

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Design and Building Practitioners Bill 2019

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public consultation draft

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Design and Building Practitioners Bill 2019

No , 2019

A Bill for

An Act with respect to the registration of design practitioners, principal design practitioners and other building practitioners, compliance declarations and a duty of care; and for other purposes.

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Design and Building Practitioners Act 2019*.

2 Commencement

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

3 Definitions

(1) In this Act—

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

building compliance declaration—see section 8(3).

building element—see section 6.

building practitioner—see section 7(1).

building work—see section 4.

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

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

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

Department means the Department of Customer Service.

design includes a plan or specification.

design compliance declaration—see section 8(1).

design practitioner means a person who prepares regulated designs.

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

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

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

practitioner means a design practitioner, principal design practitioner or building practitioner.

principal compliance declaration—see section 8(2).

principal design practitioner means a person who co-ordinates the provision of design compliance declarations for the purposes of building work done by a building practitioner.

register as a design practitioner, principal design practitioner or building practitioner includes renew or restore registration.

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

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

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

registered director means an individual who is a registered practitioner and who is a director of a registered body corporate.

registered practitioner means a registered design practitioner, registered principal design practitioner or a registered building practitioner.

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

registration means registration as a registered design practitioner, principal design practitioner or building practitioner and includes recognition as a practitioner under this Act.

regulated design—see section 5.

Secretary means the Secretary of the Department.

stop work order—see section 78.

Tribunal means the Civil and Administrative Tribunal.

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

- (2) In this Act, a reference to the **preparation of a design** includes a reference to carrying out work relating to the preparation of a design.
- (3) Notes included in this Act do not form part of this Act.

4 Building work

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

5 Regulated designs

- (1) For the purposes of this Act, **regulated design** means a design of a class prescribed by the regulations that is prepared for building work.
- (2) Without limiting subsection (1), a regulated design may include a design for—
 - (a) a building element, or
 - (b) a performance solution for building work or a building element.

6 Building elements

- (1) For the purposes of this Act, **building element** means any of the following—
 - (a) the fire safety systems for a building, as prescribed by the regulations,
 - (b) waterproofing,
 - (c) an internal or external load-bearing component of a building that is essential to the stability of the building, or a part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams),

- (d) a component of a building that is part of the building enclosure,
 - (e) other things prescribed by the regulations for the purposes of this section.
- (2) The regulations may exclude elements from being building elements for the purposes of this Act.
- (3) In this section—
above grade wall means a wall above the level of the ground surrounding a building.
building enclosure means the part of the building that physically separates the interior environment of the building from the exterior environment, including roof systems and above grade walls (including windows and doors) for all habitable spaces above the level of the ground surrounding a building.

7 Building practitioners

- (1) In this Act, **building practitioner** means—
- (a) a person who contracts to do building work, or
 - (b) if more than one person contracts to do building work, a person who is the principal contractor for the work.
- (2) In this Act, **principal contractor** means a person who contracts to do building work under a contract (the **head contract**) and for whom work is to be carried out under one or more other contracts as part of or incidental to the work carried out under the head contract.
- (3) In this Act, a **building practitioner is taken to do building work** if the practitioner—
- (a) contracts to do building work, or
 - (b) is the principal contractor for the work.
- (4) The regulations may—
- (a) prescribe additional persons as building practitioners for the purposes of this Act, and
 - (b) exclude persons from being building practitioners for the purposes of this Act, and
 - (c) prescribe circumstances in which a person prescribed for the purposes of paragraph (a) is taken to do building work.

