditation

- (1) The accreditation of an industry body 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 an accreditation—
 - (a) at the time of granting accreditation, or
 - (b) at any other time by variation of the accreditation.
- (3) The Secretary may impose conditions on the suspension or cancellation of an accreditation.
- (4) An accredited industry body, or former accredited industry body, who contravenes the following is guilty of an offence—
 - (a) a condition of the accreditation,
 - (b) a condition of a suspension or cancellation of the accreditation.Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—200 penalty units.

Division 4 Conditions and endorsements of licences

35 Conditions of licence

- (1) A licence 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 a licence—
 - (a) at the time of the grant of the licence, or
 - (b) at another time by variation of the licence.
- (3) A provision of this division that authorises a type of condition to be imposed on a licence does not prevent other types of conditions being imposed, or limit the matters that may be provided for by conditions, unless expressly provided for by this division.

36 Compliance with standards or methodologies

- (1) The conditions of a licence may require the licence holder to—
 - (a) comply with a professional code of conduct, and
 - (b) carry out licensed work in accordance with specified codes, standards or methodologies.
- (2) A code, standard or methodology may be prepared or adopted by the Secretary for this section.

37 Conditions may provide authorisation takes effect later

The conditions of a licence may provide that an authorisation conferred by the licence does not take effect until—

- (a) the end of a specified period, or
- (b) the happening of—
 - (i) a particular event, or
 - (ii) a specified state of affairs.

38 Endorsements

- (1) The Secretary may attach an endorsement to a licence that authorises additional licensed work to be carried out under the licence.
- (2) The Secretary may attach the endorsement if satisfied that the holder of the licence has the qualifications, skills, knowledge and experience required to carry out the additional licensed work.
- (3) The Secretary may attach the endorsement—
 - (a) at the time of the grant of the licence, or
 - (b) at another time by variation of the licence.
- (4) The regulations may—
 - (a) provide for applications for an endorsement, and
 - (b) prescribe a fee for applications.

Division 5 Suspension or cancellation of licences

39 Grounds for suspension or cancellation of licence

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

- (a) the licence holder is not a suitable person to carry out the licensed work authorised by the licence,
- (b) the licence holder is not entitled to be licensed,
- (c) the licence holder has applied for the licence to be suspended or cancelled,
- (d) the licence was granted in error,
- (e) the Secretary has suspended or cancelled another licence held under this Act,
- (f) the Secretary has decided to suspend or cancel the licence under *Building Compliance and Enforcement Act 2024*, Part 6,
- (g) a ground prescribed by the regulations.

40 Suspension of licence

- (1) The Secretary may, by written notice to a licence holder, suspend the licence of the licence holder if the Secretary is satisfied there are grounds for the suspension of the licence.
- (2) Notice of the suspension must specify—
 - (a) the date or time from which the suspension takes effect, and
 - (b) the period of the suspension, and
 - (c) the grounds for the suspension, and
 - (d) information about how the decision to suspend the licence may be reviewed.

41 Cancellation of licence

- (1) The Secretary may, by written notice to a licence holder, cancel the licence of the licence holder if the Secretary is satisfied there are grounds for the cancellation of licence.
- (2) Notice of the cancellation must specify—
 - (a) the date or time from which cancellation takes effect, and
 - (b) the grounds for the cancellation, and
 - (c) information about how the decision may be reviewed.

42 Suspension or cancellation may be subject to conditions

- (1) A licence may be suspended or cancelled unconditionally or subject to the conditions imposed by the Secretary.
- (2) The conditions may include conditions to which the licence was subject immediately before the suspension or cancellation.
- (3) The Secretary may, by written notice given to the former licence holder, attach new conditions to, or vary or revoke existing conditions of, the suspension or cancellation of the licence.

Division 6 Miscellaneous

43 Offence of contravening condition

- (1) A licence holder or former licence holder who contravenes the following is guilty of an offence—
 - (a) a condition of the licence, other than a condition for which a different maximum penalty is prescribed,
 - (b) a condition of a suspension or cancellation of the licence.Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (2) The regulations may make provision about work carried out in contravention of this section, including payments for the carrying out of the work.

44 Offence of lending licence

- (1) A licence holder must not—
 - (a) let out, hire or lend a licence to another person, or
 - (b) permit another person to use the licence.Maximum penalty—
 - (a) for a body corporate—3,000 penalty units, or
 - (b) otherwise—600 penalty units.
- (2) The Secretary must cancel the licence of a licence holder who is convicted of an offence against this section.
- (3) In this section—

conviction includes—

 - (a) a finding by a court that the charge for the offence is proven, or that a person is guilty of the offence, even though the court does not proceed to a conviction, and

- (b) a penalty notice being issued to the licence holder for the offence and the payment by the licence holder of some or all of the amount payable under the penalty notice.

45 Voluntary surrender or suspension of licence

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

Note— Disciplinary action may be taken against a former licence holder in certain circumstances under the *Building Compliance and Enforcement Act 2024*, Part 6.

46 Recovery of unpaid fees

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

47 Licence register

- (1) The Secretary must keep a register of licences (the ***licence register***), including the information required to be kept in the register by the regulations.
- (2) The licence register must be—
 - (a) in the form decided by the Secretary, and
 - (b) freely available on the internet for inspection by the public.
- (3) Without limiting subsection (1), the regulations may require that the licence register include the following information in relation to a licence—
 - (a) details of the licence, including details of the licence holder,
 - (b) the results of relevant disciplinary determinations,
 - (c) the results of prosecutions under this Act or the *Building Compliance and Enforcement Act 2024*,
 - (d) details of penalty notices paid,
 - (e) details of orders of the Tribunal in relation to a building claim,
Note— See section 166(4).
 - (f) instances of non-compliance with an order of the Secretary or Tribunal to carry out work or to pay money,
 - (g) details of warning notices published under the *Building Compliance and Enforcement Act 2024*,
 - (h) details of conditions on the licence,
 - (i) details of a cancellation or suspension of the licence,
 - (j) the number of demerit points incurred against the licence holder under the *Building Compliance and Enforcement Act 2024*.

- (4) The Secretary may remove information from, or otherwise amend, the licence register if the information is, in the opinion of the Secretary—
 - (a) false, erroneous or misleading, or
 - (b) unfairly prejudicial to the interests of the licence holder.
- (5) More than 1 register may be kept under this section.
Example— A separate register may be kept for architects.

Part 3 Requirements on licence holders

Division 1 Insurance and other arrangements

48 Licence holders must be indemnified

- (1) The holder of a prescribed licence must, before carrying out licensed work, be adequately insured.
Maximum penalty—
 - (a) for a body corporate—1,500 penalty units, or
 - (b) otherwise—300 penalty units.
- (2) In this section, a licence holder is *adequately insured* in relation to licensed work if the licence holder—
 - (a) is indemnified by insurance that complies with the regulations against liability to which the licence holder may become subject as a result of carrying out the licensed work, or
 - (b) is part of another arrangement approved by the regulations that provides indemnity against the liability.
- (3) The regulations may exempt specified licensed work from a requirement of this section.
- (4) This section does not limit other insurance that may be required as a member of a profession.
- (5) In this section—
prescribed licence means a licence of a kind prescribed by the regulations.

49 Regulations about insurance arrangements

The regulations may make provision about the following—

- (a) the persons or bodies who may provide indemnity,
- (b) the period for which a licence holder must be indemnified,
- (c) the amount for which a licence holder must be indemnified,
- (d) the risks for which a licence holder must be indemnified,
- (e) the nature and terms of the 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 is a former licence holder.

Division 2 General requirements

50 Qualifications, skills and experience

- (1) The Secretary may, by order published in the Gazette, specify the following in relation to the requirements for licence holders—
 - (a) qualifications,
 - (b) registration or assessment by industry bodies,
 - (c) skills, knowledge and experience,
 - (d) additional standards or other requirements, including the completion of specified courses of training or other continuing professional development requirements.
- (2) The requirements must also be published on a government website.
- (3) A decision of the Secretary relating to the specification of requirements under subsection (1) is not a reviewable decision under this or another Act.

51 Secretary may publish practice standards for supervision

- (1) The Secretary may approve practice standards containing requirements relating to supervision (the *supervision standards*).
 - (2) The supervision standards must be published in the Gazette.
 - (3) The supervision standards—
 - (a) may set out requirements by reference to a licence, a class of licence or a type of licensed work, and
 - (b) may exempt certain licences, classes of licence or licensed work from the requirements generally or in particular circumstances, and
 - (c) must be published on a government website.
 - (4) A licence holder must, in accordance with the supervision standards, supervise a person while carrying out licensed work if the person is—
 - (a) not authorised, by a licence issued under this Act, to carry out the work, and
 - (b) carrying out the work under the management, influence or direction of the licence holder.
- Maximum penalty—
- (a) for a body corporate—3,000 penalty units, or
 - (b) otherwise—600 penalty units.

52 Codes of conduct

- (1) The regulations may prescribe codes of conduct for licence holders.
- (2) A code of conduct may specify requirements relating to the following—
 - (a) the carrying out of licensed work,
 - (b) the operation of a business that carries out licensed work,
 - (c) professional standards.
- (3) The regulations may create offences for failing to comply with a code of conduct or provisions of a code of conduct.
- (4) The Minister may consult with the Architects Board before recommending the making of a regulation that prescribes a code of conduct for architects.

53 Licence holder to notify other persons of certain changes

- (1) A licence holder who, in the course of the licence holder's employment, carries out licensed work must give written notice to the licence holder's employer, of—
 - (a) the suspension or cancellation of the holder's licence, or
 - (b) a change in the licence, including its conditions, that would prevent the licence holder from carrying out the licensed work.
- (2) A licence holder who carries out licensed work under a contract must give written notice to the other party to the contract of—
 - (a) the suspension or cancellation of the holder's licence, or
 - (b) a change in the licence, including its conditions, that would prevent the licence holder from carrying out the licensed work.
- (3) 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.
Maximum penalty—
 - (a) for a body corporate—1,500 penalty units, or
 - (b) otherwise—300 penalty units.

54 Licence holder to notify Secretary of certain events

- (1) A licence holder must give written notice to the Secretary of the following events—
 - (a) a relevant authorisation held by the licence holder being suspended or cancelled, other than at the request of the licence holder,
 - (b) the licence holder, including, if the licence holder is a body corporate, a director of the body corporate—
 - (i) being found guilty of a relevant offence, or
 - (ii) having proceedings for a relevant offence being instituted against the licence holder or director, or
 - (iii) being investigated in another Australian jurisdiction by a government agency or a body that issues a relevant authorisation in relation to—
 - (A) the carrying out of work authorised to be carried out under a relevant authorisation, or
 - (B) a failure to comply with a relevant authorisation,
 - (iv) becoming bankrupt or making a composition, arrangement or assignment for the benefit of creditors, or
 - (v) becoming personally insolvent,
 - (c) the licence holder no longer being adequately insured in relation to licensed work,
 - (d) if the licence holder is a body corporate—the body corporate—
 - (i) becoming the subject of a winding up order or having a controller or administrator appointed, or
 - (ii) having no nominee appointed for the licence,
 - (e) an event prescribed by the regulations.
- (2) The notice must be given within 7 days after the licence holder—
 - (a) became aware of the event, or
 - (b) if the licence ought to have been aware of the event before that time—ought to have been aware of the event.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
- (b) otherwise—200 penalty units.

55 Licence holder to notify of changes to information recorded in register

A licence holder must give written notice to the Secretary of a change required to the information recorded in the register in relation to the licence holder, other than a change the Secretary has already been notified of, within 14 days of the licence holder becoming aware of the need for the change.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
- (b) otherwise—100 penalty units.

56 Directions to prevent use of cancelled, suspended and varied licences

- (1) The Secretary may direct a person whose licence has been cancelled, suspended or varied to take the steps specified in the direction to ensure the person is not able to the use—
 - (a) the cancelled licence, or
 - (b) the suspended licence during the period of suspension, or
 - (c) the varied licence as if it had not been varied.
- (2) The direction—
 - (a) must be in writing, and
 - (b) may be included as part of a statement of a decision by the Secretary to take disciplinary action against the person, and
 - (c) may be given at any time.
- (3) The person must comply with the direction.
Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.

Division 3 Additional requirements for licensed bodies corporate

57 Directors must ensure licensed work carried out lawfully

Each director of a licensed body corporate must, in relation to licensed work carried out by or on behalf of the body corporate, ensure that—

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

Maximum penalty—1,500 penalty units.

58 Directors must report certain conduct

Each director of a licensed body corporate must report to the Secretary conduct by 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—

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

Maximum penalty—300 penalty units.

59 Licensed work must be carried out by licensed individual

A licensed body corporate must ensure that licensed work carried out on behalf of the body corporate is carried out by an individual who is authorised to carry out the work.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, and for each day the offence continues, 300 penalty units, or
- (b) otherwise—600 penalty units, and for each day the offence continues, 60 penalty units.

60 Nominees of licensed bodies corporate

- (1) A body corporate must, in an application for a licence, nominate at least 1 eligible individual to be the nominee for the licence.
- (2) The Secretary may appoint a nominee if satisfied that the nominee is—
 - (a) an eligible individual, and
 - (b) otherwise suitable to be appointed as nominee.
- (3) The Secretary may revoke an appointment by written notice to the licensed body corporate.
- (4) If a licensed body corporate becomes aware that a nominee for the licence is no longer an eligible individual, the body corporate—
 - (a) must immediately revoke the nomination, and
 - (b) within 7 days, must apply to the Secretary to appoint a replacement nominee.
- (5) The application must—
 - (a) be in a form approved by the Secretary, and
 - (b) include or be accompanied by information or evidence the Secretary reasonably requires to assess the application.

Note— The *Crimes Act 1900*, Part 5A 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.

- (6) A licensed body corporate must not carry out licensed work under a licence if there is no nominee appointed for the licence.
Maximum penalty—3,000 penalty units.
- (7) It is a defence to the offence if the licensed body corporate demonstrates that—
 - (a) no nominee was appointed because the nominee ceased to be an eligible individual, and
 - (b) the licensed work was carried out within 7 days after the body corporate became aware that the nominee was no longer an eligible individual.
- (8) In this section—
eligible individual means an individual who—

- (a) is eligible to be appointed as a nominee, and
- (b) is authorised to carry out the work required by the body corporate unsupervised, and
- (c) provides a declaration that the individual—
 - (i) understands the responsibilities of a nominee, and
 - (ii) consents to being the nominee for the licence, and
- (d) satisfies any other requirements prescribed by the regulations.

61 Duties of licensed bodies corporate

A body corporate that holds a licence for which a nominee is appointed must keep policies and procedures relating to the following—

- (a) effectively managing and supervising nominees,
- (b) the corporate responsibilities of the body corporate under the licence,
- (c) arrangements for regular communication with nominees about licensed work carried out under the licence,
- (d) arrangements to ensure licensed work carried out under the licence is—
 - (i) carried out by a nominee, or
 - (ii) is appropriately supervised by a nominee.

Maximum penalty—1,500 penalty units.

62 Duties of nominee

- (1) A nominee must, in relation to the licence for which the nominee is appointed—
 - (a) carry out or appropriately supervise the carrying out of licensed work under the licence, and
 - (b) ensure licensed work complies with—
 - (i) this Act, and
 - (ii) the *Building Compliance and Enforcement Act 2024*, and
 - (iii) the National Construction Code.

Maximum penalty—300 penalty units.

- (2) A nominee is not guilty of an offence under this section if the nominee—
 - (a) gave the licence holder written notice in relation to the contravention, and
 - (b) took all reasonable steps to prevent the contravention.
- (3) The licence holder also commits an offence if the nominee contravenes subsection (1).

Maximum penalty—1,500 penalty units.

Part 4 Miscellaneous

63 Falsely representing work

A person must not, for the purposes of securing work for the person or another person falsely represent that work is—

- (a) certification work, or
- (b) professional engineering work, or
- (c) building work involving a building element.

Maximum penalty—300 penalty units.

64 Secretary may require information about insurance policies

- (1) The Secretary may direct a person that issues an insurance policy to a licence holder in relation to licensed work (a *licence holder policy*), to provide to the Secretary any of the following information about licence holder policies or particular classes of licence holder 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 licence holders 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.

Chapter 4 Home building work

Part 1 Contract requirements

Division 1 Preliminary

65 Definitions

In this part—

contracted party means a party to a home building work contract who is—

- (a) an owner of the land on which the home building work will be carried out, or
- (b) a person who enters into a contract with a contractor.

cost of work means—

- (a) the contract price for the work, or
- (b) if the contract price is not known—the reasonable market cost of the labour and materials involved in carrying out the work.

contractor—see section 67(1).

home building work contract means a contract to carry out home building work.

major work contract means a home building work contract if the cost of the work to which the contract relates is more than the major work amount.

major work amount means the amount prescribed by the regulations as the major work amount.

minor work contract means a home building work contract if the cost of the work to which the contract relates—

- (a) is more than the minor work amount, and
- (b) is not more than the major work amount.

minor work amount means the amount prescribed by the regulations as the minor work amount.

progress payment has the same meaning as in the *Building and Construction Industry Security of Payment Act 1999*.

66 Application of part

- (1) This part applies to a home building work contract.
- (2) This part does not apply to the following—
 - (a) a contract entered into between a licence holder and a developer,
 - (b) a contract entered into between licence holders,
 - (c) a contract prescribed by the regulations.
- (3) This part does not affect a right or remedy that a person, other than the person who contracts to carry out the work, may have apart from this Act.

67 Contractors

In this part, **contractor** means a party to a home building work contract who agrees under the contract—

- (a) to carry out home building work, or
- (b) to ensure home building work is carried out, or
- (c) to supply a prefabricated building, or
- (d) to supply a kit home.

68 Persons who may enter contracts

- (1) A person must not enter a home building contract as a contractor unless the person—
 - (a) is authorised to carry out the work under the contract, and
 - (b) holds a licence authorising the person to enter into contracts as a contractor.Maximum penalty—
 - (a) for a body corporate—3,000 penalty units, or
 - (b) otherwise—500 penalty units.
- (2) This section does not apply to a contract prescribed by the regulations.

69 Contracts generally

- (1) If the same parties enter into 2 or more separate home building work contracts to carry out the work in stages—
 - (a) the separate contracts are taken to be a single contract, and
 - (b) the contract price is the sum of the contract prices for the separate contracts.
- (2) An agreement made before a home building work contract is taken to form part of the contract if the agreement—
 - (a) includes a requirement to carry out work prescribed by the regulations, and
 - (b) is not independent of the home building work contract or requires the home building work contract to be entered into.

70 Requirement to have contract

- (1) A person must not carry out home building work if the cost of the work is more than the major work amount unless—
 - (a) the work is carried out under a contract, and
 - (b) the contract complies with this chapter.Maximum penalty—
 - (a) for a body corporate—3,000 penalty units, or
 - (b) otherwise—500 penalty units.
- (2) A person must not carry out home building work if the cost of the work is more than the minor work amount and no more than the major work amount unless—
 - (a) the work is carried out under a contract, and
 - (b) the contract complies with this chapter.Maximum penalty—
 - (a) for a body corporate—600 penalty units, or
 - (b) otherwise—100 penalty units.

71 Exceptions to requirement to have contract

A major work contract or a minor work contract is not required for the carrying out of home building work if—

- (a) the work—
 - (i) is required to be carried out urgently because there is likely to be—
 - (A) a hazard to the health or safety of a person or the public, or
 - (B) damage to property, and
 - (ii) the work cannot be carried out urgently if the person complies with section 70 before commencing the work, or

- (b) the work is carried out by the holder of a licence on land owned by the licence holder, or
- (c) the work is carried out by the holder of an owner-builder permit in accordance with the permit.

Division 2 Major work contracts

Subdivision 1 Requirements for major work contracts

72 Application of division

- (1) This division applies to a major work contract.
- (2) This division does not apply to a major work contract prescribed by the regulations.

73 Form of major work contracts

A major work contract must be—

- (a) in writing, and
- (b) dated and signed by or on behalf of each party to the contract.