8 Compliance declarations

- (1) In this Act, **design compliance declaration** means a declaration made by a design practitioner in the form and manner prescribed by the regulations as to the following—
- (a) whether or not a regulated design prepared for building work complies with the requirements of the *Building Code of Australia*,
 - (b) whether or not the design complies with other applicable requirements prescribed by the regulations for the purposes of this subsection.
- (2) In this Act, **principal compliance declaration** means a declaration made by a principal design practitioner in the form and manner prescribed by the regulations as to the following—
- (a) whether or not a design compliance declaration has been provided in accordance with this Act for each regulated design prepared for the building work,

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

Part 2 Regulated designs and building work

Division 1 Obligations of design practitioners

9 Compliance declarations by registered design practitioners

- (1) A registered design practitioner must provide a design compliance declaration to a person if—
 - (a) the practitioner provides the person with a regulated design, and
 - (b) the design is in a final form for use by that person or another person in connection with building work.Maximum penalty—500 penalty units.
- (2) A registered design practitioner must provide a design compliance declaration to a person if—
 - (a) the practitioner provides the person with a varied regulated design relating to a building element or performance solution, and
 - (b) the design is in a final form for use by that person or another person in connection with building work.Maximum penalty—500 penalty units.
- (3) A registered design practitioner who is required by subsection (1) or (2) to provide a design compliance declaration to a person must also provide a copy of the declaration to the principal design practitioner (if any) appointed for the building work to which the declaration relates.
Maximum penalty—500 penalty units.
- (4) A registered design practitioner must provide a design compliance declaration in other circumstances prescribed by the regulations.
Maximum penalty—500 penalty units.
- (5) A regulation made under subsection (4) may require regulated designs and design compliance declarations to be lodged electronically through an internet site or an application established by or on behalf of the Department.
- (6) A person must not make a design compliance declaration that the person knows to be false or misleading in a material particular.
Maximum penalty—2,000 penalty units or imprisonment for 2 years, or both.
- (7) The regulations may require a design compliance declaration provided under this section to be accompanied by other documents prescribed by the regulations.

10 Declarations by unregistered persons

A person must not make a design compliance declaration unless—

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

Maximum penalty—500 penalty units.

11 Registered design practitioners to be indemnified

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

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

Maximum penalty—100 penalty units.

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

Division 2 Obligations of principal design practitioners

12 Compliance declarations by registered principal design practitioners

- (1) A registered principal design practitioner appointed for building work must ensure that—
 - (a) design compliance declarations have been provided in accordance with section 9 for regulated designs prepared for the building work, and
 - (b) the declarations have been provided by registered design practitioners whose registration authorises them to provide declarations as to the matters to which the declarations relate.

Maximum penalty—1,000 penalty units.

- (2) A registered principal design practitioner must provide a principal compliance declaration to the persons, and in the circumstances, prescribed by the regulations.
Maximum penalty—500 penalty units.

- (3) Without limiting subsection (2), a regulation made under that subsection may require regulated designs and principal compliance declarations to be lodged electronically through an internet site or an application established by or on behalf of the Department.

- (4) A person must not make a principal compliance declaration that the person knows to be false or misleading in a material particular.

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

- (5) The regulations may require a principal compliance declaration provided under this section to be accompanied by other documents prescribed by the regulations.

13 Declarations by unregistered persons

A person must not make a principal compliance declaration unless—

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

Maximum penalty—500 penalty units.

14 Registered principal design practitioners to be indemnified

- (1) A registered principal design practitioner must not—

- (a) provide a principal compliance declaration or do other work for the purposes of this Act, or
 - (b) hold out that the practitioner is adequately insured with respect to the provision of the declaration or that work,
unless the practitioner is adequately insured with respect to the declaration and work.
Maximum penalty—100 penalty units.
- (2) For the purposes of this section, a principal design practitioner is *adequately insured* with respect to a declaration and work if the practitioner—
- (a) is indemnified by insurance that complies with the regulations against any liability to which the practitioner may become subject as a result of making the declaration or carrying out the work, or
 - (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.
- (3) It is a condition of registration that a registered principal design practitioner must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the practitioner is adequately insured in accordance with this section.

Division 3 Obligations of building practitioners

15 Compliance declarations by registered building practitioners

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

16 Building practitioners must ensure compliance with declaration obligations

- (1) A building practitioner who does building work must take all reasonable steps to ensure that—
- (a) regulated designs for the building work are prepared by a registered design practitioner, and
 - (b) a design compliance declaration is obtained for each of those designs from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and

- (c) if required by the regulations, a principal compliance declaration is obtained for all those designs from a registered principal design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates.
- (2) A building practitioner who does building work must take all reasonable steps to ensure that, if regulated designs for a building element or performance solution are varied—
 - (a) designs for the building element or performance solution as varied are prepared by a registered design practitioner, and
 - (b) a design compliance declaration is obtained for those varied designs from a registered design practitioner whose registration authorises the practitioner to provide a declaration as to the matters to which the declaration relates, and
 - (c) if required by the regulations, a principal compliance declaration is obtained for those varied designs.