74 Content of major work contracts

A major work contract must contain the following—

- (a) the names of the parties to the contract—
- (b) if the contractor is a body corporate that has an ACN—the ACN,
- (c) if the contractor holds a licence—the number of the licence,
- (d) a detailed scope and description of the work to which the contract relates,
- (e) any plans or specifications for the work,
- (f) one of the following set out in a prominent position on the first page of the contract—
 - (i) the contract price,
 - (ii) the method for calculating the contract price, including a reasonable estimate,
- (g) if the contract price may be varied—the following placed next to the contract price—
 - (i) a warning that the contract price may be varied,
 - (ii) an explanation of the effect of the provision allowing variation of the contract price,
- (h) the date, or how the date will be determined, for—
 - (i) the start of the work at the building site, and
 - (ii) practical completion of the work,
- (i) the statutory warranties applying to the work,
- (j) a statement setting out the cooling-off period that applies to the contract (a *cooling-off statement*),
- (k) details of progress payments payable under the contract,
- (l) a statement that—
 - (i) the contract may be terminated in the circumstances provided by the general law, and
 - (ii) the general law does not prevent the parties agreeing to additional circumstances in which the contract may be terminated,

- (m) a checklist in the approved form,
- (n) information, in the approved form, that explains the operation of the *Building and Construction Industry Security of Payment Act 1999*,
- (o) other matters prescribed by the regulations.

75 Variations

- (1) A major work contract must not be varied unless a document evidencing the variation (a **variation document**) is prepared by the contractor in accordance with this section.
Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) The variation document must—
 - (a) be a written document authorised by each party to the contract, and
 - (b) include a detailed description of the variation, and
 - (c) state the reason for the variation, and
 - (d) specify the cost of the variation or a reasonable estimate of the cost, and
 - (e) if the variation will result in a delay affecting the work to which the contract relates—state a reasonable estimate for the period of the delay.
- (3) The contractor must give an authorised copy of the variation document to each contracted party.
- (4) The contractor must not start to carry out home building work relating to the variation before the contractor has complied with this section unless—
 - (a) the work is required to be carried out urgently because there is likely to be—
 - (i) a hazard to the health or safety of a person or the public, or
 - (ii) damage to property, and
 - (b) the work cannot be carried out urgently if the person complies with this subsection before commencing the work.
- (5) The regulations may prescribe circumstances where a major work contract may be varied without a variation document.

76 Display homes

- (1) An exhibitor must, when a display home is available for inspection, prominently display the following at the display home—
 - (a) a copy of the plans and specifications relating to the construction of the home,
 - (b) if the person is aware that persons will be invited to enter into contracts for the construction of similar homes—a copy of a standard form of contract that complies with the requirements for major work contracts under sections 73 and 74,
 - (c) other information prescribed by the regulations.
Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) A contract is taken to contain a provision that a home will be constructed in accordance with this Act and the National Construction Code if—

- (a) the contract is entered into with the contractor for the construction of a home similar to the display home, and
 - (b) the contractor knows the contract was entered into after the contracted party had inspected the display home, and
 - (c) the contract identifies the home to be built by reference to the display home.
- (3) In this section—

display home means a home, including a representation of a home, made available for inspection to persons who are invited, expressly or impliedly, to enter into a contract for the construction of a similar home.

exhibitor means a person who—

- (a) makes a display home available for inspection, or
- (b) advertises that a display home is available for inspection.

77 Maximum progress payments

If a major work contract provides for progress payments, the required progress payments must not be more than the value of the work completed at the time the payment is required to be made.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
- (b) otherwise—200 penalty units.

Subdivision 2 Rescission and cooling-off periods

78 Application of subdivision

- (1) This subdivision does not apply to a major work contract if—
 - (a) the contract is fully prepared by or on behalf of the contracted party, and
 - (b) no terms or conditions are added to the contract by or on behalf of the contractor.
- (2) This subdivision does not apply to a major work contract if—
 - (a) the home building work under the contract is required to be carried out urgently because there is likely to be—
 - (i) a hazard to the health or safety of a person or the public, or
 - (ii) damage to property, and
 - (b) the work could not be carried out urgently if this subdivision were to apply.

79 Rescission

- (1) A person who is a contracted party to a major work contract may rescind the contract within 5 business days after the person—
 - (a) is given a copy of the signed contract, or
 - (b) if the person is not given a copy of the signed contract within 5 days after the contract is signed—becomes aware that the person is entitled to be given a copy of the signed contract.
- (2) The person may rescind the contract by giving a written notice—to the contractor that states that the person rescinds the contract.
- (3) The notice be given by—
 - (a) giving it to the contractor personally, or

- (b) leaving it at the address shown in the contract as the address of the contractor, or
 - (c) giving it to the contractor in accordance with a notice or service provision in the contract.
- (4) If a notice is given in accordance with this section—
 - (a) the contract is taken to be rescinded from the time the contract was signed, and
 - (b) the contractor may keep the amount of reasonable out-of-pocket expenses the contractor incurred before the rescission, and
 - (c) the contractor must refund all other money paid to the contractor under the contract by or on behalf of the person who rescinded the contract, and
 - (d) the person who rescinded the contract is not liable to the contractor for the rescission of the contract.
- (5) A contract may be rescinded even if work has been done under the contract at the time of rescission.
- (6) The contractor is entitled to a reasonable price for work carried out under the contract to the date the contract is rescinded.

80 Variation or avoidance of cooling-off period

- (1) A cooling-off period may be shortened or avoided by a provision in a major work contract.
- (2) The provision takes effect when the contracted party gives the contractor a waiver certificate.
- (3) A waiver certificate must—
 - (a) be given in writing, and
 - (b) be signed by a relevant Australian legal practitioner, and
 - (c) indicate the purpose for which the certificate is given, and
 - (d) contain a statement to the effect that the relevant Australian legal practitioner explained the following to the contracted party—
 - (i) the effect of the contract,
 - (ii) the nature of the certificate,
 - (iii) the effect of giving the certificate to the contractor.
- (4) In this section—

relevant Australian legal practitioner means an Australian legal practitioner other than the following—

 - (a) an Australian legal practitioner acting for the contractor,
 - (b) another Australian legal practitioner employed in the legal practice of an Australian legal practitioner acting for the contractor,
 - (c) another Australian legal practitioner who is a member or employee of a firm in which an Australian legal practitioner acting for the contractor is a member or employee,
 - (d) a close associate of the contractor.

81 Person may rescind contract if cooling-off statement not included

- (1) If a contract does not contain a cooling-off statement, a person, other than the contractor, may rescind the contract within 7 days of becoming aware the contract should have contained the statement.

- (2) The person may rescind the contract by giving a written notice to the contractor that states that the person rescinds the contract.
- (3) The notice be given by—
 - (a) giving it to the contractor personally, or
 - (b) leaving it at the address shown in the contract as the address of the contractor, or
 - (c) giving it to the contractor in accordance with a notice or service provision in the contract.
- (4) The notice must be given in the approved form.
- (5) If a notice is given in accordance with this section, the contract is taken to be rescinded from the time the contract was signed.
- (6) A contract may be rescinded even if work has been done under the contract at the time of rescission.
- (7) The contractor—
 - (a) is entitled to a reasonable price for work carried out under the contract to the date the contract is rescinded, and
 - (b) must not recover more than the contractor would have been entitled to recover under the contract.
- (8) In this section—
cooling-off statement—see section 74(i).

Division 3 Minor work contracts

82 Application of division

- (1) This division applies to a minor work contract.
- (2) This division does not apply to a minor work contract prescribed by the regulations.

83 Form of minor work contracts

A minor work contract must be—

- (a) in writing, and
- (b) dated and signed by or on behalf of each party to the contract.

84 Content minor work contracts

A minor work contract must contain the following—

- (a) the names of the parties to the contract,
- (b) if the contractor is a body corporate that has an ACN—the ACN,
- (c) if the contractor holds a licence—the number of the licence,
- (d) a description of the work to which the contract relates,
- (e) any plans or specifications for the work,
- (f) the contract price, or the method for calculating the contract price, including a reasonable estimate, set out in a prominent position on the first page of the contract,
- (g) if the contract price may be varied—the following placed next to the contract price—
 - (i) a warning that the contract price may be varied,

- (ii) an explanation of the effect of the provision allowing variation of the contract price,
- (h) other matters prescribed by the regulations.

Division 4 Other requirements

85 Terms of home building work contracts

- (1) A home building work contract must include, and is taken to include, statutory terms.
- (2) A home building work contract containing a term that is inconsistent with a statutory term is unenforceable to the extent of the inconsistency.
- (3) A regulation made under this section does not apply to a contract in force on the day the regulation commences.
- (4) In this section—
statutory term means a term or other information prescribed by the regulations.

86 Certain terms and conditions void in home building work contracts

- (1) A contractor must not enter into a home building work contract that—
 - (a) contains a prohibited condition or term, or
 - (b) is or contains a prohibited variation.Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) A home building work contract is unenforceable to the extent to which it—
 - (a) contains a prohibited condition or term, or
 - (b) is or contains a prohibited variation, or
 - (c) may reasonably be construed as an attempt to enforce a prohibited condition or term or a prohibited variation.
- (3) A regulation made under this section does not apply to a contract in force on the day the regulation commences.
- (4) The regulations may make provision about terms or other information that must not be included in a home building work contract.
- (5) In this section—
prohibited condition or term means a condition or term prescribed by the regulations as a prohibited condition or term.
prohibited variation means a variation of a term prescribed by the regulations as a term that must not be varied.

87 Arbitration provision prohibited

A provision in a home building work contract that requires a dispute under the contract to be referred to arbitration is void.

88 Deposits

- (1) A contractor must not request or accept a deposit for home building work that is more than the maximum amount permitted by the regulations.
Maximum penalty—
 - (a) if the home building work requires a major work contract—

- (i) for a body corporate—3,000 penalty units, or
 - (ii) otherwise—500 penalty units, or
- (b) otherwise—
 - (i) for a body corporate—600 penalty units, or
 - (ii) otherwise—100 penalty units.
- (2) A home building work contract is unenforceable to the extent to which it requires a deposit for home building work that is more than the maximum amount permitted by the regulations.

89 Undue influence relating to appointment of approval authority

- (1) A contractor must not unduly influence, or attempt to unduly influence, a contracted party in the appointment by that party of an approval authority for the home building work to be carried out under a home building contract.
Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—300 penalty units.
- (2) Without limiting subsection (1), a contractor is taken to have attempted to unduly influenced a contracted party in the appointment of an approval authority if the contractor—
 - (a) made it a requirement of entering the home building contract that a specified approval authority or type of approval authority was or was not be appointed, or
 - (b) offered to change the contract price if a specified approval authority or type of approval authority would be or would not be appointed, or
 - (c) refuses to carry out work under the contract if a specified approval authority or type of approval authority is or is not appointed.

90 Consumer information

- (1) Before entering into a major work contract or a minor work contract, the contractor must give consumer information to each other contracted party.
Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) The consumer information must be given in the approved form.
- (3) This section does not apply to a contract prescribed by the regulations.
- (4) In this section—
consumer information means the following information—
 - (a) an explanation about the operation of this Act,
 - (b) if there is a requirement for an approval authority—an explanation about the role of the approval authority,
 - (c) an explanation about the procedure for the resolution of disputes—
 - (i) under the contract, and
 - (ii) relating to insurance,
 - (d) an explanation about the operation of the *Building and Construction Industry Security of Payment Act 1999* and the regulations under that Act,
 - (e) a checklist,

- (f) other information prescribed by the regulations.

91 Copy of contract

A contractor must, no later than 5 business days after entering into a home building work contract, give each other contracted party a signed copy of the contract in the form in which it was made.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
- (b) otherwise—100 penalty units.

92 Interests in land under contract

- (1) A home building work contract does not give the contractor or other person a legal or equitable estate or interest in land.
- (2) A provision in a contract or other agreement is void to the extent that it may reasonably be construed as an attempt to create an estate or interest in land.
- (3) This section does not apply to a provision in a home building work contract that creates a charge over land if—
 - (a) the land is land on which the work is or will be carried out under the contract, and
 - (b) the charge is in favour of the contractor, and
 - (c) the charge is created to secure the payment to the contractor by another contracted party of money payable under the contract, but only if a court or tribunal has made an order or judgment for the payment, and
 - (d) for land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land.
- (4) A charge over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land.

93 Enforceability of contracts and other rights

- (1) This section applies to a person (a **non-compliant person**) who enters into a contract to carry out home building work if—
 - (a) the person is not authorised to carry out the work, or
 - (b) the contract is a major work contract that does not comply with a requirement imposed by or under this Act, or
 - (c) the person does not obtain mandatory insurance for the work in contravention of the *Building Insurance Act 2024*, or
 - (d) the person contravenes another provision prescribed by the regulations.
- (2) The contract is unenforceable by the non-compliant person.
- (3) The non-compliant person is, in relation to a breach of the contract committed by another party to the contract, not entitled—
 - (a) to damages, or
 - (b) to enforce another remedy.
- (4) The non-compliant person is, in relation to a breach of the contract committed by the non-compliant person—
 - (a) liable for damages, and

- (b) subject to other remedies.
- (5) This section does not affect the liability of the non-compliant person for an offence against a provision of, or made under, this or another Act.

Part 2 Statutory warranties

94 Definitions

In this part—

major defect means —

- (a) a major defect referred to in section 95, or
- (b) a defect prescribed by the regulations as a major defect.

statutory warranty—see section 96(1).

warranty beneficiary—see section 97.

warranty provider—see section 98.

95 Major defects

- (1) A defect in a building element of a building is a major defect if the defect—
 - (a) is caused by a failure to comply with 1 or more of the following when work is carried out—
 - (i) the governing requirements or performance requirements of the National Construction Code,
 - (ii) applicable standards,
 - (iii) approved plans for the work, and
 - (b) has a significant impact on the building.
- (2) A defect in a building element of a building, or a building product used in the building, is a major defect if the defect—
 - (a) is caused by 1 or more of the following—
 - (i) defective design,
 - (ii) defective workmanship,
 - (iii) defective materials, and
 - (b) has a significant impact on the building.
- (3) The use of a building product in the building in contravention of the *Building Products (Safety) Act 2017* is a major defect.
- (4) In this section—

significant impact on a building means the following—

 - (a) the inability to inhabit the building or part of the building,
 - (b) the inability to use the building or part of the building for its intended use,
 - (c) the destruction of the building or part of the building,
 - (d) the threat of collapse of the building or part of the building.

96 Warranties

- (1) The following warranties apply to home building work (**statutory warranties**)—
 - (a) a warranty that the work will be carried out with due care and skill,
 - (b) a warranty that the work will be carried out in accordance with the plans and specifications set out in the contract,

- (c) a warranty that all materials supplied, whether assembled on-site or off-site, will be—
 - (i) good, and
 - (ii) suitable for the purpose for which the materials are used, and
 - (iii) unless otherwise stated in the contract, new,
 - (d) a warranty that the work will be carried out in accordance with this or another law,
 - (e) a warranty that the work will be carried out with due diligence and within—
 - (i) the time agreed, or
 - (ii) if no time is agreed—a reasonable time,
 - (f) a warranty that the work will result in a home that is reasonably fit for habitation,
 - (g) a warranty that the work and the materials used in carrying out the work will be reasonably fit for the specified purpose or result.
- (2) The warranties apply to—
- (a) the home building work specified in the contract under which the work is carried out (the **contracted work**), and
 - (b) work carried out in relation to the contracted work if the work is—
 - (i) necessary to carry out of the contracted work, or
 - (ii) incidental to the contracted work.
- (3) A breach of a statutory warranty constitutes a breach of the contract.

97 Warranty beneficiary

The following persons (**warranty beneficiaries**) are entitled to the benefit of a statutory warranty for home building work—

- (a) a person who is a party to the contract under which the work is carried out,
- (b) an owner of the land on which the work is carried out, whether or not a party to the contract,
- (c) a subsequent owner of the land.

98 Warranty provider

The person (the **warranty provider**) responsible for providing a statutory warranty for home building work on land is—

- (a) the person who enters a contract for the work with the owner of the land, or
- (b) if a person did not enter a contract with the owner for the work—the person who contracts or arranges for, facilitates or otherwise causes, whether directly or indirectly, the work to be carried out, or
- (c) a person who carries out the work under a subcontract.

99 Duties of warranty beneficiaries

- (1) A warranty beneficiary—
- (a) must take reasonable steps to ensure the warranty provider is given written notice of a breach of a statutory warranty within 6 months after the warranty beneficiary—
 - (i) becomes aware of the breach, or
 - (ii) ought reasonably to have become aware of the breach, and

- (b) must mitigate loss arising from the breach, and
 - (c) must not refuse reasonable access to enable a person to rectify the breach.
- (2) A court or tribunal may, in proceedings about the breach, take into account a failure by the warranty beneficiary to comply with this section.
- (3) The onus of establishing a failure to mitigate loss is on the person alleging the failure.

100 Warranty period

- (1) Proceedings for breach of a statutory warranty must be commenced before the end of—
 - (a) the warranty period for the breach, or
 - (b) if the breach becomes apparent within the last 6 months of the warranty period—the 6-month period after the end of the warranty period, or
 - (c) if the Secretary has been notified under Chapter 7, Part 2 of a building dispute relating to the breach of the statutory warranty within the last 6 months of the warranty period—the period prescribed by the regulations after the end of the warranty period (the *extended warranty period*).
- (2) During the extended warranty period—
 - (a) no additional defects can be included, and
 - (b) no other extensions of the warranty period may be granted.
- (3) The warranty period for home building work is—
 - (a) for a breach resulting in a major defect—6 years after the completion of the work, or
 - (b) otherwise—
 - (i) if a building bond has been lodged for the work—90 days after the final report is required to be completed under the *Building Insurance Act 2024* for the work, or
 - (ii) otherwise—2 years after the completion of the work.
- (4) If the home building work is completed, the warranty period starts on the date on which the work is completed in accordance with Part 3.
- (5) If the home building work is not completed, the warranty period starts on—
 - (a) the date on which the contract is terminated, or
 - (b) if the contract is not terminated—the date on which the home building work under the contract stops, or
 - (c) if the contract is not terminated and home building work under the contract did not commence—the date on which the contract is made, or
 - (d) if there is no contract—the date on which a person last attended the site to carry out home building work.
- (6) The warranty period for a statutory warranty relating to a prefabricated building ends before the period specified in subsection (2) if—
 - (a) the prefabricated building is relocated to another site, and
 - (b) the contract for the prefabricated building work does not expressly provide that the prefabricated building is designed to be—
 - (i) assembled, and
 - (ii) disassembled for the purposes of reassembly at another site.
- (7) In this section—

becomes apparent, for a breach of warranty, means the first time at which the warranty beneficiary—

- (a) becomes aware of the breach, or
- (b) ought reasonably to have become aware of the breach.

building bond means a building bond under the *Building Insurance Act 2024*, Part 5.

final report means—

- (a) the final report required under the *Building Insurance Act 2024*, section 136, or
- (b) if no final report is required—the interim report required under the *Building Insurance Act 2024*, section 138.

101 Proceedings for breaches involving certain defects

- (1) A warranty beneficiary must not enforce a statutory warranty for a deficiency in work or materials if the warranty has already been enforced for the deficiency.
- (2) A warranty beneficiary who has enforced a statutory warranty for a particular deficiency in work is not prevented from enforcing the same warranty for—
 - (a) the same deficiency if the deficiency has not been rectified, or
 - (b) a deficiency of a different kind in the work (*the other deficiency*) if—
 - (i) the other deficiency existed when the work was completed, and
 - (ii) the person did not know, and could not reasonably be expected to have known, of the existence of the other deficiency when the statutory warranty was previously enforced.
- (3) Subsection (2) does not apply to the warranty set out in section 96(1)(e).