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

17 Compliance with requirements for designs

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

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

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

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

- (3) A building practitioner must not, except with reasonable excuse, carry out building work for which a regulated design is to be used unless the practitioner has obtained—
 - (a) a final design from a registered design practitioner for the work, and
 - (b) a design compliance declaration for the design from a registered design practitioner whose registration authorises the practitioner to provide declarations as to the matters to which the declaration relates.

Maximum penalty—500 penalty units.

18 Obligations relating to *Building Code of Australia*

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

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

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

Maximum penalty—1,000 penalty units.

19 Declarations by unregistered persons

A person must not make a building compliance declaration unless—

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

Maximum penalty—500 penalty units.

20 Registered building practitioners to be indemnified

- (1) A registered building practitioner must not—

- (a) provide a building compliance declaration under this Act or do related building work, or
- (b) hold out that the building practitioner is adequately insured with respect to the provision of the declaration or doing the work,

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

Maximum penalty—100 penalty units.

- (2) For the purposes of this section, a building practitioner is *adequately insured* with respect to a function if the building practitioner—

- (a) is indemnified by insurance that complies with the regulations against any liability to which the building practitioner may become subject as a result of exercising the function, or
- (b) is part of some other arrangement approved by the regulations that provides indemnity against the liability.

- (3) It is a condition of registration that a registered building practitioner must provide to the Secretary, in the time specified by the Secretary, information that the Secretary may require to satisfy the Secretary that the practitioner is adequately insured in accordance with this section.

Division 4 Miscellaneous

21 Compliance with *Building Code of Australia*

- (1) For the purposes of this Act, it is sufficient to comply with the requirements of the *Building Code of Australia* in respect of a regulated design or building work if the regulated design or building work complies with or satisfies—

- (a) the applicable governing requirements, and
- (b) the applicable performance requirements.

- (2) For the purposes of subsection (1)(b), the applicable performance requirements may be satisfied by—

- (a) in respect of building work—
 - (i) achieving a performance solution in the manner specified in the *Building Code of Australia*, or

- (ii) showing compliance through a deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*, or
 - (iii) a combination of a performance solution and deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*, and
 - (b) in respect of a regulated design that includes a performance solution—
 - (i) achieving a performance solution in the manner specified in the *Building Code of Australia*, or
 - (ii) a combination of a performance solution and deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*, and
 - (c) in respect of any other regulated design—showing compliance through a deemed-to-satisfy solution in the manner specified in the *Building Code of Australia*.
- (3) Despite subsection (1), if—
 - (a) the application of the requirements of the *Building Code of Australia* is modified by another law (***modified requirements***) in respect of a regulated design or building work, and
 - (b) the regulated design or building work complies with the modified requirements,that regulated design or building work is taken to comply with the requirements of the *Building Code of Australia* for the purposes of this Act.
- (4) In this section—
deemed-to-satisfy solution, ***governing requirements*** and ***performance requirements*** have the same meanings as in the *Building Code of Australia*.

22 Requirements for compliance declarations before issue of building certificates

The regulations may make provision for or with respect to prohibiting the issue of a complying development certificate or a certificate under Part 6 of the *Environmental Planning and Assessment Act 1979* unless one or more compliance declarations or final regulated designs have been provided to the issuer of the certificate.

23 Provision of compliance declarations, and other obligations, of registered body corporates

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

Maximum penalty—300 penalty units.

- (2) A registered body corporate must ensure that a compliance declaration that is provided on behalf of the body corporate is provided by a registered individual whose registration authorises the individual to provide the declaration.

Maximum penalty—1,000 penalty units.

24 Improper influence with respect to provision of declarations

- (1) A registered practitioner must not, on an understanding that the registered practitioner will act otherwise than impartially in the provision of a compliance declaration, seek or accept, or offer or agree to accept, a benefit of any kind, whether on the registered practitioner's own behalf or on behalf of any other person.
- (2) A person must not, on an understanding that a registered practitioner will act otherwise than impartially in the provision of a compliance declaration, give, or offer or agree to give, a benefit of any kind, whether to the registered practitioner or to any other person.

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

25 Regulations relating to insurance requirements

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

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

Part 3 Duty of care

26 Definitions

- (1) In this Part—
- association** means an association constituted under the *Community Land Management Act 1989*.
- building** means a building of a class prescribed by the regulations.
- construction work** means building work and the preparation of regulated designs and other designs for building work.
- owner** of land means any of the following—
- (a) every individual who jointly or severally or at law or in equity is entitled to the land for an estate of freehold possession,
 - (b) every individual 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,
 - (c) other persons prescribed by the regulations for the purposes of this definition.
- owners corporation** for a building means the owners corporation constituted under the *Strata Schemes Management Act 2015*.
- (2) In this Part, a reference to **building work** includes a reference to work done in relation to a building within the meaning of this Part.
- (3) In this Part, a reference to the **owner** of land includes—
- (a) if the land is subject to a strata scheme under the *Strata Schemes Management Act 2015*, the owners corporation constituted for the scheme, or
 - (b) if the land is subject to a community scheme, precinct scheme or neighbourhood scheme within the meaning of the *Community Land Management Act 1989*, the association constituted for the scheme.
- (4) The regulations may—
- (a) prescribe additional work that is construction work for the purposes of this Part, and
 - (b) exclude work from being construction work for the purposes of this Part.
- (5) The regulations may exclude persons from being owners for the purposes of this Part.

27 Extension of duty of care

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

28 Economic loss—owners corporations and associations

- (1) An owners corporation or an association is taken to suffer economic loss for the purposes of this Part if the corporation or association bears the cost of rectifying defects (including damage caused by defects) that are the subject of a breach of the duty of care imposed under this Part.
- (2) Subsection (1) applies whether or not the owners corporation or association was the owner of the land when the construction work was carried out.
- (3) Subsection (1) does not limit the economic loss for which an owners corporation, association or an owner may claim damages under this Part.

29 Duty must not be delegated

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

30 No contracting out of Part

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

31 Relationship with other duties of care and law

- (1) The provisions of this Part are in addition to duties, statutory warranties or other obligations imposed under the *Home Building Act 1989*, other Acts or the common law and do not limit the duties, warranties or other obligations imposed under that Act, other Acts or the common law.
- (2) This Part does not limit damages or other compensation that may be available to a person under another Act or at common law because of a breach of a duty by a person who carries out construction work.
- (3) This Part is subject to the *Civil Liability Act 2002*.

Note. Actions under this Part are subject to applicable limitation periods established under the *Limitation Act 1969*, and section 6.20 of the *Environmental Planning and Assessment Act 1979* which relates to civil actions relating to certain work.

Part 4 Registration of practitioners

Division 1 Applications for registration

32 Classes of registration

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

33 Application for registration

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

34 Secretary may obtain information from third parties

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

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

35 Determination of applications

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

36 Grounds for opinion that a person is not a suitable person to carry out work

- (1) The Secretary may refuse to register a person as a practitioner if the Secretary is of the opinion that the person (including, if the person is a body corporate, a director of the body corporate) is not a suitable person to carry out the work for which the applicant is seeking registration.
- (2) The Secretary may form an opinion that a person is not a suitable person to carry out the work for which the person is seeking registration in any one or more of the following circumstances—
- (a) the person (including, if the person is a body corporate, a director of the body corporate) has contravened a requirement imposed by or under this Act or a requirement imposed under another Act or law that applies to the work for which registration is sought,
 - (b) an equivalent authorisation of the person has been suspended or cancelled (other than at the person's request) under the law of another Australian jurisdiction,
 - (c) the person is disqualified (other than on the grounds of not residing in that jurisdiction or on the grounds that the person is a body corporate) from holding an equivalent authorisation under the law of another Australian jurisdiction,
 - (d) a close associate of the person who would not be a fit and proper person to be registered exercises a significant influence over the person or the operation and management of the person's business,
 - (e) a circumstance prescribed by the regulations.