102 Defences

- (1) This section applies to proceedings to enforce a statutory warranty in relation to a deficiency.
- (2) It is a defence if the defendant proves the deficiency arises from instructions given by the person for whom the work was contracted to be done contrary to written advice given—
 - (a) by the defendant or person who did the work, and
 - (b) before the work was done.
- (3) It is a defence if the defendant proves the deficiency arises from the defendant reasonably relying on written instructions given—
 - (a) by a person who—
 - (i) is a relevant professional, and
 - (ii) acts for the person for whom the work was contracted to be done, and
 - (iii) is independent of the defendant, and
 - (b) before the work was done or confirmed after the work was done.
- (4) A relevant professional is independent of the defendant if the relevant professional was not engaged by the defendant—
 - (a) to provide a service in connection with the work, or
 - (b) to carry out work for the defendant in connection with the work.
- (5) A relevant professional is not independent of the defendant if it is established that the relevant professional—

- (a) was engaged on the basis of a recommendation or referral of the defendant to act for the person for whom the work was contracted to be done, or
 - (b) is, or was within 3 years before the relevant instructions were given, a close associate of the defendant.
- (6) In this section—
relevant professional means a person who—
- (a) represents the person to be 1 or more of the following—
 - (i) an architect,
 - (ii) a licensed design practitioner,
 - (iii) an engineer,
 - (iv) an approval authority, or
 - (b) represents the person to have, in relation to home building work or a particular aspect of home building work, expert or specialised qualifications or knowledge, or
 - (c) represents the person—
 - (i) is engaged in a profession, or
 - (ii) holds a qualification published in the Gazette under section 50, or
 - (d) is a person prescribed by the regulations.

103 Warranties may not be excluded

- (1) A provision of an agreement or other instrument must not cause the rights of a warranty beneficiary in relation to a statutory warranty to be restricted or removed.
- (2) A provision that would restrict or remove the rights is void.

Part 3 Completion of home building work

104 When home building work is complete

- (1) Home building work is **complete** for the purposes of this Act—
 - (a) for work involving the construction of a new building in a strata scheme—
 - (i) if the regulations prescribe when the work is complete—when the work is complete in accordance with the regulations, or
 - (ii) otherwise—when an occupation approval is issued that authorises the occupation and use of the whole of the building, or
 - (b) for work carried out under a contract that provides for the date the work is complete, other than work involving the construction of a new building in a strata scheme—when the work is complete in accordance with the contract, or
 - (c) otherwise—
 - (i) if a completion approval is required for the building to which the work relates, when—
 - (A) the completion approval has been issued, or
 - (B) an application has been made for the completion approval and the approval has not been issued within 6 months after the application is made, or
 - (ii) if a completion approval is not required for the building to which the work relates, when—
 - (A) the work is practically complete, and

- (B) the licence holder has last attended the site to carry out work, other than work to remedy a defect that does not affect practical completion.
- (2) Home building work may be complete at different times for different buildings if—
- (a) the work involves the construction of 2 or more buildings, and
 - (b) the buildings are reasonably capable of being used and occupied separately.
- (3) This section does not apply to a building unless the building, as a new building, would require the issue of an occupation approval before it could be used and occupied.
- Note—** A swimming pool, tennis court or detached garage may be a building for the purposes of this section if an occupation approval is required to authorise its use and occupation.
- (4) In this section—
- practically complete***, for work, means the work—
- (a) is completed in compliance with the contract, including—
 - (i) all plans and specifications for the work, and
 - (ii) all statutory requirements applying to the work, or
 - (b) if the work is not carried out under a contract—is completed without defects or omissions, other than minor defects or omissions that will not unreasonably affect the intended use of the work.

Chapter 5 Owner-builder work

105 Definitions

In this Act—

owner-builder means a person who carries out owner-builder work authorised by an owner-builder permit issued to the person.

owner-builder permit or **permit** means an owner-builder permit issued under this part.

106 Application for owner-builder permit

- (1) An individual may apply to the Secretary for an owner-builder permit.
- (2) An application must—
 - (a) be in a form approved by the Secretary, and
 - (b) include or be accompanied by information or evidence the Secretary reasonably requires to assess the application.

Note— The *Crimes Act 1900*, Part 5A 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 an owner-builder permit.
- (4) The Secretary may require the fee to accompany the application.
- (5) If the Secretary considers it necessary, the Secretary may require either or both of the following—
 - (a) further documents or information to be provided by the applicant,
 - (b) that the applicant attend an interview, undertake an oral or written examination or provide a demonstration of the applicant's skills.

107 Grant or refusal of application

- (1) The Secretary may not grant the application unless satisfied of the following—
 - (a) the applicant is an individual,
 - (b) the applicant is at least 18 years of age,
 - (c) the applicant has complied with the requirements of this chapter,
 - (d) the applicant intends to carry out owner-builder work at the intended primary place of residence of the applicant,
 - (e) the intended primary place of residence is not a secondary dwelling,
 - (f) the residence is on land (the **subject land**) owned by the applicant individually or with other persons,
 - (g) the applicant is shown as an owner of the title of the subject land,
 - (h) the applicant does not already hold an owner-builder permit,
 - (i) an owner-builder permit has not been issued during the relevant period in relation to land owned—
 - (i) by the applicant, or
 - (ii) by another owner of the subject land,
 - (j) the applicant holds the qualifications specified for a an owner-builder permit by the Secretary by notice published in the Gazette,
 - (k) the applicant is not a developer,

- (l) if the applicant holds a licence or relevant authorisation—the licence or authorisation—
 - (i) has not been suspended or subject to other compliance activity during the relevant period, and
 - (ii) has not incurred demerit points during the relevant period,
 - (m) if the applicant held a licence or relevant authorisation during the relevant period—the applicant was not subject to any compliance activity during the relevant period.
- (2) If the Secretary is satisfied there are special circumstances, the Secretary may grant an application despite not being satisfied of the matters in subsection (1)(e) or (i).
- (3) In this section—
relevant period means—
- (a) a period of 5 years before the application is made, or
 - (b) another period prescribed by the regulations.

108 Authority of owner-builder permit

- (1) An owner-builder permit authorises the permit holder to carry out the following work set out in the permit on the land specified in the permit—
 - (a) owner-builder work,
 - (b) other work prescribed by the regulations.
- (2) The Secretary may, on the application of a permit holder, vary the authority conferred by the permit by giving written notice to the permit holder.

109 Duration of owner-builder permit

An owner-builder permit remains in force for a period of 5 years, unless sooner cancelled.

110 Cancellation of owner-builder permit

- (1) The Secretary may, by written notice to a permit holder, cancel the owner-builder permit of the permit holder if the Secretary is satisfied there are grounds for the cancellation of the permit.
- (2) Each of the following constitutes grounds for cancelling an owner-builder permit—
 - (a) the permit holder carries out work that is not authorised by the permit,
 - (b) the permit holder is not entitled to hold the permit,
 - (c) the permit was granted in error,
 - (d) another ground prescribed by the regulations.
- (3) Notice of the cancellation must specify—
 - (a) the date or time from which cancellation takes effect, and
 - (b) the grounds for the cancellation, and
 - (c) information about how the decision may be reviewed and appealed.

111 Unlicensed contracting

- (1) A permit holder must not engage another person to carry out home building work for the permit holder unless the other person holds a licence authorising the person to carry out the work.
Maximum penalty—300 penalty units.

- (2) A person is not guilty of an offence under this section if the person establishes that the person took all reasonable steps to prevent the contravention.

DRAFT

Chapter 6 Approvals relating to building work

Part 1 Preliminary

112 Definitions

In this chapter—

approval authority, for a building approval or completion approval, means—

- (a) a local council,
- (b) a person whose licence authorises the person to issue the approval.

building approval, for building work, means an approval under this chapter that authorises the building work to be carried out.

building element means a building element relating to—

- (a) a class 2 building, a class 3 building or a class 9c building, or
- (b) a building with a class 2, a class 3 or class 9c part.

building work compliance declaration—see section 115.

change of building use means a change of the use of a building from a use as a class of building recognised by the National Construction Code to a use as a different class of building recognised by the National Construction Code.

completion of work approval means an approval under this chapter to certify that work included in the building approval has been completed in accordance with the building approval.

compliance declaration means the following—

- (a) a design compliance declaration,
- (b) a prefabricated design compliance declaration,
- (c) a building work compliance declaration,
- (d) a prefabricated building work compliance declaration.

declared building work—see section 138.

design compliance declaration—see section 114.

fire safety certificate means a certificate that—

- (a) is issued for a building by an approval authority, and
- (b) certifies that each essential fire safety measure specified in the current fire safety schedule for the building has been assessed by a properly qualified person as capable of performing to at least the standard required by the current fire safety schedule.

fire safety schedule—see section 123.

occupation approval, for a building or part of a building, means an approval under this chapter—

- (a) to occupy or use the building or part, or
- (b) for a change of building use for the building or part.

prefabricated building declaration—see section 144(1).

prefabricated building work compliance declaration—see section 131.

prefabricated design—see section 120(2)(a).

prefabricated design compliance declaration—see section 120(2)(b).

regulated design—see section 113.

staged building work—see section 121(1).

transportation and building instructions—see section 145(1).

113 Regulated design

In this chapter, **regulated design** for building work means a design, including a plan or specification or a report detailing a design—

- (a) for a building element, and
- (b) prepared by the holder of a licence whose licence authorises the holder to prepare the design, and
- (c) in the approved form, and
- (d) containing sufficient detail for the person who carries out the building work to carry the work out in compliance with the National Construction Code, and
- (e) containing the matters—
 - (i) prescribed by the regulations, or
 - (ii) specified by the Secretary in an order published in the Gazette.

114 Design compliance declarations

In this chapter, a **design compliance declaration** for a regulated design means a declaration, by the holder of a licence whose licence authorises the holder to make the declaration, declaring—

- (a) building work carried out in accordance with the regulated design will comply with the National Construction Code, and
- (b) the regulated design provides sufficient detail for the person who carries out the building work to carry out the work in compliance with the National Construction Code, and
- (c) other requirements prescribed by the regulations are satisfied.

115 Building work compliance declarations

In this chapter, a **building work compliance declaration** for building work means a declaration, by the holder of a licence whose licence authorises the holder to make the declaration, declaring that the building work—

- (a) complies with the National Construction Code, and
- (b) was carried out in accordance with the regulated design for the building work that is part of the building approval, and
- (c) other requirements prescribed by the regulations are satisfied.

Part 2 Building approvals

116 Building work requires building approval

- (1) A person must not carry out building work under a development consent unless—
 - (a) a building approval is in force that authorises the building work to be carried out, and
 - (b) the building work is carried out in accordance with the building approval.Maximum penalty—[#]
- (2) The development consent does not authorise the carrying out of the building work.
- (3) This section does not apply to building work prescribed by the regulations.

117 Applications for building approval—general

- (1) An application for a building approval for building work may be made to an approval authority by, or on behalf of, the owner of the land on which the building work is to be carried out.
- (2) The application must—
 - (a) be made using the NSW planning portal, and
 - (b) be accompanied by—
 - (i) the prescribed fee, and
 - (ii) the documents prescribed by the regulations, and
 - (c) comply with the additional requirements prescribed by the regulations.
- (3) The approval authority may require the applicant to give the approval authority any additional information that the approval authority reasonably requires to decide the application.
- (4) If the approval authority accepts the application the approval authority is taken to be appointed for the building work.

118 Applications—building work involving building element

- (1) This section applies to an application for a building approval if the building work involves a building element.
- (2) The application must also be accompanied by—
 - (a) a regulated design for the building element and other aspects of the building work prescribed by the regulations, and
 - (b) a design compliance declaration for the regulated design.

119 Applications—building work involving performance solution

- (1) This section applies to an application for a building approval for building work involving a performance solution.
- (2) The application must also be accompanied by a report (a *performance solution report*) that—
 - (a) is prepared by the holder of a licence that authorises the holder to prepare the report, and
 - (b) is prepared in accordance with the requirements set out in the National Construction Code, A2G2(4), and
 - (c) contains relevant building work plans and specifications that show and describe the physical elements of the performance solution, if possible, and
 - (d) if the proposed performance solution relates to a fire safety requirement for a building, other than a building prescribed by the regulations—is developed following consultation with the Fire Commissioner, and
 - (e) otherwise complies with other requirements that may be prescribed by the regulations.

120 Applications—building work involving prefabricated building work

- (1) This section applies to an application for a building approval for building work involving prefabricated building work.
- (2) The application must also be accompanied by—
 - (a) a design (a *prefabricated design*) for the prefabricated building to which the prefabricated building work relates, and

- (b) a declaration by the holder of a licence that the prefabricated building has been designed for transportation, and
 - (c) a declaration (a ***prefabricated design compliance declaration***) by the holder of a licence whose licence authorises the holder to make the declaration, that declares the design—
 - (i) complies with the National Construction Code, and
 - (ii) if the regulations prescribe additional requirements—complies with the requirements prescribed by the regulations, and
 - (d) sets out the standards, codes or other requirements that have been applied in preparing the design, and
 - (e) specifies the requirements to be met to ensure the prefabricated building to which the design relates will comply with the requirements of the National Construction Code after it has been transported and installed, and
 - (f) includes any other matter required to be included by the regulations.
- (3) If the work involves the erection of a prefabricated building for which a prefabricated building declaration was required to be made, the declaration—
- (a) must be provided with the prefabricated design compliance declaration, or
 - (b) if the erection of the prefabricated building is the only prefabricating building work to which the application relates—must be provided instead of the prefabricated design compliance declaration.

121 Applications—staged building work

- (1) An application for a building approval may be made for only part of the building work if the building work is to be carried out in stages (***staged building work***).
- (2) The first application for a building approval in relation to staged building must include a detailed schedule of the proposed stages in which the building work is to be carried out.
- (3) Each building approval for staged building work relates only to the building work specified for the particular stage.
- (4) The approval authority must consider the impact of other stages of the building work when deciding each application for a building approval for staged building work.

122 Deciding to issue building approval

An approval authority must not issue a building approval for building work unless—

- (a) the application for the building approval has been made in accordance with this part, and
- (b) a development consent is in force for the development to which the building work relates, and
- (c) the building work is consistent with the development consent, including with designs that are part of the development consent, and
- (d) any preconditions to the issue of the building approval that are specified in the development consent have been complied with, and
- (e) the building work will comply with—
 - (i) the building enforcement legislation, and
 - (ii) the National Construction Code, and
- (f) if the regulations require a site inspection to be carried—the site inspection has been carried out at the time required by the regulations, and

- (g) other requirements prescribed by the regulations are satisfied.

123 Issue of building approval

- (1) The approval authority must when issuing a building approval include the following—
- (a) the documents, designs and declarations required to be included with the application for the building approval,
 - (b) a schedule of inspections required to be carried out in relation to the building work,
 - (c) if the building approval is for the first stage of a staged approval—a schedule of the proposed stages,
 - (d) for building work involving a building other than a class 1a building, a class 10 building or a temporary structure—a schedule (a *fire safety schedule*)—
 - (i) in the approved form, and
 - (ii) containing the matters prescribed by the regulations.
- (2) An earlier fire safety schedule is superseded by a later fire safety schedule and ceases to have effect when the later fire safety schedule is issued.
- (3) The building approval and the documents approved by the approval authority when issuing the building approval are taken to form part of any development consent that relates to the building work.

124 Cannot issue building approval after work commences

- (1) A building approval must not be issued for building work if the building work has already commenced.
- (2) A building approval issued in contravention of this section is void and has no effect.

125 Variation to building approval

- (1) A building approval may be varied with the approval of the approval authority appointed for the building work.
- (2) The approval authority may approve the variation if satisfied that the application for the building approval would still have been granted if the variation had been included as part of the application.

126 Carrying out building work

A person must not carry out building work under a building approval unless—

- (a) the person is authorised to carry out the work,
- (b) the building work is carried out in accordance with the building approval.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
- (b) otherwise—100 penalty units.

Part 3 Completion approvals

127 Occupation approval

- (1) This section applies to—
- (a) a building, or part of a building, to which building work relates if the building work was carried out under a building approval, or

- (b) a change of building use for an existing building, or part of a building, if a development consent is in force in relation to the change of building use.
- (2) A person must not occupy or use the building, or part, referred to in subsection (1)(a), unless—
 - (a) an occupation approval is in force that allows the building or part to be occupied or used, and
 - (b) the occupation or use is in accordance with the occupation approval.Maximum penalty—500 penalty units.
- (3) A person must not commence a new use of an existing building resulting from a change of building use, referred to in subsection (1)(b), unless—
 - (a) an occupation approval is in force that allows the new use, and
 - (b) the new use is in accordance with the occupation approval.Maximum penalty—500 penalty units.
- (4) The building approval does not authorise the building or part to be occupied or used.

128 Completion of work approval

- (1) This section applies to a building, or part of a building, to which building work relates if—
 - (a) the building work was carried out under a building approval, and
 - (b) the building or part—
 - (i) cannot be occupied or used, and
Example— A retaining wall or a fence.
 - (ii) is not included in a occupation approval.
Example— A fence around a new house would be included under the occupation approval for the house.
- (2) The owner of the land on which the building or part is located must ensure that an application is made for a completion of work approval for the building or part as soon as practicable after the completion of the building work.
Maximum penalty—

129 Applications for completion approval—general

- (1) An application for a completion approval may be made to an approval authority by, or on behalf of, the owner of the land on which the building work or change of building use is carried out.
- (2) The application must—
 - (a) be made using the NSW planning portal, and
 - (b) be accompanied by—
 - (i) the prescribed fee, and
 - (ii) the documents prescribed by the regulations, and
 - (c) comply with the additional requirements prescribed by the regulations.
- (3) The approval authority may require the applicant to give the approval authority any additional information that the approval authority reasonably requires to decide the application.

130 Applications—building work involving building element

- (1) This section applies to an application for completion approval for building work if the building work involves a building element.

- (2) The application must also be accompanied by a building work compliance declaration for the building work.

131 Applications—building work involving prefabricated building work

- (1) This section applies to an application for completion approval for building work involving prefabricated building work.
- (2) The application must also be accompanied by a declaration (a ***prefabricated building work compliance declaration***) by the holder of a licence whose licence authorises the holder to make the declaration, declaring that the building work—
 - (a) complies with the National Construction Code, and
 - (b) has been carried out in accordance with the transportation and building instructions for the prefabricated building, and
 - (c) has been carried out in accordance with the prefabricated designs that is part of the building approval.

132 Applications—staged building work

- (1) Each application for an completion approval for a stage of staged building work must include the schedule of the proposed stages in which the building work is to be carried out.
- (2) The completion approval relates only to the building work specified for the particular stage.
- (3) The approval authority must consider the impact of other stages of the building work when deciding an application for a completion approval for a stage of staged building work.

133 Deciding to issue completion approval

- (1) An approval authority must not issue a completion approval for building work unless—
 - (a) the application for the approval has been made in accordance with this part, and
 - (b) the building work complies with the relevant building approval, and
 - (c) any preconditions to the issue of a completion approval that are specified in the development consent have been complied with, and
 - (d) the conditions of the development consent have not been breached, and
 - (e) the building work complies with the building enforcement legislation, and
 - (f) all inspections required for the building work were carried out as required, and
 - (g) for an occupation approval—the completed building or part of the building to which the building work relates is—
 - (i) suitable for occupation or use in accordance with its classification under the National Construction Code,
 - (ii) not a hazard to the health or safety of an occupant of the building or part,
 - (h) other requirements prescribed by the regulations are satisfied.
- (2) Subsection (1) applies to the issue of an occupation approval for a change of use not involving building work subject to the regulations.

134 Fire safety certificates

- (1) An approval authority must not issue a completion approval authorising a person to commence the following unless the approval authority has issued a fire safety certificate for the building—
 - (a) occupation or use of a new building,
 - (b) a change of building use for an existing building.Maximum penalty—
 - (a) for a corporation—600 penalty units, or
 - (b) otherwise—300 penalty units.
- (2) An approval authority must not issue a completion approval authorising a person to commence the following unless the approval authority has issued a fire safety certificate for the relevant part of the building—
 - (a) occupation or use of a partially completed new building,
 - (b) a change of building use for part of an existing building.Maximum penalty—
 - (a) for a corporation—600 penalty units, or
 - (b) otherwise—300 penalty units.
- (3) This section does not apply to—
 - (a) a class 1a or 10 building, or
 - (b) a temporary structure.

135 Effect of occupation approval on earlier occupation approvals

- (1) An occupation approval for a building revokes an earlier occupation approval for the building.
- (2) An occupation approval for a part of a building revokes an earlier occupation approval to the extent to which it applies to that part.