37 Requirements for registration

- (1) The regulations may make provision for or with respect to the requirements for registration.
- (2) Without limiting subsection (1), the regulations may provide for the qualifications, skills and experience for registration, including registration for particular classes of registration.

38 Duration of registration

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

39 Conditions of registration

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

40 Particular conditions

- (1) Conditions may be imposed on registration to require a registered practitioner to prepare regulated designs or carry out building work in accordance with specified standards or methodologies, including but not limited to standards or methodologies prepared by the Secretary.
- (2) A condition of registration may provide that an authorisation conferred by the registration does not take effect until the end of a specified period or the happening of a particular event or the occurrence of a particular state of affairs.
- (3) This section does not limit the matters for which conditions of registration may provide.

Division 2 Variation, suspension or cancellation of registration

41 Variation, suspension or cancellation of registration generally

- (1) The Secretary may, by written notice given to a practitioner, vary, suspend or cancel the practitioner's registration on the following grounds—
 - (a) the practitioner is not entitled to be registered,
 - (b) the practitioner fails to comply with a condition of registration,
 - (c) in the opinion of the Secretary, the practitioner is not a suitable person to be registered or registered as a particular class of practitioner,
 - (d) the practitioner has contravened this Act or a regulation made under this Act, whether or not the practitioner is prosecuted or convicted for the contravention,
 - (e) the registration was granted in error,
 - (f) the Secretary has decided to suspend or cancel the registration under Part 5,
 - (g) the practitioner has applied for the registration to be cancelled or suspended,
 - (h) a ground prescribed by the regulations.

- (2) The notice must specify—
 - (a) the date or time from which the variation, suspension or cancellation takes effect, and
 - (b) the grounds for the variation, suspension or cancellation.

42 Suspension or cancellation may be subject to conditions

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

43 Return of certificate of registration

- (1) The Secretary may at any time by written notice require a person whose registration has been suspended, varied or cancelled to return to the Secretary within a specified time a certificate of registration issued to the person.
- (2) The notice may be included as part of a statement of a decision by the Secretary to take disciplinary action against the person.
- (3) A person must comply with a notice under this section.
Maximum penalty—20 penalty units.

Division 3 Recognition as registered practitioner

44 Recognition procedure

- (1) The regulations may make provision for or with respect to the recognition of persons or classes of persons as registered practitioners for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may provide for the following—
 - (a) the recognition of persons who hold designated qualifications, or who are registered or recognised as practitioners under a law of this State or another State or a Territory, as registered practitioners,
 - (b) the classes of practitioners for which persons or classes of persons may be recognised as registered practitioners,
 - (c) the qualifications, skills and experience required for recognition,
 - (d) insurance requirements for recognition,
 - (e) applications for recognition and related matters (including conditions of recognition).

Division 4 Registration offences

45 Registered body corporate with insufficient registered directors

- (1) A registered body corporate must not provide a compliance declaration during a period during which it does not have at least 1 suitably qualified director.
Maximum penalty—1,000 penalty units.
- (2) A registered body corporate that has not had for a continuous period of 3 months at least 1 suitably qualified director must not provide a compliance declaration until—
 - (a) it has a suitably qualified director, and

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

Maximum penalty—1,000 penalty units.

(3) In this section—

suitably qualified director, in relation to the provision of a compliance declaration, means a director who is an individual who is a registered practitioner whose registration authorises the individual to provide the declaration.

46 Offence of contravening condition

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

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

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

Maximum penalty—300 penalty units.

47 Offence of lending certificate registration

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

Maximum penalty—300 penalty units.

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

48 False representations relating to practitioners

(1) A person must not represent himself or herself to be a registered practitioner, and must not allow himself or herself to be represented to be a registered practitioner, unless the person is a registered practitioner.

(2) A person must not represent another person to be a registered practitioner if the person knows, or ought reasonably to know, that the person is not a registered practitioner.

Maximum penalty—300 penalty units.

49 Return of cancelled, suspended or varied registration

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

Maximum penalty—300 penalty units.