Part 4 Declared building work

136 Definitions

In this part—

person responsible for declared building work means—

- (a) a person who agrees under a contract or other arrangement to carry out declared building work, or
- (b) if more than 1 person agrees to carry out declared building work—the principal contractor for the work.

principal contractor means a person—

- (a) who agrees to do declared building work under a contract or arrangement (the ***head contract***), and
- (b) for whom work is to be carried out under 1 or more other contracts or arrangements as part of or incidental to the work carried out under the head contract.

137 Application of part

This part applies to declared building work.

138 Declared building work

- (1) In this chapter, **declared building work** means relevant building work involving a building element that is—
 - (a) Crown building work, or
 - (b) exempt development prescribed by the regulations, or
 - (c) other work prescribed by the regulations.
- (2) The regulations may exclude work from being declared building work.
- (3) In this section—

Crown building work means development, other than exempt development, or an activity subject to an environmental impact assessment under the *Environmental Planning and Assessment Act 1979*, Division 5.1, by the Crown that comprises—

 - (a) the erection of a building, or
 - (b) the demolition of a building or work, or
 - (c) the doing of anything that is incidental to the erection of a building or the demolition of a building or work.

exempt development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

relevant building work means building work involved in the—

 - (a) erection of a new building, or
 - (b) alteration of an existing building, including the repair, renovation or protective treatment of the building.

139 Requirements before starting declared building work

A person responsible for declared building work must not start to carry out the declared building work unless—

- (a) a regulated design has been prepared for the declared building work, and
- (b) a design compliance declaration has been obtained for the regulated design, and
- (c) the regulated design and the design compliance declaration have been lodged on the NSW planning portal, and
- (d) other requirements prescribed by the regulations have been satisfied.

Maximum penalty—

- (a) for a body corporate—2,000 penalty units, or
- (b) otherwise—400 penalty units.

140 Declared building work must comply with regulated design

The following must ensure that declared building work is carried out in accordance with the regulated design for the declared building work.

- (a) each person responsible for declared building work, and
- (b) the principal contractor for the declared building work.

Maximum penalty—

- (a) for a body corporate—2,000 penalty units, or
- (b) otherwise—400 penalty units.

141 Building work compliance declaration for declared building work

A person responsible for declared building work must lodge the following on the NSW planning portal within 7 days after the declared building work is completed—

- (a) a building work compliance declaration for the declared building work,
- (b) other documents prescribed by the regulations.

Maximum penalty—

- (a) for a body corporate—2,000 penalty units, or
- (b) otherwise—400 penalty units.

142 Strata certificates for declared building work

The regulations may prescribe requirements for the issue of a strata certificate within the meaning of the *Strata Schemes Development Act 2015* in relation to declared building work.

Part 5 Prefabricated buildings

143 Definition

In this part—

manufacturer, of a prefabricated building, means the person who carries out the prefabrication building work of manufacturing the prefabricated building away from the site at which it will be erected.

144 Prefabricated building declaration

- (1) The manufacturer of a prefabricated building must ensure that a declaration (a ***prefabricated building declaration***) is made for the prefabricated building—
 - (a) by the holder of a licence whose licence authorises the holder to make the declaration, and
 - (b) in a form prescribed by the regulations, and
 - (c) that declares that the prefabricated building—
 - (i) complies with the requirements of the National Construction Code, and
 - (ii) if the regulations prescribe additional requirements—complies with the additional requirements, and
 - (iii) is manufactured in accordance with a design subject to a prefabricated design declaration, and
 - (d) that sets out the standards, codes or other requirements that have been applied in preparing the design, and
 - (e) that includes any other matter required to be included by the regulations.
- (2) A person who erects a prefabricated building for which a prefabricated building declaration has been prepared is able to reasonably rely on the prefabricated building declaration to be satisfied of the matters to which the declaration relates.

145 Transportation and building instructions

- (1) The manufacturer of a prefabricated building must prepare instructions (***transportation and building instructions***) about how to transport the prefabricated building to the site at which it will be erected in a way that will ensure that it can be erected in compliance with—
 - (a) the requirements of the National Construction Code, and

- (b) if the regulations prescribe additional requirements—the additional requirements.
- (2) The regulations may prescribe—
 - (a) requirements for the transportation and building instructions, and
 - (b) circumstances in which transportation and building instructions are not required to be given under this section.

146 Information to be provided for erection of prefabricated building

- (1) A person must not supply a prefabricated building to another person unless—
 - (a) the person holds a licence that authorises the person to supply the prefabricated building, and
 - (b) the other person has been given—
 - (i) the prefabricated building declaration for the building, and
 - (ii) the transportation and building instructions for the building, and
 - (iii) other information prescribed by the regulations.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—250 penalty units.
- (2) This section does not apply to the sale of the prefabricated building after the building has been erected.
- (3) The regulations may prescribe circumstances in which transportation and building instructions are not required to be given under this section.

147 Certification of prefabricated buildings

The regulations may prescribe requirements for the issue of the following in relation to prefabricated buildings—

- (a) a strata certificate within the meaning of the *Strata Schemes Development Act 2015*,
- (b) a certificate of compliance within the meaning of the *Swimming Pools Act 1992*.

148 Prefabricated buildings built outside New South Wales

The regulations may —

- (a) exempt prefabricated buildings built outside of the State from some or all of the provisions of this part, and
- (b) impose alternative requirements in relation to prefabricated buildings built outside of the State.

Part 6 Miscellaneous

149 Definition

In this part—

compliance declaration includes a prefabricated building declaration.

150 Reliance on compliance declaration

- (1) A person who exercises functions under this Act, or carries out work, in reliance on a compliance declaration is entitled to assume—

- (a) that the declaration has been properly made, and
 - (b) that all conditions precedent to the issuing of the compliance declaration have been complied with, and
 - (c) that all things that are stated in the compliance declaration are true.
- (2) The person is not liable for any loss or damage arising from any matter about which the compliance declaration has been issued.
- (3) It is a defence to an offence if the person shows that the reason the person committed the offence was because the person carried out work in reliance on a compliance declaration.
- (4) This section does not apply if the person failed to take reasonable steps to ensure the compliance declaration was made by a person whose licence authorised the person to make the compliance declaration.
- (5) This section does not apply to a person other than a council in relation to a compliance declaration issued by the person.

151 False or reckless compliance declarations and instructions

- (1) A person must not make a compliance declaration if the person—
 - (a) knows or ought to know that the compliance declaration is false or misleading, or
 - (b) is reckless as to whether the compliance declaration is false or misleading.Maximum penalty—
 - (a) for a body corporate—3,000 penalty units, or
 - (b) otherwise—750 penalty units.
- (2) A person must not issue transportation and building instructions if the person—
 - (a) knows or ought to know that the instructions are false or misleading, or
 - (b) is reckless as to whether the instructions are false or misleading.Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—250 penalty units.

152 Improper influence in making declarations

- (1) A person (the *declarer*) must not—
 - (a) act other than impartially in making a compliance declaration, or
 - (b) seek or accept a benefit to the declarer or another person on an understanding that the declarer will act other than impartially in making a compliance declaration.Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.
- (2) A person must not do any of the following to encourage a declarer to act other than impartially in making a compliance declaration—
 - (a) give or offer a benefit to the declarer or another person,
 - (b) cause or threaten a financial or other detriment to the declarer or another person,
 - (c) otherwise unduly influence the declarer or another person,
 - (d) attempt anything in paragraphs (a)–(c).Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.

153 Improper influence—approval authority

- (1) An approval authority must not—
- (a) act other than impartially in making a decision in determining an approval, or
 - (b) seek or accept a benefit to the declarer or another person on an understanding that the declarer will act other than impartially in determining an approval.

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

- (2) A person must not do any of the following to encourage an approval authority to act other than impartially in determining an approval—
- (a) give or offer a benefit to the approval authority or another person,
 - (b) cause or threaten a financial or other detriment to the approval authority or another person,
 - (c) otherwise unduly influence the approval authority or another person,
 - (d) attempt anything in paragraphs (a)–(c).

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

- (3) In this section—
approval means—

- (a) a building approval, or
- (b) a completion approval.

declarer has the same meaning as in section 152

154 Regulations

The regulations may make provision about the following—

- (a) approvals under this chapter, including—
 - (i) applications for approvals, and
 - (ii) the form of the approvals,
- (b) designs referred to in this chapter and declarations, including the following—
 - (i) the keeping of records,
 - (ii) the giving of information to the Secretary,
 - (iii) the lodging of documents,
- (c) compliance declarations,
- (d) declared building work,
- (e) staged building work, including specifying a maximum number of stages and the period within which all the stages must be completed.

Chapter 7 Dispute resolution

Part 1 Preliminary

155 Definitions

In this chapter—

building claim—see section 161(1).

building dispute—see section 156.

conciliation means a conciliation conducted under section 160.

goods includes materials, products or components that form part of a building or are otherwise required for home building work.

notifying party—see section 157.

Part 2 Dealing with building disputes

156 Meaning of “building dispute”

- (1) In this chapter, **building dispute** means a dispute relating to 1 or more of the following matters relating to the carrying out of home building work, whether or not under a contract—
 - (a) the supply of goods, including the substitution of inferior goods,
 - (b) the standard and quality of the home building work, including—
 - (i) compliance with the National Construction Code, and
 - (ii) the standard and quality of work required under the contract,
 - (c) compliance with the terms of the contract, including a term specifying the period in which home building work must be carried out,
 - (d) the payment of a specified sum of money,
 - (e) relief from payment of a specified sum of money,
 - (f) another matter prescribed by the regulations.
- (2) A building dispute also includes a dispute relating to the following—
 - (a) a building bond within the meaning of the *Building Insurance Act 2024*,
 - (b) a policy of decennial insurance within the meaning of *Building Insurance Act 2024*.
- (3) The regulations may provide that a dispute about a prescribed matter is not a building dispute.

157 Notification of disputes

- (1) Each of the following persons (a **notifying party**) may notify the Secretary of a building dispute relating to home building work —
 - (a) an owner of the home on which the home building work is carried out,
 - (b) for home building work on common property in a strata scheme—the owners corporation for the strata scheme,
 - (c) for home building work on association property in a scheme—the association for the scheme,
 - (d) a person involved in carrying out the home building work,
 - (e) another person prescribed by the regulations.

- (2) A notification must—
 - (a) be made within the time prescribed by the regulations,
 - (b) be made in the way and form approved by the Secretary, and
 - (c) include the following information—
 - (i) the person’s name and contact details,
 - (ii) the name of each party to the building dispute,
 - (iii) the particulars of the building dispute.
- (3) A person may withdraw a notification before the Secretary has decided to accept or decline the notification under 158 by giving written notice to the Secretary.
- (4) The withdrawal of a building dispute does not prevent the Secretary taking action under this Act or the *Building Compliance and Enforcement Act 2024* in relation to any matter raised in the building dispute.
- (5) The regulations may—
 - (a) specify circumstances in which building disputes may or may not be notified under this section, and
 - (b) require other information, or specified documents, to be included in the notification.
- (6) In this section—
scheme has the same meaning as in the *Community Land Management Act 2021*.

158 Secretary may accept or decline notifications

- (1) The Secretary may, after being notified of a building dispute by a person, do either or both of the following—
 - (a) accept the notification, in whole or part,
 - (b) decline the notification, in whole or part.
- (2) Before deciding whether to accept or decline the notification, the Secretary may, by written notice, require the notifying party and each of the other parties to the building dispute to—
 - (a) provide information, documents to other material that the Secretary considers necessary to decide whether to accept or decline the notification, and
 - (b) provide the information, documents to other material within the period specified in the notice.
- (3) The Secretary may accept a notification even if the notifying party has not complied with a requirement of section 157 if the Secretary thinks it is appropriate in the circumstances of the building dispute.
- (4) The Secretary may decline a notification of a building dispute, in whole or part, if the Secretary is satisfied—
 - (a) the notifying party—
 - (i) has withdrawn the notification, or
 - (ii) has not provided information, documents or other material requested by the Secretary, or
 - (iii) has not taken reasonable steps to resolve the building dispute or part of the dispute before making the notification, or
 - (b) the notification or part does not relate to a building dispute, or
 - (c) the building dispute or part of the dispute—

- (i) is or has been the subject of proceedings before the Tribunal or a court, or
 - (ii) is being dealt with under the *Building and Construction Industry Security of Payment Act 1999*, or
 - (iii) is frivolous, vexatious, misconceived or lacking in substance, or
 - (iv) has no reasonable likelihood of being resolved, or
- (d) the Secretary is satisfied for another reason that it is not appropriate to accept the notification or part.
- (5) The Secretary must give written notice of a decision to accept or decline a notification or part to—
 - (a) the notifying party, and
 - (b) each of the other parties to the building dispute.
- (6) The notice must set out reasons for a decision to decline a notification or part.

159 Secretary may determine disputes

- (1) The Secretary may, after accepting a notification, do 1 or more of the following—
 - (a) take action under the *Building Compliance and Enforcement Act 2024*,
 - (b) refer the building dispute for conciliation,
 - (c) refer the building dispute for mediation in accordance with the regulations,
 - (d) give approval to the person to apply to the Tribunal under Part 3 if the amount in dispute is no more than—
 - (i) the amount prescribed by the regulations, or
 - (ii) if no amount is prescribed—\$500,000.
- (2) The Secretary must give written notice to the following persons about the action taken by the Secretary under subsection (1)—
 - (a) the notifying party,
 - (b) each of the other parties to the building dispute.
- (3) If the Secretary has not taken action under subsection (1) within 4 weeks after accepting a notification, the Secretary is taken to have given approval under subsection (1)(d).
- (4) The regulations may make provision about the following—
 - (a) the procedures for mediation,
 - (b) whether or not a mediation required under this section is binding,
 - (c) the appointment of a person to conduct the mediation,
 - (d) the fees to be charged for the mediation.

160 Conciliations

- (1) If the Secretary refers a building dispute for conciliation, the Secretary must try to bring the parties to the building dispute to a settlement acceptable to all of them by conducting a conciliation.
- (2) The Secretary may be assisted by a dispute resolution officer.
- (3) The dispute resolution officer may—
 - (a) make the inquiries and seek the information the dispute resolution officer considers appropriate, and

- (b) require a party, by written notice, to give to the dispute resolution officer a document or thing that—
 - (i) relates to the dispute, and
 - (ii) is under the party's control or possession, and
 - (c) conduct the conciliation on behalf of the Secretary.
- (4) A party must give the dispute resolution officer a document or thing required by a notice—
 - (a) within the period specified in the notice, or
 - (b) within a later period agreed by the dispute resolution officer.
- (5) The regulations may make further provision about the conduct of conciliations, including the following—
 - (a) the procedures for a conciliation,
 - (b) the obligations of the parties to the building dispute, including obligations imposed by—
 - (i) the Secretary, or
 - (ii) the dispute resolution officer,
 - (c) the functions of the Secretary and the dispute resolution officer.
- (6) In this section—
dispute resolution officer means an employee of the Department appointed by the Secretary for purposes of this section.

Part 3 Tribunal may determine building claims

161 Meaning of “building claim”

- (1) In this chapter, **building claim** means the following—
 - (a) a building dispute, if the Secretary has given approval under section 159(1)(d),
 - (b) a claim relating to 1 or more of the following matters relating to the carrying out of home building work, whether or not under a contract—
 - (i) a dispute arising out of a contract that also involves the sale of land,
 - (ii) the refusal of an insurance claim of up to \$500,000,
 - (iii) work carried out by a person not authorised by a licence to carry out the work,
 - (iv) a dispute between a contractor and a person to whom the contractor subcontracts work required under a home building work contract,
 - (v) claims about defective work carried out by owner-builders,
 - (vi) cross claims relating to building claims,
 - (c) a claim relating to another matter prescribed by the regulations.
- (2) A claim about the following is not a building claim—
 - (a) a matter arising under the *Building and Construction Industry Security of Payment Act 1999*, sections 15, 16 or 25,
 - (b) a matter arising under a contract for the supply of goods or services, except as otherwise provided by this section,
 - (c) a matter arising under a contract that is collateral to a contract for the supply of building goods or services.

- (3) The regulations may provide that a claim about a prescribed matter is not a building claim.
- (4) In this section—
contractor and *home building work contract* have the same meaning as in section 65.
owner-builder has the same meaning as in section 105.

162 Application for determination of building claim

- (1) A person may apply to the Tribunal for the determination of a building claim.
- (2) An application for a building claim in relation to the following must be made within—
 - (a) for the supply of goods or services—3 years after the goods or services were last supplied,
 - (b) for goods or services that are required to be supplied but have not been supplied by the required date—3 years after the goods or services were last required to be supplied,
 - (c) for home building insurance—within 10 years after the home building work the subject of the building claim was completed,
 - (d) for a breach of a statutory warranty—the period within which proceedings for a breach of the statutory warranty must be commenced.

Note— see section 100.
- (3) The application may be withdrawn—
 - (a) if, immediately before the application is made, the applicant is subject to the requirements of an enforcement action under the *Building Compliance and Enforcement Act 2024*—with the leave of the Tribunal, or
 - (b) otherwise—at any time.
- (4) If an application is withdrawn with the leave of the Tribunal under subsection (3)(a), the Tribunal may also restore a remedial order under the *Building Compliance and Enforcement Act 2024* that was in force immediately before the withdrawal of the application.

163 Transfer of proceedings from court to Tribunal

- (1) This section applies to proceedings in relation to a building claim if—
 - (a) the proceedings are commenced in a court, and
 - (b) the building claim may be determined by the Tribunal under this part.
- (2) The defendant in the proceedings may make an application for the proceedings to be transferred to the Tribunal.
- (3) If an application is made, the proceedings must be transferred to the Tribunal in accordance with the regulations.
- (4) The transferred proceedings must continue before the Tribunal as if the proceedings had been commenced in the Tribunal.
- (5) This section prevails to the extent of an inconsistency with the *Civil and Administrative Tribunal Act 2013*, schedule 4, clause 6.

164 Jurisdiction for actions against refusal of insurance claims

A building claim relating to the refusal of an insurance claim must be determined by a court of competent jurisdiction if the insurance claim is more than—

- (a) the amount prescribed by the regulations, or
- (b) if no amount is prescribed—\$500,000.

Part 4 Powers of Tribunal

165 Determining building claim

The Tribunal, in determining a building claim, must—

- (a) consider an order or direction given under the building enforcement legislation in relation to a matter giving rise to the building claim, and
- (b) take as evidence the following reports that relate to the building claim—
 - (i) a report of an investigation by an authorised officer under the *Building Compliance and Enforcement Act 2024*,
 - (ii) a report by the Secretary in relation to action taken under sections 158 or 159.

166 Making orders

- (1) The Tribunal may make 1 or more of the following orders, whether or not the applicant asks for the order—
 - (a) an order that a party to the proceedings—
 - (i) pay money, whether by way of debt, damages or restitution, to—
 - (A) another party to the proceedings, or
 - (B) a person specified in the order, or
 - (ii) refund money paid by a specified person,
 - (b) an order that—
 - (i) a specified amount of money is not due or owing by a party to the proceedings to a specified person, or
 - (ii) a party to the proceedings is not entitled to a refund of money paid to another party to the proceedings,
 - (c) an order that a party to the proceedings—
 - (i) carry out specified work or perform a specified service or obligation arising under this Act or the terms of an agreement, or
 - (ii) carry out or perform, or refrain from carrying out or performing, a specified act, matter or thing, or
 - (d) an order that is ancillary to an order specified in paragraphs (a)–(c).
- (2) The Tribunal may require a party to engage a third party to carry out specified work or perform a specified service or obligation on behalf of the party.
- (3) The Tribunal may also make interim orders during the hearing of the building claim.
- (4) The Tribunal may vary or suspend an order made under this section.
- (5) The Tribunal must, as soon as practicable after making or varying an order under this section, notify the Secretary of—
 - (a) the order or the variation of the order, and
 - (b) the time limit for compliance with the order or the varied order.

167 Matters to be considered by Tribunal when making orders

- (1) The Tribunal must not make an order under this part unless it is satisfied that the order is fair and equitable to all the parties to the building claim.

- (2) The Tribunal must take the following factors into consideration when deciding whether or not to make an order to the extent that the factors are relevant—
- (a) the material inequality in bargaining power between the parties to the building claim,
 - (b) the relative economic circumstances, educational background and literacy of the parties and persons representing parties,
 - (c) the ability of a party, or a person representing the party, to reasonably protect the party's interest because of the age or physical or mental capacity of the party or person,
 - (d) independent legal or other expert advice obtained by the claimant,
 - (e) whether undue influence, unfair pressure or unfair tactic has been used against the person making the building claim (the *claimant*) by another party to the building claim, including by way of a another person—
 - (i) acting or appearing to act on behalf of the other party, or
 - (ii) acting with the knowledge of the other party or person acting or appearing to act on behalf of the other party,
 - (f) the conduct of a party in relation to similar transactions in which the person was a party,
 - (g) if the building claim relates to a contract for the supply of goods or services—
 - (i) whether the provisions of the contract were the subject of negotiation, and
 - (ii) whether it was reasonably practicable for the claimant to negotiate for the alteration of the contract, and
 - (iii) whether provisions of the contract impose conditions that are—
 - (A) unreasonably difficult to comply with, or
 - (B) not reasonably necessary for the protection of the legitimate interests of a party, and
 - (iv) the form of the contract and the intelligibility of the language in which it is expressed, and
 - (v) the extent to which the provisions and legal effect of the contract were accurately explained to the claimant and whether the claimant understood the provisions and legal effect,
 - (vi) the commercial or other setting, purpose and effect of the contract.
 - (h) if the Tribunal finds that home building work is defective—an order requiring the rectification of the defective work by the party that carried out the work is the preferred outcome, unless the order is inappropriate in the circumstances of the building claim,
 - (i) a relevant code of conduct prescribed under the regulations.

168 Joint liability

The *Civil Procedure Act 2005*, section 95 applies to an order of the Tribunal under this part as if the order were a judgment of the Supreme Court.

Part 5 Miscellaneous

169 Requirement to notify Secretary of Tribunal orders

- (1) A person against whom an order has been made by the Tribunal under Part 4 must give a written notice to the Secretary in accordance with this section.
- Maximum penalty—

- (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) The notice must be given within 7 days after the order is made.
- (3) The notice must specify—
 - (a) the terms of the order, and
 - (b) other information prescribed by the regulations.
- (4) A person is not required to notify the Secretary if the Tribunal notifies the Secretary about the order.

170 Secretary must be informed of compliance with order

- (1) A person against whom an order has been made by the Tribunal under Part 4 must notify the Secretary when the order has been complied with.
Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) The person must not inform the Secretary that the order has been complied with if the person knows or ought reasonably to know that the order has not been complied with.
Maximum penalty—
 - (a) for a body corporate—2,000 penalty units, or
 - (b) otherwise—400 penalty units.
- (3) If the Secretary is satisfied the person has complied with the order, the Secretary must ensure the record of the order is removed from the licence register.
- (4) The Secretary may also remove the record of an order from the licence register if—
 - (a) a person against whom the order has been made notifies the Secretary that the order has not been complied with, and
 - (b) the person provides evidence of the steps the person has taken to comply with the order, and
 - (c) the Secretary is satisfied the person has taken all reasonable steps in the circumstances to comply with the order.
- (5) Nothing in this section prevents the Secretary from recording non-compliance with an order if the Secretary had previously removed a reference to the order from the licence register.

171 Failure to inform of compliance

- (1) The Secretary may record a person's non-compliance with an order on the licence register if, by the end of the time limit for compliance with the order—
 - (a) the Secretary is not informed that the order has been complied with, or
 - (b) if the Secretary is informed that the order has not been complied with—the Secretary is not satisfied that the person has taken all reasonable steps in the circumstances to comply with the order.
- (2) If the Secretary is not informed that an order has been complied with by the end of the time limit for compliance with the order, the order is also taken to have not been complied with.

172 Requirement to notify Secretary of court order to pay money in relation to building claim

- (1) A person must give a written notice to the Secretary in accordance with this section if—
- (a) the person holds a licence under this Act, and
 - (b) a court has ordered the person to pay an amount of money in relation to a building claim.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) The notice must be given within 7 days after the order is made.
- (3) The notice must specify the following—
- (a) the amount of money ordered to be paid,
 - (b) the date on which the money is due to be paid if the date is specified in the order,
 - (c) the name of the person to whom the money must be paid,
 - (d) other information prescribed by the regulations.
- (4) A party to proceedings in which a court makes an order for the payment of money in relation to a building claim may notify the Secretary of—
- (a) the making of the order, and
 - (b) the terms of the order.
- (5) A reference in this section to a building claim includes a reference to a claim for the payment of an unspecified sum of money arising from a supply of goods or services.

Chapter 8 Architects—special provisions

Part 1 NSW Architects Registration Board

173 Constitution of Architects Board

- (1) The NSW Architects Registration Board (the *Architects Board*) is constituted as a body corporate.
- (2) The Architects Board is a statutory body representing the Crown.
- (3) Schedule 1 includes provision relating to the membership and procedure of the Architects Board.

174 Members of Architects Board

- (1) The members of the Architects Board are as follows—
 - (a) the immediate past President of the New South Wales Chapter of the Royal Australian Institute of Architects,
 - (b) the NSW Government Architect,
 - (c) 1 architect who—
 - (i) teaches architecture at an educational institution prescribed by the regulations, and
 - (ii) is appointed by the governing body of the institution in accordance with the regulations,
 - (d) 2 architects who are elected by architects in accordance with the regulations,
 - (e) 1 architect appointed by the Minister who the Minister is satisfied—
 - (i) will represent the interests of practising architects, and
 - (ii) is not an office holder in any Australian architectural industry organisation,
 - (f) 1 person appointed by the Minister who the Minister is satisfied—
 - (i) has taken a public interest in architectural matters, and
 - (ii) will represent the views of home owners as consumers of architectural services,
 - (g) 1 person appointed by the Minister who the Minister is satisfied has expertise in the property development industry,
 - (h) 1 person appointed by the Minister who the Minister is satisfied has particular knowledge and awareness of the views of local government in relation to the quality of building,
 - (i) 1 person appointed by the Minister who is an Australian legal practitioner and who the Minister is satisfied has expertise in building and construction law,
 - (j) 1 person appointed by the Minister who the Minister is satisfied has expertise in the building industry.
- (2) The Minister may appoint an architect that the Minister considers to be suitable to be a member under subsection (1)(c) or (d) if an architect is not appointed or elected under the relevant paragraph.
- (3) The regulations may provide for the office under subsection (1)(c) to be rotated between more than 1 institution.

175 Issue of licences by Architects Board

- (1) Only the Architects Board may grant a licence to a person as an architect.

- (2) The Architects Board may, in granting a licence as an architect—
 - (a) authorise the architect to carry out additional architectural work, or
 - (b) restrict the carrying out of additional architectural work by the architect.
- (3) Additional architectural work is taken to be building work for the purposes of the building enforcement legislation, but only when carried out by an architect.
- (4) In this section—
additional architectural work means work, other than building work—
 - (a) carried out in connection with the design, planning or construction of buildings that is ordinarily carried out by architects, and
 - (b) prescribed by the regulations.

176 General functions of Architects Board

- (1) The Architects Board may—
 - (a) exercise functions of the Secretary under the building enforcement legislation that are prescribed by the regulations, and
 - (b) accredit courses of study for architects, and
 - (c) receive and investigate complaints about architects, and
 - (d) investigate and report on matters in relation to architects that are referred to the Board by the Minister, and
 - (e) exercise other functions prescribed by the regulations.
- (2) The Secretary must ensure that the Architects Board is delegated the functions of the Secretary that are necessary for it to properly exercise its other functions.
- (3) The Architects Board may cooperate with other Australian jurisdictions in relation to the exercise of its functions

177 Subcommittees of Architects Board

- (1) The Architects Board may establish subcommittees.
- (2) The members of a subcommittee are not required to be members of the Architects Board.

178 Staff of Architects Board

The Architects Board may do the following—

- (a) employ a registrar and other staff,
- (b) arrange for the use of staff from a government sector agency or local authority,
- (c) engage consultants.

Part 2 Architects Fund

179 Establishment of Fund

The Architects Board must establish a fund in the special deposits account to be called the Architects Fund.

180 Payments to and from Fund

- (1) The following must be paid into the Architects Fund—
 - (a) fees paid to the Architects Board under this Act in relation to architects,
 - (b) other money received by the Architects Board,

- (c) other money required to be paid into the Architects Fund under this Act.
Note— See section 253(6).
- (2) The following may be paid from the Architects Fund—
 - (a) remuneration payable under Schedule 1, section 6,
 - (b) remuneration for members of staff of the Architects Board,
 - (c) other expenses related to the exercise of functions by the Architects Board,
 - (d) subject to sufficient funds being available for the matters set out in paragraphs (a)–(c)—payments—
 - (i) to advance the profession of architecture, or
 - (ii) for the purposes of architectural education.

Part 3 Offences

181 Offence of falsely claiming to be architect

- (1) A person who is not an architect—
 - (a) must not represent that the person is an architect, and
 - (b) must take reasonable steps to prevent or correct a representation that the person is an architect.

Maximum penalty—

 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (2) A person must not represent that another person is an architect if the other person is not an architect.

Maximum penalty—

 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (3) Without limiting the ways in which a person may be represented to be an architect the following are representations—
 - (a) the use of the terms architect or registered architect,
 - (b) the use of terms indicating that the person is an architect,
 - (c) for a body corporate—a representation that the body corporate comprises or has architects,
 - (d) the use of terms prescribed by the regulations.
- (4) The regulations may prescribe circumstances in which the use of terms does not breach this section.

182 Arranging for carrying out of work by architect

- (1) A person who is not an architect must not offer to arrange for the carrying out of work by an architect unless the work is carried out by an architect.

Maximum penalty—

 - (a) for a body corporate—200 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) A person must ensure that correspondence about the carrying out of work by an architect contains the required information if the person—

- (a) is not an architect, and
- (b) has offered to arrange for the carrying out of the work for another person.

Maximum penalty—

- (a) for a body corporate—200 penalty units, or
- (b) otherwise—100 penalty units.

- (3) In this section—

required information means—

- (a) the name of the architect who will carry out the work, or
- (b) if the work will be carried out by a person under the supervision of an architect—the name of the architect who will supervise the person.

DRAFT

Chapter 9 Gas and electrical work

Part 1 Preliminary

183 Definitions

In this chapter—

person responsible for an electrical installation, gas installation or medical gas installation means—

- (a) the occupier of the place at which the installation is installed, or
- (b) if there is no occupier of the place—an owner of the place.

184 Application

This chapter does not apply to a gas installation that—

- (a) has a carrying capacity greater than 200 kilopascals, and
- (b) is located partially or wholly within a workplace within the meaning of the *Work Health and Safety Act 2011*.

Part 2 Electrical and gas installations

Division 1 Work to comply with regulations

185 Work to comply with regulations

- (1) A person must carry out the following work out in accordance with the standards or requirements prescribed by the regulations—

- (a) electrical work, or
- (b) gasfitting work.

Maximum penalty—

- (a) for a body corporate—
 - (i) 5,000 penalty units for a first offence, or
 - (ii) for a continuing offence—500 penalty units for each day the offence continues, or
- (b) otherwise—
 - (i) 500 penalty units for a first offence, or
 - (ii) for a continuing offence—50 penalty units for each day the offence continues.

- (2) An offence against this section is an executive liability offence.

Division 2 Electrical and gas installations

186 Safety of electrical or gas installations

- (1) A person responsible for an electrical installation or a gas installation must ensure a part of the installation prescribed by the regulations is maintained while the installation remains connected to the source of the supply of electricity or gas—

- (a) in accordance with the regulations, and
- (b) to the best of the person's ability and knowledge.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
 - (b) otherwise—200 penalty units.
- (2) A person responsible for an electrical installation that has been lawfully disconnected for reasons of safety must ensure that the electrical installation or a part of it is not connected to the source of supply of electricity until the installation has been made safe.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
- (b) otherwise—200 penalty units.

187 Prohibition on use of unsafe electrical or gas installation

- (1) This section applies if an authorised officer believes on reasonable grounds that an electrical or gas installation is being used in a way that presents a significant risk of—
 - (a) the death of, or injury to, a person, or
 - (b) significant damage to property.
- (2) The authorised officer may, by written notice given to the person responsible for the electrical installation or gas installation, prohibit the use of the installation in a specified way.
- (3) The notice takes effect when it is given to the responsible person and continues to have effect for 14 days.
- (4) The Secretary may, by a further written notice given to the person responsible for the electrical installation or gas installation—
 - (a) vary the initial notice, or
 - (b) extend the period of the initial notice, or
 - (c) revoke the initial notice.
- (5) A person must not use the electrical or gas installation in a way that contravenes a notice given under this section.

Maximum penalty—

- (a) for a body corporate—
 - (i) 1,000 penalty units for a first offence, or
 - (ii) for a continuing offence—100 penalty units for each day the offence continues, or
- (b) otherwise—
 - (i) 100 penalty units for a first offence, or
 - (ii) for a continuing offence—10 penalty units for each day the offence continues.

188 Interfering with electrical or gas installations

- (1) A person who carries out work for fee or reward near an electrical installation or a gas installation must ensure that the work does not adversely affect the safety of the installation.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
 - (b) otherwise—200 penalty units.
- (2) A person who carries out work without fee or reward near an electrical installation or a gas installation must take reasonable steps to make the installation safe if—

- (a) the work adversely affects the safety of the installation, and
- (b) the person knows, or ought to have known, that the installation has been adversely affected.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
- (b) otherwise—200 penalty units.

189 Restrictions on connection of gas appliances to certain gas installations

- (1) A person must not connect a gas appliance to, or modify a gas appliance connected to, a gas installation to which gas is supplied from a gas network unless the appliance, or appliance as modified, is a certified gas appliance.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
- (b) otherwise—200 penalty units.

- (2) A person must not connect a gas appliance to another gas installation unless the appliance—

- (a) is a certified gas appliance labelled in accordance with the regulations, and
- (b) is suitable and safe for use with the gas with which it is designed to be used.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
- (b) otherwise—200 penalty units.

- (3) Subsections (1) and (2) do not apply to a person or gas appliance that is exempt from the *Gas and Electricity (Consumer Safety) Act 2017*, section 21(1).

- (4) Subsection (2) does not apply to—

- (a) the carrying out of gasfitting work by a person authorised to carry out the work, or
- (b) the testing of a gas installation by a person authorised to carry out the testing.

190 Regulations about electrical and gas installations

Regulations may be made about the following—

- (a) testing, inspection and compliance requirements that must be carried out on completion of electrical work and gasfitting work,
- (b) electrical installations or gas installations, including—
 - (i) the sale of electrical or gas installations,
 - (ii) the use of electrical or gas installations,
- (c) the supply of gas for use in gas installations,
- (d) the connection of—
 - (i) electrical articles to electrical installations, or
 - (ii) gas containers, gas regulators or gas appliances to gas installations,
- (e) the examination and testing of gas meters,
- (f) the alteration, maintenance, repair, replacement and operation of electrical articles or gas appliances.

Division 3 Electrical meter installations

191 Definitions

In this division—

advanced meter means a meter that is a type 4 metering installation referred to in the *National Electricity Rules*, Chapter 7.

Australian/New Zealand Wiring Rules means the Australian and New Zealand Standard, entitled AS/NZS 3000:2018, *Electrical installations*, as in force from time to time.

meter supplier means a metering co-ordinator or a retailer who provides, installs, maintains or replaces an advanced meter.

metering co-ordinator has the same meaning as it has in the *National Electricity Rules*.

retailer has the same meaning as it has in the *National Energy Retail Law (NSW)*.

192 Installation of advanced meters by retailers and metering co-ordinators

- (1) A meter supplier must ensure that—
 - (a) a person engaged to install an advanced meter is a qualified person, and
 - (b) the person has undertaken appropriate training in the installation of advanced meters, including de-energisation and re-energisation of electrical installations, and
 - (c) safety and compliance testing is carried out in relation to each installation as required by regulation under the *Gas and Electricity (Consumer Safety) Act 2017*.
- (2) A meter supplier must not install an advanced meter in relation to premises at which 1 or more persons require life support equipment unless the occupier of the premises is given—
 - (a) at least 4 business days' notice of the proposed installation, or
 - (b) a shorter period as may be agreed, in writing, between the occupier and meter supplier.
- (3) A meter supplier must ensure the Asbestos Management Code of Practice is complied with in the installation, maintenance and replacement of an advanced meter.
- (4) In this section—

Asbestos Management Code of Practice means the *Code of Practice: How to manage and control asbestos in the workplace*, published by SafeWork NSW in December 2022.

life support equipment has the same meaning as it has in the *National Energy Retail Rules*.

qualified person—

 - (a) means a person authorised to do electrical work without supervision, and
 - (b) in relation to the testing of a consumer's aerial wiring system, within the meaning of the Australian/New Zealand Wiring Rules—includes a person who is authorised to test a distributor's overhead lines.

193 Metering safety management system requirements

- (1) A metering co-ordinator who provides, installs, maintains or replaces an advanced meter must have a safety management system in place that—

- (a) ensures compliance with section 192(1), and
 - (b) satisfies the requirements of the Code for Safe Meter Installation.
- Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (2) A retailer must ensure that a metering co-ordinator engaged by the retailer to install, maintain or replace an advanced meter has a safety management system in place that complies with this section.
- (3) The Secretary may, by written notice, direct a metering co-ordinator to amend a safety management system if, in the opinion of the Secretary, the safety management system does not comply with this section.
- (4) The metering co-ordinator must comply with the direction.
Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (5) Before providing, installing, maintaining or replacing an advanced meter, a metering co-ordinator must—
 - (a) provide documentation relating to the co-ordinator's safety management system to the Secretary, and
 - (b) ensure—
 - (i) the safety management system is brought to the attention of the persons engaged by the metering co-ordinator to install, replace or maintain an advanced meter, and
 - (ii) a copy of the documents relating to the system are made readily available to the persons.
- Maximum penalty—
 - (a) for a body corporate—1,000 penalty units, or
 - (b) otherwise—200 penalty units.
- (6) In this section—
Code for Safe Meter Installation means the *Code for safe installation of direct-connected whole current electricity metering in NSW—Minimum requirements for safety management systems*, published in the Gazette by Treasury, as in force from time to time.

Part 3 Medical gas

Division 1 Carrying out work

194 Standards to be met

- (1) A person must carry out medical gas work in accordance with the applicable standards for the work.
Maximum penalty—
 - (a) for a body corporate—
 - (i) 5,000 penalty units for a first offence, or
 - (ii) for a continuing offence—500 penalty units for each day the offence continues, or

- (b) otherwise—
 - (i) 500 penalty units for a first offence, or
 - (ii) for a continuing offence—50 penalty units for each day the offence continues.
- (2) An offence against this section is an executive liability offence.
- (3) In this section—
applicable standards for medical gas work means—
 - (a) the Australian standard prescribed for the work by the regulations or if no standard is prescribed—all relevant Australian standards, and
 - (b) the relevant standards of the International Organization for Standardization that are prescribed by the regulations for the work, and
 - (c) the standards or requirements specified for the work by the Health Secretary by written order published on the website of the Ministry of Health.

Division 2 Medical gas installations

195 Safety of medical gas installations

A person responsible for a medical gas installation must ensure the installation, while connected to the source of the supply of medical gas, is maintained—

- (a) in accordance with—
 - (i) the Australian standard prescribed for the installation by the regulations or if no standard is prescribed—all relevant Australian standards, and
 - (ii) the relevant standards of the International Organization for Standardization prescribed by the regulations for the installation, and
- (b) to the best of the person's ability and knowledge.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
- (b) otherwise—200 penalty units.