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

(a) lodging the certificate with the Secretary, or

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

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

Division 5 General

50 Registration not transferable

Registration is not transferable.

51 Voluntary surrender or suspension of registration

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

52 Review by Civil and Administrative Tribunal

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

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

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

Part 5 Disciplinary action against practitioners

53 Grounds for taking disciplinary action

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

- (a) the practitioner has engaged in conduct in connection with the preparation of regulated designs or carrying out building work, or the provision of declarations under this Act, that has fallen short of the standard of competence, diligence and integrity that a member of the public is entitled to expect of a reasonably competent practitioner,
- (b) the practitioner has contravened this Act or a regulation made under this Act, whether or not the practitioner is prosecuted or convicted for the contravention,
- (c) the practitioner has contravened a law of this or another Australian jurisdiction (whether or not the contravention is an offence and whether or not the practitioner is prosecuted or convicted for the contravention) with respect to any of the following—
 - (i) the preparation of regulated designs or the carrying out of building work or work authorised to be carried out under an equivalent authorisation,
 - (ii) the provision of a compliance declaration,
 - (iii) registration or an equivalent authorisation,
 - (iv) fraud or dishonesty,
- (d) the practitioner has failed to comply with a statutory or other duty, or a contractual obligation, imposed on the practitioner by or in accordance with a law of this or another Australian jurisdiction with respect to the preparation of regulated designs or the carrying out of building work or work authorised to be carried out under an equivalent authorisation or the provision of a compliance declaration,
- (e) the practitioner has failed to comply with a condition of the registration,
- (f) the practitioner has wilfully disregarded matters to which the practitioner is required to have regard to when preparing regulated designs or carrying out building work or when providing a compliance declaration,
- (g) the practitioner has failed to comply with an undertaking given under section 77,
- (h) other grounds prescribed by the regulations.

54 Notice to show cause

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

evidence adduced, if any, by or on behalf of the practitioner with respect to those matters that the Secretary thinks fit.

- (6) The Secretary must, before determining whether or not to take disciplinary action under this Part against a person, take into consideration any submission made by the person in accordance with this section.
- (7) However, the Secretary may take immediate disciplinary action without taking any steps under this section if the Secretary is of the opinion that it is in the public interest to take immediate action.

55 Disciplinary action that may be taken by Secretary

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

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

56 Registered directors must report certain conduct

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

- (a) the body corporate,
- (b) another registered director of the body corporate,

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

Maximum penalty—300 penalty units.

57 Review by Civil and Administrative Tribunal

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

58 Enforcement of monetary penalties and payment of costs

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

59 Liability for offences not affected

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

Part 6 Investigations

Division 1 Preliminary

60 Definitions

In this Part—

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

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

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

premises includes—

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

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

specify an act, matter or thing includes—

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

vessel means any kind of vessel used in navigation.

61 Purposes for which functions under Part may be exercised

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

Division 2 Authorised officers

62 Appointment of authorised officers

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

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

63 Scope of authority

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

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

64 Identification

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

Division 3 Information gathering powers

65 Exercise in conjunction with other powers

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

66 Powers of authorised officers to require information and records

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

67 Power of authorised officers to require answers

- (1) An authorised officer may direct a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters with respect to which information is reasonably required for an authorised purpose to answer questions with respect to those matters.
- (2) An authorised officer may, by written notice, direct a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (3) The place and time at which a person may be directed to attend is to be a place and time nominated by the authorised officer that is reasonable in the circumstances.

68 Recording of evidence

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

Division 4 Entry to premises

69 Powers of authorised officers to enter premises

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

70 Entry into residential premises only with permission or warrant

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

71 Search warrants

- (1) An authorised officer under this Act may apply to an issuing officer for the issue of a search warrant if the authorised officer believes on reasonable grounds that—
 - (a) a requirement imposed by or under this Act is being or has been contravened at any premises, or
 - (b) there is, in or on any premises, a matter or a thing that is connected with an offence under this Act or the regulations.
- (2) An issuing officer to whom an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant—
 - (a) to enter the premises, and
 - (b) to exercise any function of an authorised officer under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer—

- (a) may accompany an authorised officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.
- (5) In this section—
issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