196 Prohibition on use of unsafe medical gas installation

- (1) This section applies if an authorised officer believes on reasonable grounds that a medical gas installation is being used in a way that presents a significant risk of—
 - (a) the death of, or injury to, a person, or
 - (b) significant damage to property.
- (2) The authorised person may, by written notice given to the person responsible for the medical gas installation, prohibit the use of the installation in a specified way.
- (3) The notice takes effect when it is given to the responsible person and continues to have effect for 14 days.
- (4) The Secretary may, by a further written notice given to the person responsible for the medical gas installation—
 - (a) vary the initial notice, or
 - (b) extend the period of the initial notice, or
 - (c) revoke the initial notice.
- (5) A person must not use the medical gas installation in a way that contravenes a notice given under this section.
Maximum penalty—

- (a) for a body corporate—
 - (i) 1,000 penalty units for a first offence, or
 - (ii) for a continuing offence—100 penalty units for each day the offence continues, or
- (b) otherwise—
 - (i) 100 penalty units for a first offence, or
 - (ii) for a continuing offence—10 penalty units for each day the offence continues.

197 Interfering with medical gas installations

- (1) A person who carries out work for fee or reward near a medical gas installation must ensure that the work does not adversely affect the safety of the installation.
Maximum penalty—
 - (a) for a body corporate—1,000 penalty units.
 - (b) otherwise—200 penalty units.
- (2) A person who carries out work near a medical gas installation must notify the person responsible for the installation as soon as is reasonably practicable if—
 - (a) the work adversely affects the safety of the installation, and
 - (b) the person knows, or ought to have known, that the installation has been adversely affected.Maximum penalty—
 - (a) for a body corporate—1,000 penalty units.
 - (b) otherwise—200 penalty units.

198 Notice of defective medical gas installation

- (1) The responsible person for medical gas work carried out on land must give the owner and the occupier of the land written notice of any defect in a medical gas installation on the land discovered in the course of carrying out the work.
Maximum penalty—100 penalty units.
- (2) The responsible person for medical gas work carried out on land must give the Secretary written notice of a defect in a medical gas installation on the land if the defect—
 - (a) is discovered in the course of carrying out the work, and
 - (b) poses an imminent threat to public health or safety.Maximum penalty—100 penalty units.
- (3) A notice required under this section must be given—
 - (a) for subsection (1)—as soon as practicable after the defect is discovered, or
 - (b) for subsection (2)—within 24 hours after the defect is discovered.
- (4) A defect in a medical gas installation on land is discovered if—
 - (a) medical gas work is carried out on the land, and
 - (b) the responsible person for the work, or a person carrying out work under the supervision of the responsible person, becomes aware of the defect.
- (5) In this section—
responsible person for medical gas work means—
 - (a) the licence holder who carries out the work, or

- (b) if the work is carried out under supervision—the licence holder who supervises the work.

199 Regulations about medical gas installations

- (1) The regulations may make provision about the following—
 - (a) testing, inspection and compliance requirements that must be carried out on completion of medical gas work,
 - (b) medical gas installations, including the use and maintenance of medical gas installations,
 - (c) the connection of containers, regulators or appliances to medical gas installations.
- (2) The regulations may not exempt a person, or provide for a person to be exempted, from the requirements of this part.

Part 4 Accident reporting and investigations

Division 1 Serious accidents

200 Definitions

In this division—

electrical accident means an accident if—

- (a) it involves an electrical article or electrical installation, other than electricity works within the meaning of the *Electricity Supply Act 1995*, and
- (b) at the time of the accident, the article or installation was used for—
 - (i) the conveyance, control and use of electricity, or
 - (ii) for a purpose incidental to the conveyance, control and use of electricity.

gas accident means an accident caused by—

- (a) the use of a gas appliance or gas installation to supply gas, or
- (b) work carried out on a gas appliance or gas installation.

medical gas accident means an accident caused by—

- (a) the use of a medical gas installation, or
- (b) work carried out on a medical gas installation.

serious accident means an electrical accident, gas accident or medical gas accident which causes a person—

- (a) to die, or
- (b) suffer permanent or temporary disability, or
- (c) be hospitalised, or
- (d) receive treatment from a registered health practitioner, or
- (e) be unable to attend work for any period of time.

201 Notification of serious accidents

- (1) The following persons must give the Secretary notice of a serious accident at a place in accordance with this section—
 - (a) if the place is residential premises—
 - (i) the first person who attends the place after the accident who is

- (A) an emergency services worker, or
 - (B) a holder of a licence who attends to carry out work in relation to the accident,
 - (C) for a serious accident that is an electricity accident—an employee of an electricity supply authority, and
 - (ii) other persons prescribed by the regulations.
 - (b) otherwise—
 - (i) the occupier of the place, and
 - (ii) other persons prescribed by the regulations.
- Maximum penalty—
- (a) if the place is residential premises—5 penalty units, or
 - (b) otherwise—100 penalty units.
- (2) The notice must be given—
- (a) if the serious accident is a medical gas accident—within 24 hours after the accident, and
 - (b) otherwise—within 7 days after the accident.
- (3) The notice must be given in the way prescribed by the regulations.
- (4) The regulations may exempt a person from this section but not if the serious accident is a medical gas accident.
- (5) In this section—
emergency services organisation has the same meaning as in *State Emergency and Rescue Management Act 1989*.
emergency services worker means an officer, employee or member of an emergency services organisation.

202 Secretary may arrange investigation of serious accident

The Secretary may cause a serious accident to be investigated under *Building (Compliance and Enforcement) Act 2024*.

203 Interference with site of serious electrical or gas accident

A person must not disturb or interfere with the site of a serious accident before it has been inspected by an authorised officer except—

- (a) to make it safe, or
- (b) with the permission of an authorised officer, or
- (c) as provided by the regulations.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units.
- (b) otherwise—200 penalty units.

204 Secretary may publish details of serious electrical or gas accident

The Secretary may publish details of a serious accident if the Secretary considers it necessary in the interests of public information and safety.

Division 2 Serious incidents

205 Meaning of “serious incident”

In this division—

serious incident means an accident or other incident—

- (a) involving electricity, gas or medical gas, and
- (b) which causes a person—
 - (i) to die, or
 - (ii) suffer permanent or temporary disability, or
 - (iii) be hospitalised, or
 - (iv) receive treatment from a registered health practitioner, or
 - (v) be unable to attend work for any period of time.

206 Meaning of “relevant regulator”

- (1) In this division, ***relevant regulator*** means the following—

- (a) the Energy Secretary,
- (b) the Fair Trading Secretary,
- (c) the Health Secretary,
- (d) SafeWork NSW,
- (e) the Secretary of the Department in which this Act is administered.

- (2) In this section—

Energy Secretary means the Secretary of the Department of Climate Change, Energy, the Environment and Water.

Fair Trading Secretary means the Secretary within the meaning of the *Fair Trading Act 1987*.

SafeWork NSW means SafeWork NSW as referred to in the *Work Health and Safety Act 2011*, Schedule 2, clause 1.

207 Arrangements for investigating serious incidents

- (1) The relevant regulators may enter into arrangements regarding 1 or more of the following—
- (a) the referral of serious incidents to a relevant regulator for investigation or other action under relevant legislation,
 - (b) matters concerning a serious incident that is the subject of investigation or other action by more than one relevant regulator at the same time,
 - (c) the co-operative exercise of the respective functions of relevant regulators in relation to serious incidents,
 - (d) the sharing of information relevant to, and for the purposes of, enabling or assisting any of the relevant regulators to carry out functions under this part.
- (2) The relevant regulators must jointly cause notice of arrangements to be published in the Gazette as soon as is practicable after the arrangements are entered into.
- (3) A failure to publish notice of arrangements does not affect the validity of the arrangements.
- (4) A relevant regulator may do the following to give effect to an arrangement—
- (a) decline, discontinue or defer an investigation or other action in relation to an serious incident,

- (b) give information in relation to the serious incident to a relevant regulator to which the serious incident has been referred,
- (c) investigate or take other action in relation to a serious incident referred to the regulator and use information given in relation to the referral.

DRAFT

Chapter 10 Certification work

Part 1 Responsibility for certification work

208 Responsibilities of individuals acting on behalf of body corporate or council

- (1) This section applies to a licence holder who carries out certification work on behalf of—
 - (a) a body corporate that holds a licence, or
 - (b) a local council.
- (2) The licence holder—
 - (a) is not excused from compliance with the person's obligations under this Act or another Act in relation to the certification work, and
 - (b) is subject to the same requirements in relation to the carrying out of the certification work as if the person were carrying out the work on the person's own behalf.

209 Functions exercised on behalf of council or body corporate

A reference in this Act to the carrying out of certification work by the holder of a licence includes a reference to the carrying out of certification work on behalf of—

- (a) a local council, or
- (b) a body corporate that holds of a licence.

210 Body corporate must ensure certification work carried out by licensed individual

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

211 Responsibilities of councils carrying out certain prescribed certification work

- (1) A local council must ensure that relevant certification work carried out on behalf of the local council is carried out by the holder of a licence that authorises the holder to carry out the certification work.
Maximum penalty—1,000 penalty units.
- (2) The Secretary may exempt a local council from the requirements of subsection (1) with the approval of the Minister.
- (3) The exemption—
 - (a) may be limited in time or subject to conditions, or both, and
 - (b) may be revoked by the Secretary, and
 - (c) must be revoked by the Secretary if the approval of the Minister is no longer in force.
- (4) The exemption may be given or revoked by giving written notice to the local council.
- (5) The approval of the Minister—
 - (a) may apply generally or be limited, and

- (b) may be subject to conditions, and
 - (c) may be amended from time to time.
- (6) A council must not carry out certification work outside its area.
- (7) In this section—
relevant certification work means certification work prescribed by the regulations.

Part 2 Conflicts of interest

212 Meaning of “conflict of interest”

- (1) In this part, a person has a *conflict of interest* in certification work if the person is—
 - (a) a person obtains the benefit of the certification work, or
 - (b) a person who has been involved in an aspect of the development or building to which the certification work relates, other than involvement that is certification work, or
 - (c) a person who has provided professional services, other than services that are certification work, relating to the construction or design of the development or building to which the certification work relates, or
 - (d) a person who is a close associate of the person for whom the certification work is being carried out, or
 - (e) for certification work carried out in the area of a local council other than on behalf of the local council—a person who is associated with the local council, or
 - (f) a person who has a pecuniary interest in the development or building to which the certification work relates, or
 - (g) for certification work involving the issuing a strata certificate for a strata plan, strata plan of subdivision or a notice of conversion—a person who has prepared the plan or notice, or
 - (h) a person prescribed by the regulations, or
 - (i) a person who has a relationship, whether family, personal, employment, or business, with a person referred to in paragraph (a)–(h).
- (2) The regulations may specify circumstances where a person referred to in subsection (1)(a)–(h) is taken not to have a conflict of interest.
- (3) In this section—
associated with a council means—
 - (a) being a councillor or employee of the council, or
 - (b) being related to a councillor or employee of the council, or
 - (c) having a contractual arrangement with the council that might reasonably be seen to give rise to a conflict between a person’s duties when carrying out certification work and the person’s interests under the arrangement.

213 Meaning of “pecuniary interest”

- (1) In this part, a person has a *pecuniary interest* in a development or building if there is a reasonable likelihood or expectation financial gain to the person or a close associate of the person.
- (2) However, a person 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 a decision in relation to certification work, or

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

214 Offence of carrying out certification work with conflict of interest

- (1) An individual must not carry out relevant certification work if the individual has a conflict of interest in the relevant certification work.
Maximum penalty—10,000 penalty units.
- (2) A director or employee of a body corporate must not carry out relevant certification work if any of the following has a conflict of interest in the relevant certification work—
 - (a) the body corporate,
 - (b) another director or employee of the body corporate authorised to do certification work.Maximum penalty—10,000 penalty units.
- (3) A licence authorising an individual to carry out relevant certification work is automatically suspended for the following period if the individual is convicted by a court of an offence under this section—
 - (a) 120 days, or
 - (b) a longer period specified by the Secretary in a written notice given to the individual.
- (4) In this section—
relevant certification work means the following—
 - (a) carrying out an inspection,
 - (b) issuing a certificate or approval,
 - (c) certification work prescribed by the regulations.

215 Exemptions

- (1) The regulations may create exemptions from the conflict of interest offence.
- (2) The Secretary may, on the written application of an individual, exempt the individual from the conflict of interest offence in relation to specified certification work or a kind of certification work.
- (3) An exemption under this section may be unconditional or subject to conditions.
- (4) A individual who has a conflict of interest in certification work does not commit a conflict of interest offence if—
 - (a) an exemption applies to the certification work, and
 - (b) the individual carries out the certification work in accordance with any conditions to which that exemption is subject.
- (5) In this section—
conflict of interest offence means the offence in section 214.

Part 3 Offences

216 Knowingly issuing false certificate

- (1) A person must not issue any of the following certificates if the person knows that the certificate is false or misleading in a material particular—
 - (a) a complying development certificate,

- (b) a strata certificate under the *Strata Schemes Development Act 2015*,
- (c) a certificate of compliance under the *Swimming Pools Act 1992*, Part 2, Division 5.

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

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

217 Improper influence—certification work

- (1) A person (the *certifier*) must not—
 - (a) act other than impartially in carrying out certification work, or
 - (b) seek or accept a benefit to the certifier or another person on an understanding that the certifier will act other than impartially in carrying out certification work.

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

- (2) A person must not do any of the following to encourage a certifier to act other than impartially in carrying out certification work—
 - (a) give or offer a benefit to the certifier or another person,
 - (b) cause or threaten a financial or other detriment to the certifier or another person,
 - (c) otherwise unduly influence the certifier or another person,
 - (d) attempt anything in paragraphs (a)–(c).

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

Chapter 11 Certificates of compliance for specialist work

Part 1 Preliminary

218 Definitions

In this chapter—

installation or system means the following—

- (a) a plumbing installation,
- (b) a sanitary plumbing system,
- (c) a sanitary drainage system,
- (d) a medical gas installation,
- (e) an electrical installation,
- (f) other installations or systems prescribed by the regulations.

responsible person means—

- (a) for specialist work carried out by a licence holder—the licence holder who carried out the work, or
- (b) for specialist work carried out or proposed to be carried out under the supervision of a licence holder—the licence holder who supervised the work.

Part 2 Notifiable work

219 Certain specialist work must be pre-notified to Secretary

- (1) The Secretary may, by order published in the Gazette, specify specialist work that must be notified in accordance with this part.
- (2) The responsible person for specialist work must ensure that no specialist work is carried out by, or under the supervision of, the responsible person unless—
 - (a) the responsible person has given the Secretary a notice of work, and
 - (b) the work carried out corresponds to the specifications in the notice of work.Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (3) A **notice of work** is a notice in the approved form that specifies—
 - (a) the work to be carried out, and
 - (b) the responsible person for the work.
- (4) The notice of work must be given to the Secretary—
 - (a) within the period prescribed by the regulations, and
 - (b) in the way prescribed by the regulations.
- (5) Work carried out corresponds to the specifications in a notice of work only if—
 - (a) the work is the same as or not materially different from the work specified in the notice of work, and
 - (b) the work is carried out by or under the supervision of the responsible person specified in the notice of work.
- (6) Work notified in accordance with this section is work that has been **pre-notified**.

220 Emergency work does not have to be pre-notified

- (1) Specialist work prescribed by the regulations (*emergency work*) does not have to be pre-notified.
- (2) The responsible person for emergency work that is not pre-notified must give the Secretary notice of the emergency work within the period prescribed by the regulations after carrying out the work.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (3) The notice must be given in the approved form.
- (4) The responsible person for emergency work must take all reasonable steps to ensure the work does not threaten the health and safety of an occupier of premises affected by the work.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.

221 Notice of defective installation or system

- (1) The responsible person for specialist work carried out on land must give notice of a defective installation or system on the land discovered in the course of carrying out the specialist work to—

- (a) the owner of the land, and
 - (b) if the owner does not occupy the land—the occupier of the land.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) The notice must be given—
 - (a) within the period prescribed by the regulations, and
 - (b) in the way prescribed by the regulations.
- (3) The responsible person for specialist work carried out on land must give the Secretary notice of a defective installation or system on the land discovered in the course of carrying out the specialist work if the defective installation or system poses an imminent threat to public health or safety.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (4) A defective installation or system is discovered if the responsible person, or a person carrying out the specialist work under the responsible person's supervision, becomes aware that the installation or system is defective.

Part 3 Inspection of specialist work

222 Inspection of specialist work by Secretary

- (1) The Secretary may, for the purpose of monitoring compliance with this Act, do either or both of the following—

- (a) inspect specialist work prescribed by the regulations,
 - (b) inspect documents prescribed by the regulations.
- (2) The Secretary may carry out more than 1 inspection if the Secretary considers it necessary in the circumstances.

223 Responsible person to notify Secretary when work is ready for inspection

- (1) A responsible person for specialist work must notify the Secretary when the work will be ready for inspection by the Secretary—
 - (a) before completing the work, or
 - (b) within the period prescribed by the regulations.Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) Notice is given only if the fee, if any, required to be paid for the inspection has been paid to the Secretary.
- (3) Before carrying out an inspection, the Secretary must advise the responsible person—
 - (a) of the period during which the specialist work must be available for inspection by the Secretary (the *inspection period*), and
 - (b) that the responsible person must ensure the specialist work is accessible for inspection during the inspection period.
- (4) The inspection period must be—
 - (a) agreed between the Secretary and the responsible person or
 - (b) in the absence of an agreement—determined by the Secretary considering what is reasonable in the circumstances.
- (5) The responsible person must, unless the responsible person has a reasonable excuse—
 - (a) ensure the specialist work is accessible and ready to be inspected during the inspection period, and
 - (b) be present, or ensure an agreed representative of the responsible person is present, during the inspection period at the place at which the specialist work has been carried out.Maximum penalty—
 - (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (6) In this section—

agreed representative of a responsible person means a person—

 - (a) authorised to carry out the work being inspected, and
 - (b) nominated by the responsible person, with the agreement of the Secretary, to attend the inspection as the responsible person's representative.

Part 4 Obligations to supply certificates of compliance and plans

224 Person to give certificate of compliance after specialist work completed

- (1) The responsible person for specialist work prescribed by the regulations must—
 - (a) give the Secretary a certificate of compliance—
 - (i) if a physical inspection of the specialist work has been carried out—on the completion of the work, or
 - (ii) otherwise—within the prescribed period, and
 - (b) give, within the prescribed period, a copy of the certificate of compliance to—
 - (i) the person for whom the work is carried out, and
 - (ii) other persons, if any, prescribed by the regulations.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
 - (b) for an individual—100 penalty units.
- (2) The documents must be given in the way prescribed by the regulations.
- (3) In this section, specialist work is completed by a responsible person when—
 - (a) the responsible person completes, in accordance with this Act, all of the specialist work the person was engaged to carry out, and
 - (b) the inspection period has ended.
- (4) In this section—
inspection period has the same meaning as in section 223(3).

225 Supply of plans

- (1) On completion of relevant specialist work, the responsible person for the work must give a plan of the work to the following persons—
 - (a) the owner of the land or the owner's agent,
 - (b) the Secretary.

Maximum penalty—

 - (a) for a body corporate—1,500 penalty units, or
 - (b) for an individual—300 penalty units.
- (2) The plans must be provided—
 - (a) in the way prescribed by the regulations, and
 - (b) in the approved form, and
 - (c) within the prescribed period.
- (3) The regulations may make provision about the following—
 - (a) the types of plans that must be provided under this section in relation to relevant specialist work,
 - (b) further requirements for the provision of specified plans in relation to relevant specialist work to the Secretary and other persons specified by the regulations
- (4) In this section—
relevant specialist work means the following—
 - (a) plumbing and drainage work that consists of or involves carrying out work on a sanitary drainage system,

- (b) other work prescribed by the regulations.

Part 5 Miscellaneous

226 Obligation to prevent threats to public health or safety

- (1) The owner or occupier of land who has control of an installation or system must take all reasonable steps to ensure the installation or system does not threaten public health or safety.

Maximum penalty—

- (a) for a body corporate—10,000 penalty units, or
(b) for an individual—2,000 penalty units.
- (2) The regulations may exempt specified persons from the offence in subsection (1).

227 Authorised fittings required for specialist work

- (1) A responsible person for specialist work must ensure a fitting used in the specialist work is an authorised fitting.

Maximum penalty—100 penalty units.

- (2) The Secretary may, by order published in the Gazette, give directions about the fittings that may be used in specialist work by specifying fittings that—

- (a) may be used, or
(b) must not be used.

- (3) A direction may apply generally or in specified circumstances.

- (4) In this section, a fitting is an ***authorised fitting*** if its use does not contravene a direction made by the Secretary.

Chapter 12 Miscellaneous

Part 1 Review of decisions by Tribunal

228 Review by Tribunal

- (1) A person aggrieved by the following decisions may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
 - (a) decision referred to in subsection (2),
 - (b) another decision prescribed by the regulations.
- (2) A decision of the Secretary—
 - (a) to refuse an application for the grant of a licence or owner-builder permit, or
 - (b) to refuse an application to vary a licence or owner-builder permit, or
 - (c) to vary a licence or owner-builder permit, other than where the holder applied for the variation, or
 - (d) to refuse an application for the suspension or cancellation of a licence or owner-builder permit, or
 - (e) to refuse to accredit an industry body, or
 - (f) to impose a condition on the accreditation of an industry body, or
 - (g) to not give approval for a person to apply to the Tribunal under section 159(1)(d), or
 - (h) to suspend or cancel—
 - (i) a licence, or
 - (ii) an owner-builder permit, or
 - (iii) the accreditation of an industry body, or
 - (i) to impose, vary or revoke a condition on—
 - (i) a licence, or
 - (ii) an owner-builder permit, or
 - (iii) the accreditation of an industry body, or
 - (iv) the suspension or cancellation of a licence,
 - (j) to impose a penalty.
- (3) Despite the provisions of the *Administrative Decisions Review Act 1997*, Chapter 3, Part 3, Division 2, the Tribunal may not order that a decision of the Secretary be stayed pending the determination of an application for its administrative review.

229 Time limits for review of Secretary's decisions

- (1) An application for an administrative review of a decision of the Secretary may be made to the Tribunal within 30 days after the decision (the **30-day period**).
- (2) A late application may, with the leave of the Tribunal, be made to the Tribunal within 30 days after the end of the 30-day period.
- (3) The Tribunal may only grant leave to make a late application if satisfied that—
 - (a) there is a sufficient explanation as to why the application was not made in time, and
 - (b) the other persons concerned in the matter would not be prejudicially affected if leave were granted.

230 Determination of reviews

- (1) A review must be dealt with by way of a rehearing.
- (2) Fresh evidence, or evidence in addition to, or in substitution for, the evidence received by the Secretary, may be given.
- (3) In determining a review, the Tribunal may make the following orders—
 - (a) an order confirming the Secretary's decision,
 - (b) an order substituting for the Secretary's decision another decision the Secretary may have made.

Part 2 Duty of care

231 Definitions

- (1) In this part—

association means an association within the meaning of the *Community Land Management Act 2021*.

civil action includes a counter-claim.
- (2) In this part, a reference to a person who carries out building work includes a reference to a person who manufactures or supplies a building product used for the work.

232 Extension of duty of care

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

233 Limitation on time when action for defective building work may be brought

- (1) A civil action for loss or damage arising out of or in connection with defective building work may not be brought more than 10 years after the date of completion of the work.
- (2) Building work is taken to be completed on—
 - (a) the date on which the occupation approval authorising the occupation of the building in relation to which the work was carried out is issued, or
 - (b) if an occupation approval is not required—the date on which a completion of work approval is issued for the completed building work, or
 - (c) if the occupation approval is required, but has not been issued—the date on which a required inspection of the completed building work is carried out by the approval authority, or

- (d) otherwise—the date on which the building in relation to which the work was carried out is first occupied or used.
- (3) This section has effect despite another Act or law, but does not operate to extend a period of limitation under this Act or the *Limitation Act 1969*.
- (4) This section does not limit a right to recover damages for death or personal injury arising out of or concerning defective building work.

234 Economic loss suffered by owners corporations and associations

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

235 Duty must not be delegated

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

236 No contracting out of part

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

237 Relationship with other duties of care and law

- (1) The provisions of this part—
 - (a) operate in addition to duties, statutory warranties or other obligations imposed under this Act, other Acts or the common law, and
 - (b) do not limit the duties, statutory warranties or other obligations imposed under this Act, other Acts or the common law.
- (2) This part does not limit damages or other compensation that may be available to a person under another Act or at common law because of a breach of a duty by a person who carries out building work or subdivision work.
- (3) This part is subject to the *Civil Liability Act 2002*.

Note— Actions under this part are subject to applicable limitation periods established under the *Limitation Act 1969*.

Part 3 Premises affected by loose-fill asbestos insulation

238 Definitions

In this part—

affected residential premises means residential premises listed on the asbestos insulation register, but does not include premises excluded by the regulations.

asbestos insulation register—see section 239.

loose-fill asbestos insulation means loose-fill asbestos used as ceiling insulation.

residential premises means a building wholly or partly used, or wholly or partly designed, constructed or adapted for use, as a place of residence.

239 Asbestos insulation register

- (1) The Secretary must keep a register of residential premises that contain or have contained loose-fill asbestos insulation (the *asbestos insulation register*).
- (2) Residential premises must be listed on the asbestos insulation register if the Secretary is satisfied the presence of loose-fill asbestos insulation at the premises has been verified in accordance with the regulations.
- (3) Other residential premises may be listed on the asbestos insulation register in the circumstances prescribed by the regulations.
- (4) The asbestos insulation register must include the following information in relation to residential premises listed on the asbestos insulation register—
 - (a) the address and title of the land,
 - (b) other information prescribed by the regulations.
- (5) The names of owners or occupiers of residential premises who are individuals must not be included on the asbestos insulation register.
- (6) The asbestos insulation register must be—
 - (a) kept in the approved form, and
 - (b) available for inspection by the public.
- (7) The Secretary must remove the following information relating to affected residential premises from the asbestos insulation register—
 - (a) if the Secretary is satisfied the premises have been demolished and the land on which the premises were erected has been remediated—all information,
 - (b) information the Secretary is satisfied—
 - (i) is false or misleading, or
 - (ii) has been mistakenly included in the asbestos insulation register,
 - (c) other information in the circumstances prescribed by the regulations.

240 Warning signs

- (1) The owner of affected residential premises must ensure a compliant warning sign is displayed on the part of the premises prescribed by the regulations.
- (2) The owner of a lot in a strata scheme is not required to display a compliant warning sign on part of the premises that is not part of the lot.
- (3) If affected residential premises are the subject of a strata scheme, the owners corporation for the scheme must ensure a compliant warning sign is displayed on the part of the premises prescribed by the regulations that consists of common property.
- (4) A person must not remove, or cause or permit to be removed, a compliant warning sign from affected residential premises.
- (5) A compliant warning sign may be removed from affected residential premises by a person authorised under the *Building Compliance and Enforcement Act 2024* or another Act to enter the premises.

- (6) The Secretary may, by order published in the Gazette, extend the application of this section to premises specified in the order if the Secretary is satisfied there are reasonable grounds to suspect the premises contain loose-fill asbestos insulation.
- (7) In this section—
affected residential premises includes premises in relation to which an order under this section is in force.
compliant warning sign means a sign about loose-fill asbestos insulation that complies with the requirements, including display requirements, prescribed by the regulations.
lot has the same meaning as in the *Strata Schemes Management Act 2015*.
Maximum penalty—
(a) for a body corporate—500 penalty units, or
(b) otherwise—100 penalty units.

Part 4 Offences

241 Compliance with National Construction Code

A person who carries out building work must take all reasonable steps to ensure that the building work complies with—

- (a) the requirements of the National Construction Code applicable to the work, subject to exemptions prescribed by the regulations, and
(b) other requirements applicable to the work prescribed by the regulations.

Maximum penalty—1,000 penalty units.

242 Disclosure and misuse of information

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

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

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
(b) otherwise—100 penalty units.

243 Secrecy of information

- (1) A person who acquires information in the exercise of functions under this Act must not, if the person knows the information is protected information, make a record of the information or disclose the information to another person otherwise than—

- (a) in accordance with this Act, or
(b) in the exercise of functions under this Act.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
(b) otherwise—100 penalty units.

- (2) Protected information may be divulged to—
- (a) a particular person if the Minister or Authority certifies it is necessary in the public interest that the information be divulged to the person, or
 - (b) a person or authority prescribed by the regulations, or
 - (c) a person expressly or impliedly authorised to obtain the information by the insurer from which the information was acquired, or
 - (d) the Minister or the Authority.
- (3) A person is not required—
- (a) to produce in a court a document or other thing containing protected information that has come into the person's possession, custody or control because of, or in the exercise of, the person's functions under this Act, or
 - (b) to divulge to a court protected information that has come to the person's notice in the exercise of the person's functions under this Act.
- (4) A person may be required to produce a document or other thing in a court or to divulge protected information to a court if—
- (a) the Minister or Authority certifies it is necessary in the public interest, or
 - (b) it is expressly authorised by the insurer to whom the information relates, or to whom the information contained in the document or thing relates.
- (5) This section applies to—
- (a) an authority or person to whom protected information is divulged under subsection (2), and
 - (b) a person or employee under the control of the authority or person.
- (6) This section does not apply to the divulging of information to, or the production of a document or other thing to—
- (a) a law enforcement agency, or
 - (b) a person or body prescribed by the regulations.
- (7) This section does not apply to the publishing of protected information in accordance with—
- (a) section 176, or
 - (b) a report in accordance with section 179.
- (8) In this section—
- court** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.
- functions under this Act** includes functions under the regulations or other instruments under this Act.
- produce** includes permit access to.
- protected information** means information, excluding publicly available information, about the business or commercial operations of an insurer obtained from an insurer under, or in connection with the administration or execution of, chapter 5.

244 Onus of proof for reasonable excuse

In proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse lies with the defendant.

245 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 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 may be imposed for the offence by a court.
- (5) This section does not limit the operation of another provision of, or made under, this or another Act relating to proceedings that may be taken in relation to offences.
- (6) In this section—
penalty notice officer has the same meaning as in the *Building Compliance and Enforcement Act 2024*.

246 Proceedings for offences

- (1) Proceedings for an offence against this Act must be dealt with summarily before—
 - (a) the Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (2) If proceedings for an offence against this Act are brought in the Local Court, the maximum monetary penalty the Local Court may impose for the offence is 1,000 penalty units.
- (3) Proceedings for an offence against the regulations must be dealt with summarily before the Local Court.
- (4) The proceedings must be commenced by an information laid within 3 years after the commission of the offence.

Part 5 General provisions for building legislation

247 Definition

In this part—

building legislation means the following Acts and the regulations and other instruments made under the Acts—

- (a) this Act,
- (b) the *Building Compliance and Enforcement Act 2024*,
- (c) the *Building Insurance Act 2024*,

248 Acts to bind Crown

The building legislation binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

249 Service of documents

- (1) A document that is authorised or required by the building legislation to be given to a person may be given in any of the following ways—
 - (a) for an individual—by personal delivery to the person,
 - (b) by sending it to a postal address or email address specified by the person for receiving documents of that kind,
 - (c) for an individual who has not specified an address—by sending it by post to the residential or business address of the person last known to the person giving the document,
 - (d) for a body corporate—
 - (i) by sending it by post to an office of the body corporate, or
 - (ii) by leaving the document with an individual who—
 - (A) is at an office of the body corporate, and
 - (B) appears to be over the age of 16 years,
 - (e) by another method prescribed by the regulations.
- (2) Nothing in this section affects the operation of a provision of a law or of the rules of a court authorising a document to be served on a person by another method.
- (3) In this section—

give includes serve or send.

office, of a body corporate, means the registered office or another office.

250 Delegation

- (1) The Secretary may delegate the exercise of a function of the Secretary under the building legislation, other than this power of delegation, to—
 - (a) a person employed in the Department, or
 - (b) if the function relates to architects or work carried out by architects—to the Architects Board, or
 - (c) for a function under the *Building Compliance and Enforcement Act 2024*—
 - (i) the chief executive of the Authority, or
 - (ii) an employee of Fire and Rescue NSW, or
 - (iii) a local council, or
 - (d) a person prescribed by the regulations.
- (2) The Minister may delegate the exercise of a function of the Minister under the building legislation, other than this power of delegation, to a person—
 - (a) employed in the Department, or
 - (b) prescribed by the regulations.
- (3) The Authority may delegate the exercise of a function of the Authority under the building legislation, other than this power of delegation, to—
 - (a) a member of staff of the Authority, or
 - (b) a person prescribed by the regulations.
- (4) The instrument delegating a function under this section may authorise the function to be subdelegated as specified in the instrument.

251 Personal liability

- (1) A protected person is not personally subject to a liability for anything done—

- (a) in good faith, and
 - (b) for the purpose of exercising a function under the building legislation.
- (2) The liability instead attaches to the Crown.
- (3) In this section—
 - done** includes omitted to be done.
 - liability** means civil liability and includes action, claim or demand.
 - protected person** means the following—
 - (a) the Secretary,
 - (b) an authorised officer,
 - (c) a member of—
 - (i) the Architects Board, or
 - (ii) a subcommittee of the Architects Board,
 - (d) a member of the staff of the Authority,
 - (e) a building inspector within the meaning of the *Building Insurance Act 2024*, Part 5,
 - (f) a professional association within the meaning of the *Building Insurance Act 2024*,
 - (g) a person acting under the direction of—
 - (i) the Architects Board, or
 - (ii) the Authority, or
 - (iii) a person referred to in paragraphs (a)–(f).

Part 6 Miscellaneous

252 Jurisdiction of Tribunal in relation to unjust contracts

- (1) The Tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract for home building work or specialist work.
- (2) This section does not—
 - (a) authorise the Tribunal to exercise the powers conferred by the *Contracts Review Act 1980*, section 10, or
 - (b) affect the jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts to carry out home building work or specialist work.

253 Building Administration Fund

- (1) A Building Administration Fund must be established in the Special Deposits Account.
- (2) The Secretary of the Department must control and manage the Fund.
- (3) The following must be paid into the Fund—
 - (a) fees for the issue of authorities, including licences and owner-builder permits,
 - (b) money received from the payment of fines or penalty infringement notices issued under this Act,
 - (c) money received from the payment of fees for inspections under Chapter 6,

- (d) amounts paid to the Department for the provision of continuing professional development,
 - (e) amounts required to be paid into the Fund,
 - (f) income from investment of the Fund,
 - (g) other amounts received or recouped in relation to the administration of the Fund.
- (4) The Secretary of the Department must use money in the Fund for the following purposes if the Minister approves the use—
 - (a) to meet the costs of operating the scheme for resolving building disputes,
 - (b) to meet the costs of administering this Act and other Acts prescribed by the regulations,
 - (c) to make investments authorised under the *Government Sector Finance Act 2018*, Part 6.
- (5) The Secretary of Department may, with the consent of the Minister, make payments out of the Fund towards the following—
 - (a) assisting education or research relating to—
 - (i) consumer-related issues in the building industry, and
 - (ii) the building industry and trades subject to licensing under this Act,
 - (b) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act, and
 - (c) assisting a public purpose connected with the objects of this Act.
- (6) A payment of a fee, fine or penalty infringement notice must be paid into the Architects Fund rather than the Building Administration Fund if the payment is made—
 - (a) in relation to a licence as an architect, or
 - (b) in relation to the exercise of a function by the Architects Board.
- (7) To avoid doubt, a reference to the Secretary of the Department in the section does not include the Building Commissioner.

254 Exchange of information

- (1) The Secretary may provide to a relevant agency information reasonably necessary to enable or assist the relevant agency to regulate or take other action in relation to one or more of the following—
 - (a) licensed work,
 - (b) a licence holder,
 - (c) home building insurance,
 - (d) other matters prescribed by the regulations.
- (2) A relevant agency may provide to the Secretary information reasonably necessary to enable or assist the Secretary to exercise the Secretary's functions under this Act.
- (3) The Secretary may enter into an arrangement (an *information sharing arrangement*) with a relevant agency to share or exchange information held by the Secretary or the agency.
- (4) Under an information sharing arrangement, the Secretary and the relevant agency are, despite another 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 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 the information can otherwise be lawfully provided, or
 - (b) limit the operation of another Act or law under which a relevant agency is authorised or required to disclose information to another person or body.
- (7) In this section—

relevant agency means the following—

 - (a) a government sector agency,
 - (b) the Self Insurance Corporation or a licensed insurer,
 - (c) the Tribunal,
 - (d) other persons or bodies, or classes of persons and bodies, prescribed by the regulations.

255 Certificate evidence

- (1) A document certifying a relevant matter is admissible in criminal or civil proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the matter certified if the document is signed by—
 - (a) the Secretary, or
 - (b) in relation to an architect—the Architects Board, or
 - (c) an employee of the Department prescribed by the regulations.
- (2) In this section—

relevant matter means the following—

 - (a) that a specified person was or was not, at a specified time or during a specified period, a licence holder,
 - (b) that a licence held by a specified person did or did not authorise the carrying out of certain work,
 - (c) that a licence held by a specified person was or was not, at a specified time or during a specified period, subject to a specified condition or was or was not suspended,
 - (d) that a specified person was or was not, at a specified time or during a specified period, an authorised officer,
 - (e) that a notice required to be given to or by the Secretary was, at a specified time or during a specified period, given or was not given,
 - (f) that an approval or exemption was or was not, at a specified time or during a specified period—
 - (i) held by a specified person, or
 - (ii) subject to a specified condition, or
 - (iii) was or was not suspended,
 - (g) that a particular or other matter was or was not, at a specified time or during a specified period, included on a register,
 - (h) another matter prescribed by the regulations.

256 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, about a 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) The regulations may make provision about the following—
 - (a) the carrying out of licensed work,
 - (b) advertisements and the display of signs relating to licensed work,
 - (c) agreements or arrangements relating to licensed work,
 - (d) the keeping of records and the provision of information to the Secretary by persons carrying out building work under this Act,
 - (e) the qualifications, skills and experience required for a licence including the approval of—
 - (i) training, and
 - (ii) persons to conduct the training or to assess persons undergoing the training,
 - (f) forms, records, notices and returns,
 - (g) appeals and show cause proceedings,
 - (h) the keeping of trust accounts by licence holders and former licence holders,
 - (i) the conduct of examinations,
 - (j) matters required to be taken into account by the Secretary in deciding whether special circumstances exist,
 - (k) fees payable under this Act or the regulations,
 - (l) the waiver, reduction, postponement or refund by the Secretary of fees payable or paid under this Act or the regulations,
 - (m) the keeping of public registers,
 - (n) exemptions from requirements of this Act or the regulations, whether or not subject to conditions.
- (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—
 - (a) for a body corporate—200 penalty units, and
 - (b) otherwise—100 penalty units.

257 Review of Act

- (1) The Minister must review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review must be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review must be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

258 Repeals

The following are repealed—

- (a) the *Architects Act 2003*,

- (b) the *Architects Regulation 2017*,
- (c) the *Building and Development Certifiers Act 2018*,
- (d) the *Building and Development Certifiers Regulation 2020*,
- (e) the *Design and Building Practitioners Act 2020*,
- (f) the *Design and Building Practitioners Regulation 2021*,
- (g) the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*,
- (h) the *Home Building Act 1989*,
- (i) the *Home Building Regulation 2014*.

DRAFT

Schedule 1 Constitution and procedure of NSW Architects Registration Board

Section 173

Part 1 General

1 Definitions

In this schedule—

appointed member means a member referred to in section 174(1)(c)–(j).

Board means the NSW Architects Registration Board.

Deputy President means the Deputy President of the Board.

meeting means a meeting of the Board.

member means a member of the Board.

paper meeting means a meeting—

- (a) conducted by the circulation of papers, whether electronically or otherwise, among all the members, and
- (b) at which decisions are made by written resolutions being supported by a majority of the votes cast at the meeting.

President means the President of the Board.

Part 2 Members

2 Terms of office

- (1) An appointed member holds office for the period specified in the instrument appointing the member.
- (2) The period specified must not be more than—
 - (a) for the members appointed under section 174(1)(d)—2 years, or
 - (b) otherwise—4 years.
- (3) Appointment as a member does not prevent a person being re-appointed as a member.