72 Provision of assistance to authorised officers

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

73 Powers that may be exercised on premises

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

- (5) The power to do a thing under this section includes a power to arrange for that thing to be done.
- (6) A power to do something under this section with respect to a thing may be exercised without the consent of the owner of the thing.
- (7) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

Division 5 Miscellaneous

74 Taking possession of records to be used as evidence

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

75 Obstruction of authorised officers

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

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

76 Failure to comply with direction

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

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

Part 7 Enforcement

Division 1 Remedial actions

77 Undertakings

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

Note. Part 5 provides that a breach of an undertaking is grounds for taking disciplinary action against a registered practitioner.

78 Stop work orders

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

79 Review by Civil and Administrative Tribunal

A person aggrieved by a decision of the Secretary to make, revoke or amend a stop work order may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.

80 Applying for injunctions

- (1) On the application of the Secretary, the Land and Environment Court may grant an injunction restraining a threatened or apprehended contravention, or the continuation of a contravention, of a provision of this Act or the regulations.
- (2) An injunction may be granted without the Secretary being required to show a likelihood of damage.

- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.
- (4) When the Secretary makes an application for the grant of an injunction under this section, the Court is not to require the Secretary or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

81 Complaints, investigations and audits of practitioners

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

Division 2 Offences

82 Proceedings for offences

- (1) Proceedings for an offence against this Act may be taken before the Local Court or before the Land and Environment Court in its summary jurisdiction.
- (2) Proceedings for an offence against the regulations may be taken before the Local Court.
- (3) If proceedings in respect of an offence against this Act are brought in the Local Court, the maximum monetary penalty that the Court may impose in respect of the offence is, despite any other provisions of this Act, 1,000 penalty units or the maximum monetary penalty provided by this Act in respect of the offence, whichever is the lesser.
- (4) If proceedings in respect of an offence against this Act are brought in the Land and Environment Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.
- (5) Despite the *Criminal Procedure Act 1986* or any other Act, proceedings for an offence against this Act or the regulations may be commenced not later than 3 years after the date alleged to be the date on which the offence was committed.

83 Penalty notices

- (1) A penalty notice officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

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

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **penalty notice officer** means any of the following designated by the Secretary as a penalty notice officer for the purposes of this section—
 - (a) a member of staff of the Department,
 - (b) a person prescribed by the regulations.

84 Offences by bodies corporate

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

85 Continuing offences

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

Part 8 Miscellaneous

86 Practitioners registers

- (1) The Secretary is to maintain a register, for each of design practitioners, principal design practitioners and building practitioners, for the purpose of obtaining and providing information about the particulars of registrations that are required by the regulations to be kept in the registers.
- (2) A register is to be in the form determined by the Secretary and is to be freely available on the internet for inspection by the public.
- (3) Without limiting the particulars that may be prescribed by the regulations with respect to a register, the regulations may require that the register include any of the following particulars with respect to registration—
 - (a) details of the registration, including details of the holder of the registration,
 - (b) the results of a relevant disciplinary determination,
 - (c) the results of prosecutions under this Act,
 - (d) details of penalty notices issued,
 - (e) details of warning notices published under this Part,
 - (f) details of any conditions on the registration,
 - (g) details of any cancellation or suspension of the registration.
- (4) The Secretary may remove a particular from, or otherwise amend, a register if the particular is, in the opinion of the Secretary, false, erroneous, misleading or unfairly prejudicial to the interests of the holder of the registration concerned.

87 Warning notices

- (1) The Secretary may authorise publication of a notice (a *warning notice*) warning persons of particular risks involved in dealing with—
 - (a) a specified registered practitioner or former registered practitioner, or
 - (b) any other person that the Secretary reasonably believes may have breached this Act or the regulations.
- (2) The Secretary may authorise publication of a warning notice in one or more of the following ways—
 - (a) to a person making inquiries to the Secretary about the person concerned,
 - (b) by advertisement by the use of any medium,
 - (c) to any media representatives.
- (3) Publication of a warning notice may be authorised whether or not a complaint has been made.
- (4) However, the Secretary must conduct an investigation before authorising the publication.
- (5) Before authorising publication of a warning notice, the Secretary must give the person concerned an opportunity for a period of not less than 2 business days to make representations to the Secretary about publication of the warning notice, unless—
 - (a) the Secretary, after making reasonable efforts to do so, is not able to contact the person promptly and advise the person of that opportunity, or
 - (b) the person refuses to make any representations.
- (6) However, no opportunity to make representations is required to be given if, in the opinion of the Secretary, there is an immediate risk to the public.