3 May hold other office

- (1) An appointed members holds office as a part-time member.
- (2) An appointed member is not a Public Service employee for the purposes of the *Government Sector Employment Act 2013*.
- (3) The following provisions in an Act or instrument do not operate to disqualify a person from holding an office and also being an appointed member—
 - (a) a provision requiring a person who is the holder of the office to devote the whole of the person's time to the duties of the office, or
 - (b) a provision prohibiting the person from engaging in employment outside the duties of the office.

4 Vacancy in office

- (1) The office of an appointed member becomes vacant if the member—
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or

- (c) resigns the office by giving written notice to the Minister, or
 - (d) is removed from office by the Minister, or
 - (e) is absent from 6 consecutive meetings of the Board, excluding meetings for which the member—
 - (i) has not been given reasonable written notice, or
 - (ii) is on leave granted by the President, or
 - (iii) is excused by the President for having been absent, or
 - (f) becomes personally insolvent, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted—
 - (i) in New South Wales of a serious offence, or
 - (ii) outside New South Wales of an offence that, if committed in New South Wales, would be a serious offence, or
 - (i) for a member referred to in section 174(1)(c)—ceases to teach architecture at the educational institution, or
 - (j) for a member referred to in section 174(1)(c) or (d)—ceases to be an architect.
- (2) The Minister may remove an appointed member from office at any time by giving written notice to the member.
- (3) In this section—
serious offence means an offence punishable by imprisonment for 12 months or more.

5 Filling of vacancy in office

The Minister must take reasonable steps to fill a vacancy in the office of an appointed member.

6 Remuneration

- (1) The Minister may decide to pay remuneration to a member.
- (2) The member is entitled to be paid the remuneration in accordance with the decision.
- (3) Remuneration may include travel and subsistence allowances.

7 Substitutes

- (1) A member may appoint a person to be the substitute for the member, if—
 - (a) the person would be eligible to be appointed to the office of the member, and
 - (b) the Minister approves the appointment.
- (2) The member or the Minister may revoke the appointment at any time.
- (3) The substitute may act in the place of the member if—
 - (a) the member is absent, or
 - (b) the office of the member becomes vacant and another person has not been appointed to the office.
- (4) The substitute, while acting—
 - (a) has the functions of the member, and
 - (b) is taken to be the member.

- (5) The substitute for a member who is President or Deputy President, does not have the functions of the President or Deputy President.

8 President and Deputy President

- (1) The Board must elect—
- (a) 1 member to be President of the Board, and
 - (b) another member to be Deputy President of the Board.
- (2) A person vacates office as President or Deputy President if the person—
- (a) is removed from the office by the Board or Minister, or
 - (b) resigns the office by giving written notice to the Minister, or
 - (c) ceases to be a member.
- (3) The Board or Minister may remove a person from office as President or Deputy President at any time by giving written notice to the person.

Part 3 Meetings and procedure

9 General procedure

- (1) The Board may decide—
- (a) where and when meetings will take place, and
 - (b) how business will be carried out at meetings.
- (2) The Minister may decide where and when the first meeting of the Board will take place.
- (3) This Part applies to a subcommittee of the Board in the same way as applies to the Board.

10 Meetings

- (1) The business of the Board may be carried out at a meeting.
- (2) A meeting may be conducted—
- (a) in person, or
 - (b) remotely, or
 - (c) in person with some members attending remotely, or
 - (d) by paper meeting.
- (3) A meeting conducted remotely, or with some members attending remotely, must be conducted in a way that all members are able to hear each other.
- (4) All members are taken to attend a paper meeting.

11 Quorum

The quorum for a meeting is a majority of the members.

12 Presiding member

The presiding member at a meeting is—

- (a) the President, or
- (b) if the President is absent—the Deputy President, or
- (c) if the President and the Deputy President are absent—a person elected by the members attending the meeting.

13 Decisions and voting

- (1) A resolution at a meeting is a decision of the Board if—
 - (a) the resolution is supported by a majority of the votes cast at a meeting, and
 - (b) the members attending the meeting comprise a quorum.
- (2) A vote is cast at a paper meeting by a member giving written notice of the member's vote in the way specified for the meeting.
- (3) The presiding member—
 - (a) has a deliberative vote, and
 - (b) if the vote is a tie—has a second or casting vote.
- (4) Decisions of the Board must be recorded in the minutes of the Board.

Part 4 Pecuniary interests

14 Disclosure of pecuniary interests

- (1) A member attending a meeting must make a disclosure if—
 - (a) the member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at the meeting, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.
- (2) The member must make the disclosure as soon as possible after the relevant facts have come to the member's knowledge.
- (3) The disclosure must specify the nature of the interest.
- (4) A disclosure at a paper meeting must be made by written notice—
 - (a) sent in the way specified for the meeting, or
 - (b) otherwise—sent to the presiding member.

15 Standing disclosures

- (1) A member may disclose at a meeting that the member—
 - (a) for a specified company or body—
 - (i) is a member of the company or body, or
 - (ii) is employed by the company or body, or
 - (iii) has some other specified interest relating to the company or body, or
 - (b) for a specified person—
 - (i) is a close relative of the person, or
 - (ii) is employed by the person, or
 - (iii) has some other specified interest relating to the person.
- (2) The disclosure is a sufficient disclosure for this part of the member's interest in a matter relating to the company, body or person.
- (3) The member is not required to repeat the disclosure at later meetings.

16 Members not to participate in relation to certain matters

- (1) A member who makes a disclosure under this part in relation to an interest in a matter must not—
 - (a) be present when the Board considers the matter, or

- (b) take part in a decision about the matter.
- (2) Subsection (1) does not apply if the Minister or the Board decides to allow the member to be present and take part in the decision.
- (3) The member must not—
 - (a) be present when the Board considers making a decision under subsection (2), or
 - (b) take part in the decision.
- (4) A contravention of this section does not invalidate a decision of the Board.

17 Records about disclosures

- (1) Particulars of any disclosure made under this part must be recorded by the Board in a document kept for the purpose.
- (2) The document must be made available to a person for inspection by if person if—
 - (a) the person proposes to carry out the inspection at a reasonable time, and
 - (b) the person pays the reasonable fee set by the Board.

18 Part extends to subcommittees

This part applies to a member of a subcommittee of the Board and the subcommittee in the same way as it applies to a member of the Board and the Board.

Schedule 2 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 commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement, but not before the date of assent to—
 - (a) for a provision of this Act—this Act, or
 - (b) for a provision amending this Act—the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before its publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before its publication.
- (6) In this section—
person does not include the State or an authority of the State.

Drafting note 4.1 *Necessary savings and transitional provisions will be included when this Bill is closer to being settled.*

Schedule 3 Amendment of other legislation

Drafting note 4.2 *Necessary consequential amendments will be made to other legislation when this Bill is closer to being settled.*

DRAFT

Schedule 4 Dictionary

Section 3

ACN has the same meaning as in the Corporations Act.

accredited industry body means an industry body holding a current accreditation from the Secretary under section 33.

adequately insured, in relation to licensed work, for Chapter 3—see section 48(2).

approval authority, for Chapter 6—see section 112.

approved form means the form approved by the Secretary.

architect means a person who holds a licence as an architect.

Architects Board means the NSW Architects Registration Board constituted under section 173.

Architects Fund means the fund established under Chapter 8, Part 2.

authorised officer has the same meaning as in the *Building Compliance and Enforcement Act 2024*.

Authority means the State Insurance Regulatory Authority.

body corporate means a legal person other than an individual.

building includes the following—

- (a) part of a building,
- (b) a structure,
- (c) part of a structure.

Building Administration Fund means the Building Administration Fund maintained under section 253.

building approval, for Chapter 6—see section 112.

building claim, for Chapter 7—see section 161.

building dispute, for Chapter 7—see section 156.

building element—

- (a) for Chapter 6—see section 112, or
- (b) otherwise—see section 9.

building enforcement legislation has the same meaning as in the *Building Compliance and Enforcement Act 2024*.

building legislation, for Chapter 12, Part 5—see section 247.

building product has the same meaning as in the *Building Compliance and Enforcement Act 2024*.

building work—see section 10.

building work compliance declaration, for Chapter 6—see section 115.

certification work—see section 11.

change of building use, for Chapter 6—see section 112.

class of building means a building of that class as recognised by the National Construction Code.

class of licence, for Chapter 3—see section 20.

close associate—see section 6.

competency assessment, for Chapter 3—see section 31(1).

complete, for home building work—see section 104.

completion approval means—

- (a) an occupation approval, or
- (b) a completion of work approval.

completion of work approval, for Chapter 6—see section 112.

compliance declaration, for Chapter 6—see section 112.

complying development has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

complying development certificate has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

conciliation, for Chapter 7—see section 155.

contract price means the total amount payable under—

- (a) a home building work contract or a contract to supply a kit home (a **primary contract**), including the amount the contractor is entitled—
 - (i) to receive and keep under the contract, and
 - (ii) to receive under the contract for payment to another person, and
- (b) the amount another person is entitled to receive under a separate contract for building work relating to the primary contract.

contracted party, for Chapter 4, Part 1—see section 65.

cost of work, for Chapter 4, Part 1—see section 65.

contractor, for Chapter 4, Part 1—see section 65.

corporation has the same meaning as in the Corporations Act.

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

correctional complex means premises declared to be a correctional complex by a proclamation in force under the *Crimes (Administration of Sentences) Act 1999*, section 224.

data has the same meaning as in the *Data Sharing (Government Sector) Act 2015*.

declared building work, for Chapter 6—see section 138.

Department means the Department of Customer Service.

design compliance declaration, for Chapter 6—see section 114.

developer has the same meaning as in the *Building Compliance and Enforcement Act 2024*, but does not include—

- (a) a developer in relation to home building work carried out for the construction of 1 or more buildings containing less than 3 self-contained dwellings, or
- (b) a company that owns a building under a company title, or
- (c) another person prescribed by the regulations.

development consent has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

electrical installation means any fixed appliances, wires, fittings, meters, apparatus or other electrical equipment used for, or for purposes incidental to, the conveyance, measuring, control and use of electricity in a particular place, but does not include the following—

- (a) subject to the regulations—electrical equipment, other than a meter, used, or intended for use, in the generation, transmission or distribution of electricity that is—
 - (i) owned or used by an electricity supply authority, or
 - (ii) located at a place that is owned or occupied by such an authority,
- (b) a meter used, or intended for use, in the generation, transmission or distribution of electricity that is—
 - (i) owned or used by an electricity supply authority, and
 - (ii) located at a place owned or occupied by the authority,
- (c) an electrical article connected to, and extending or situated beyond, any electrical outlet socket,
- (d) electrical equipment in or about a mine,

- (e) electrical equipment operating at not more than 50 volts alternating current or 120 volts ripple-free direct current,
- (f) anything prescribed by the regulations.

electrical work means specialist work that is electrical work.

electricity supply authority means a person or body engaged in the distribution of electricity to the public or in the generation of electricity for supply, directly or indirectly, to the public whether by statute, franchise agreement or otherwise and includes—

- (a) an energy services corporation within the meaning of the *Energy Services Corporations Act 1995*, and
- (b) an authorised network operator under the *Electricity Network Assets (Authorised Transactions) Act 2015*, and
- (c) Rail Corporation New South Wales, and
- (d) Transport for NSW, and
- (e) Sydney Metro, and
- (f) the Water Administration Ministerial Corporation constituted by the *Water Management Act 2000*.

exercise a function includes perform a duty.

fire safety certificate—for Chapter 6, see section 112.

fire safety schedule—for Chapter 6, see section 123.

flue means a system of pipes and associated fittings designed to convey exhaust gases away from a gas appliance.

function includes a power, authority or duty.

gas appliance means gas burning or gas using appliance that is manufactured, adapted or designed for connection to a gas installation, whether by means of a gas outlet socket or otherwise, and includes a liquefied petroleum gas dispenser, catalytic burner or vaporiser, but does not include—

- (a) an internal combustion engine that is installed in, or forms part of, a vehicle, vessel or machine, or
- (b) an appliance used in a medical facility for the supply or removal of a medical gas.

gas fitting work means specialist work that is gas fitting work.

gas installation—

- (a) means the following that are downstream of the gas supply point, but not beyond the gas installation end point—
 - (i) a pipe or system of pipes used to convey or control gas,
 - (ii) associated fittings and equipment,
 - (iii) a flue, and
- (b) but does not include—
 - (i) an autogas installation within the meaning of the *Gas and Electricity (Consumer Safety) Act 2017*, or
 - (ii) a medical gas installation.

gas installation end point means—

- (a) for a gas installation to which gas is supplied from a gas network—the gas outlet socket, or
- (b) otherwise—the control valve or other connection point of—
 - (i) a gas appliance, or
 - (ii) another gas container.

gas supply point means—

- (a) for a gas installation to which gas is supplied from a gas network—the outlet of the gas meter at which the gas is supplied, or
- (b) otherwise—the control valve or other connection point of a gas container.

goods, for Chapter 7—see section 155.

general building design work—section 12.

grant a licence, for Chapter 3—see section 20.

Health Secretary has the same meaning as in the *Health Administration Act 1982*.

home building insurance has the same meaning as in the *Building Insurance Act 2024*.

Home Building Operational Fund means the Home Building Operational Fund established under the *Building Insurance Act 2024*.

home building work—see section 13.

home building work contract, for Chapter 4, Part 1—see section 65.

hospital has the same meaning as in the *Public Health Act 2010*.

insolvent means—

- (a) for an individual—the individual is personally insolvent, or
- (b) for a corporation—that the corporation is a Chapter 5 body corporate within the meaning of the Corporations Act, or
- (c) for other bodies corporate—the body corporate—
 - (i) under the *Bankruptcy Act 1966* of the Commonwealth—
 - (A) is bankrupt, or
 - (B) is a party to a debt agreement as a debtor, or
 - (C) is a party to an insolvency agreement as a debtor and the obligations created by the agreement remain undischarged, or
 - (D) authorises a controlling trustee to control the individual's property, whether or not the individual has entered into a personal insolvency agreement as a debtor, or
 - (ii) has a status under a law of a foreign country substantially similar to an individual referred to in subparagraph (1), or
 - (iii) otherwise applies to take the benefit of a law for the relief of bankrupt or insolvent debtors.

kit home means a set of building components that, when offered for sale, is represented as sufficient for the construction of a home, garage, carport or other structure prescribed by the regulations, according to a plan or instructions provided by the supplier of the set, but does not include the following—

- (a) a set of components for the construction of a moveable dwelling, other than a registrable vehicle, within the meaning of the *Road Transport Act 2013*,
- (b) a set of components for the construction of a home, structure or improvement prescribed by the regulations.

licence—see section 20.

licence holder—see section 20.

licence register—see section 47.

licensed body corporate, for Chapter 3—see section 20.

licensed individual, for Chapter 3—see section 20.

licensed work—see section 14.

local council means—

- (a) the council of an area under the *Local Government Act 1993*, or

- (b) for Lord Howe Island—the Lord Howe Island Board, or
- (c) for land in the Western Division that is not within an area under the *Local Government Act 1993*—the Minister for Planning.

major work contract, for Chapter 4, Part 1—see section 65.

major work amount, for Chapter 4, Part 1—see section 65.

manufactured home means a self-contained dwelling that—

- (a) is a prefabricated building comprising 1 or more major sections, and
- (b) includes at least—
 - (i) 1 kitchen, and
 - (ii) 1 bathroom, and
 - (iii) 1 bedroom, and
 - (iv) 1 living area, and
- (c) includes toilet and laundry facilities, and
- (d) may include associated structures forming part of the dwelling, and
- (e) is capable of being relocated to from one site to another site, and
- (f) is not a motor vehicle, trailer or other registrable vehicle within the meaning of the *Road Transport Act 2013*.

manufacturer, of a prefabricated building, for Chapter 6Part 5—see section 143.

medical facility means—

- (a) a hospital within the meaning of the *Public Health Act 2010*,
- (b) an aged care facility,
- (c) a place where medical gas is supplied or removed, except as prescribed by the regulations.

medical gas means a substance used for medical purposes and prescribed by the regulations as a medical gas.

medical gas installation—

- (a) means a reticulated system of pipes, hoses or lines in a medical facility that conveys or controls the supply or removal of medical gases, and
- (b) includes—
 - (i) associated fixtures or fittings, and
 - (ii) things prescribed by the regulations, and
- (c) does not include anything connected to and extending or situated beyond a wall outlet or NIST fitting.

medical gas work means specialist work that is—

- (a) medical gas technician work, or
- (b) medical gasfitting work.

minor work contract, for Chapter 4, Part 1—see section 65.

minor work amount, for Chapter 4, Part 1—see section 65.

moveable dwelling means a tent, or a caravan or other van or other portable device, whether or not on wheels, used for human habitation and includes a conveyance, structure or thing prescribed by the regulations.

National Construction Code means the document, published by or on behalf of the Australian Building Codes Board, that is prescribed by the regulations, and includes the following—

- (a) the amendments made by the Board prescribed by the regulations,
- (b) the variations approved by the Board in relation to New South Wales and prescribed by the regulations,

(c) the variations prescribed by the regulations.

notifying party, for Chapter 7—see section 157.

NSW planning portal has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

occupation approval, for Chapter 6—see section 112.

owner of land means the following, but does not include a person excluded by the regulations—

- (a) every person who jointly or severally, or at law or in equity, is entitled to the land for an estate of freehold,
- (b) for a lot within a strata scheme—the owner of a lot,
- (c) for a development lot or neighbourhood lot within a community scheme—the proprietor in relation to the lot within the meaning of the *Community Land Management Act 2021*,
- (d) for land subject to a strata scheme—the owners corporation constituted for the scheme,
- (e) for land subject to a community scheme, precinct scheme or neighbourhood scheme within the meaning of the *Community Land Management Act 2021*—the association for the scheme,
- (f) every person who jointly or severally, or at law or in equity, is entitled to receive, or receives, or if the land were let to a tenant would receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise,
- (g) a home owner within the meaning of the *Residential (Land Lease) Communities Act 2013*,
- (h) other persons prescribed by the regulations.

owner-builder—see section 105.

owner-builder permit or **permit**—see section 105.

owner-builder work—see section 15.

owners corporation has the same meaning as in the *Strata Schemes Management Act 2015*.

performance solution has the same meaning as in the National Construction Code.

person responsible for declared building work, for Chapter 6, Part 4—see section 136.

plumbing and drainage work means specialist work that is plumbing and drainage work.

prefabricated building—see section 16(1).

prefabricated building declaration—see section 144(1).

prefabricated building work—see section 17.

prefabricated building work compliance declaration, for Chapter 6—see section 131(2).

prefabricated design, for Chapter 6—see section 120(2)(a).

prefabricated design compliance declaration, for Chapter 6—see section 120(2)(c).

principal contractor, for Chapter 6, Part 4—see section 136.

professional engineering work—see section 18.

progress payment, for Chapter 4, Part 1—see section 65.

registered health practitioner has the same meaning as in the *Health Practitioner Regulation National Law (NSW)*.

regulated design, for Chapter 6—see section 113.

relevant authorisation, for Chapter 3—see section 20.

relevant authority, for Chapter 12, Part 5—see section 247.

relevant offence, for Chapter 3—see section 20.

Secretary means—

- (a) the Building Commissioner, or
- (b) if the office of the Building Commissioner is vacant—the Secretary of the Department.

Self Insurance Corporation means the NSW Self Insurance Corporation constituted by the *NSW Self Insurance Corporation Act 2004*.

specialist work—see section 19.

staged building work, for Chapter 6—see section 121(1).

Standard Instrument means the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

statutory warranty—see section 96(1).

strata scheme has the same meaning as in the *Strata Schemes Management Act 2015*.

transportation and building instructions, for Chapter 6—see section 145(1).

Tribunal means the Civil and Administrative Tribunal established by the *Civil and Administrative Tribunal Act 2013*.

warranty beneficiary, for Chapter 4, Part 2—see section 97.

warranty provider, for Chapter 4, Part 2—see section 98.

DRAFT