- (7) No liability is incurred by a person for publishing in good faith—
 - (a) a warning notice under this section, or
 - (b) a fair report or summary of a warning notice.

88 Service of documents

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

89 Certificate evidence of certain matters

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

90 Personal liability

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

- (a) the Secretary,
 - (b) an authorised officer,
 - (c) a person acting under the direction of the Secretary or an authorised officer.
- (2) However, any such liability attaches instead to the Crown.

91 Disclosure and misuse of information

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

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

Maximum penalty—50 penalty units.

92 Exchange of information

- (1) The Secretary may provide relevant information to a relevant agency for the purposes of enabling or assisting the relevant agency to regulate or take other action in respect of any of the following—
- (a) the preparation of regulated designs and other work done by a registered design practitioner or principal design practitioner,
 - (b) building work,
 - (c) practitioners,
 - (d) compliance declarations,
 - (e) other matters prescribed by the regulations.
- (2) A relevant agency may provide relevant information to the Secretary for the purposes of enabling or assisting the Secretary to exercise the Secretary's functions.
- (3) Without limiting subsection (1), the Secretary may enter into an arrangement (an **information sharing arrangement**) with a relevant agency (or in the case of the Civil and Administrative Tribunal, the President of the Tribunal) for the purposes of sharing or exchanging relevant information held by the Secretary or the agency.
- (4) Under an information sharing arrangement, the Secretary and the relevant agency are, despite any other Act or law, authorised—
- (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose information to the other party.
- (5) Subsection (4) applies only to the extent that the information is reasonably necessary to assist in the exercise of functions of the Secretary under this Act or the functions of the relevant agency.
- (6) This section does not—
- (a) require the Secretary to provide information to a relevant agency only in accordance with subsection (1), or with an information sharing arrangement, where that information can otherwise be lawfully provided, or
 - (b) limit the operation of any other Act or law under which a relevant agency is authorised or required to disclose information to another person or body.

- (7) In this section—
relevant agency means any of the following—
- (a) a government sector agency,
 - (b) the Civil and Administrative Tribunal,
 - (c) other persons or bodies prescribed by the regulations.

93 Secretary may require information about insurance policies

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

94 Delegation

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

95 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision with respect to the following—
 - (a) the qualifications, skills and experience required for registration, including the approval of courses of training and the approval of persons to conduct the training or to assess persons undergoing the training,

- (b) the particulars relating to regulated designs that must be recorded, and the form and manner in which they must be recorded,
 - (c) the keeping of records and the provision of information to the Secretary by practitioners with respect to preparation of regulated designs, building work and compliance declarations,
 - (d) the lodging of copies of designs and compliance declarations electronically or otherwise with the Department or another person approved by the Minister,
 - (e) the fees payable under this Act or the regulations and the refund, reduction or waiver of any fees.
- (3) A regulation may apply, adopt or incorporate any publication as in force at a particular time or as in force from time to time.
 - (4) The regulations may exempt specified persons or bodies or classes of persons or bodies, or specified work or classes of work, or specified registrations, from any specified provision of this Act.
 - (5) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units in the case of a body corporate or 100 penalty units in any other case.

96 Recovery of unpaid fees

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

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

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

Part 2 Provisions consequent on enactment of this Act

2 Definition

In this Part—

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

3 Act does not apply to existing work

This Act does not extend to work carried out under an existing arrangement.

4 Registration requirements

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

Schedule 2 Amendment of Acts

2.1 Home Building Act 1989 No 147

Section 18F Defences

Insert “registered design practitioner or registered principal design practitioner (within the meaning of the *Design and Building Practitioners Act 2019*),” after “architect,” in section 18F (4)(a).